



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES
COMMITTEE

Access to Australian Parliament House by lobbyists

(Public)

MONDAY, 8 APRIL 2024

CANBERRA

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FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

Monday, 8 April 2024

Members in attendance: Senators Colbeck, David Pockock and Pratt [by video link]

Terms of Reference for the Inquiry:

On 6 December 2023 the Senate referred the following inquiry to the Senate Finance and Public Administration References Committee for inquiry and report by 30 April 2024.

Access to Australian Parliament House by lobbyists and the adequacy of current transparency arrangements relating to the lobbyist register, with reference to the adequacy of:

- (a) current transparency arrangements relating to the lobbyist register;
- (b) the current sponsored pass system for lobbyists to access Australian Parliament House with particular regard to transparency and publication of lobbyists who are pass holders and their sponsors; and
- (c) publicly accessible information of Australian Parliament House pass holders who are lobbyists and their sponsors.

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TWOMEY, Professor Anne, AO, Private capacity [by video link]

Committee met at 09:03

CHAIR (Senator Colbeck): I declare open this hearing of the Senate Finance and Public Administration References Committee for the inquiry into access to Australian Parliament House by lobbyists. I begin by acknowledging the traditional owners of the land on which we meet and pay my respects to their elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.

These are public proceedings being video streamed via the parliament's website, and a *Hansard* transcript is being made. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. Witnesses before parliamentary committees cannot be sued or prosecuted for giving evidence or for the content of evidence they give. It is also a contempt to give false or misleading evidence to a Senate committee. Witnesses also have the right to request to be heard in camera.

The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked to the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If a witness objects to answering a question, they should state the ground upon which the objection is made, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera.

Commonwealth officers appearing today are also reminded of the Senate order specifying the process by which a claim for public interest immunity should be raised. A copy of the order is available from the secretariat.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: I now welcome Associate Professor Yee-Fui Ng and Professor Emerita Anne Twomey by videoconference. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I invite you both to make a short opening statement, and at the conclusion of that I will go to colleagues for questions.

Dr Ng: Thank you very much for the invitation to appear before this inquiry. First of all I'd like to acknowledge that lobbying is a vital part of our democracy and that the ability to make representations to our elected representatives is essential to a healthy and well-functioning democracy. However, it is also clear that lobbying can lead to corrupt conduct by both lobbyists and public officials, and we've seen that through various corruption investigations in the states and territories. There's also a broader notion of political equality and ensuring fairness of government policy and decision-making processes by increasing the transparency in the disclosure of lobbying activity.

The regulation of lobbying is very weak at the federal level in Australia compared to international best practice and also several Australian states. I would recommend reforms to increase the scope of lobbyists covered by the register, to enhance the disclosure of lobbying activity and to increase the independence and enforcement by the regulator. Improving the regulation of lobbying through enhancing its transparency, fairness and integrity will help rebuild trust in our political and democratic institutions. Thank you for the opportunity to present at this inquiry, and I look forward to the discussion.

CHAIR: Thanks, Associate Professor. Professor Twomey?

Prof. Twomey: Like Yee-Fui, I also recognise that lobbying is a really important means of informing members of parliament about different perspectives on policy issues but also that lobbying should be subject to regulation that supports fairness in terms of equality of access to politicians and also transparency as a means of preventing corruption, or indeed the perception of corruption, which is something that corrodes public support for the political system. Accordingly, in my view, lobbyists, including in-house lobbyists, should be subject to a code of conduct and in most cases also registered. It would be preferable that they were treated equally, so that means no orange passes for some and not for others, and that they have to make formal appointments to visit MPs and ministers just like everyone else, because that would put people on a level playing field. But, if they are to have passes, in my view these should only be granted to registered lobbyists who are subject to a code of conduct, and the system should be a transparent one, including having a list of those who hold such passes and who sponsored those passes.

CHAIR: Thanks very much. Senator Pocock.

Senator DAVID POCOCK: Thank you both for your time. Professor Twomey, thank you for your submission. In it you talk about the lobbying code and how, by failing to include in-house lobbyists in its current form, it fails to achieve its intended purposes. I'm interested in your view if publicising the identities of lobbyists who hold sponsored passes, including the firm and potentially the identity of the parliamentarian who sponsored them, raises any legal issues, constitutional or otherwise.

Prof. Twomey: None that I can really think of. I mean, it's a matter of transparency. Knowing who is supporting lobbyists and their access to Parliament House and knowing who has access to Parliament House are both matters that are important for transparency. I can't see any particular legal reason why that shouldn't occur—or indeed a constitutional reason—but, if you can think of one, point it out, and I'll respond to it.

Senator DAVID POCOCK: Okay. Thank you. Your submission also rejects the argument that transparency around lobbyists passes would lead to a security risk, which is an argument that gets put forward. Can you briefly outline the security risk that some say it would raise and why it shouldn't be a concern?

Prof. Twomey: I can understand the concern. Obviously, these passes are important in terms of giving people access to the behind-the-scenes parts in Parliament House, and security in Parliament House is very important,

particularly in these more fraught times. In the past, the argument has been put that, if it is known that various people have these passes, this could then facilitate passes being stolen or replicated and other people gaining access to Parliament House. My observation is that, if that's a genuine concern, it's a genuine concern that would arise in relation to a plethora of other passes. There are lots of people who hold parliamentary passes, be they staff members who just work in Parliament House and the Parliamentary Library, the cafeteria, the people who work for politicians, the ministerial advisers, and politicians themselves and their family members. For the most part, the identity of these people are known. If someone was going to deliberately go around targeting people who have passes for the purposes of stealing or copying them then that's going to be a problem anyway. The mere fact that you've got some people on a register of lobbyists whose names are known is not actually going to really increase that risk; it's an existing risk. There are already people who are known to have those passes. I don't think it exacerbates the problem in any way. To the extent that it's a problem, then Parliament House needs to deal with that problem across the board; it's not just a problem in relation to lobbyists.

Senator DAVID POCOCK: Thank you. You mentioned a level playing field in your opening statement, and there's a section of your submission that sets out a view that providing certain individuals with unfettered access to Parliament House when others don't have that access is inconsistent with a fundamental constitutional principle of equal sharing in political power. Do you think adding some more transparency around access would align more closely with that principle? Is that heading in the right direction? What more could be done?

Prof. Twomey: It's certainly heading in the right direction. This was the reason that spurred me to write my submission; lobbying isn't really my field of expertise or interest. What did spark it was the constitutional aspects that we see pop up in relation to the implied freedom of political communication and High Court jurisprudence generally, where the court does stress that the Constitution itself—they say—guarantees equal participation of people in the political system. If we want to be true to that guarantee, we can't really have a system where some people are favoured by getting easy access to members of parliament to lobby them and other people are excluded from that. There doesn't seem to be any kind of fair process for determining who's included and who's excluded. That's really what sparked it.

Now, I'm not suggesting that the Constitution, even though it allegedly guarantees this equal participation—it does not impose a positive obligation on parliament to facilitate that by enacting legislation, because our Constitution, at least as interpreted so far, does not impose positive obligations that require parliaments to enact legislation or governments to give effect to policies. What it does tell us is that this is something very important to our constitutional system. It's a profoundly important, fundamental constitutional principle, and it's appropriate for parliament to facilitate and support that principle by allowing either equal access to people—and that might include just not giving orange passes to anyone in the lobbying field and allowing all of them instead to be ordinary temporary visitors to parliament who have an escorted pass, so everyone's on the same level playing field—or at the very least making it transparent as to who has the passes and who is sponsoring those passes and, through that transparency, and any criticism that might arise because of that, leading to a more open and fair system.

Senator DAVID POCOCK: Thank you. Professor Yee-Fui Ng, a submission from the A-G's office contains evidence that the number of new lobbyists on the lobbyists register has nearly doubled since 2020. I'm interested in whether you have any views on why this might be. Why have we seen this doubling in the last few years?

Dr Ng: Lobbying has transformed in the last 40 years from a small industry of a few hundred people to a multibillion-dollar industry, so this growth that you see is a continuation of what has come before. But one thing to say about what's on the register is that it's just third-party lobbyists, which have been estimated to be just 20 per cent of the entire lobbyist population. So that's why Professor Twomey and I have been advocating for including both third-party and in-house lobbyists on the register, because what we have right now is an incomplete picture. Even though we've seen an increase in the number of registrations, that's still just 20 per cent of the total lobbyist population.

Senator DAVID POCOCK: Your submission calls for an independent regulator for lobbying. You say it's currently being regulated through the A-G's department. Why is an independent regulator so important? To add to that, what's being done in other jurisdictions? What do you recommend as the best model for Parliament House and federal politics in Australia?

Dr Ng: That's a good question. At present it's being administered at the federal level by the Attorney-General's Department; previously it was the Prime Minister's department. What we've seen with executive government regulation is a lack of enforcement. The *Guardian* ran a piece that said that there has been no enforcement of lobbying activity, certainly at the federal level, and in many states as well, where it's administered by government departments. When the Prime Minister's department, which was administering it at the time, was questioned, they

said: 'We're not a regulator. We're just administering the scheme.' So the mentality of a government department is quite different to that of an independent statutory regulator.

For instance, in NSW, the NSW Electoral Commission is now administering the lobbying scheme, and, since they became the regulator, there have been numerous enforcement actions in terms of deregistering lobbyists—adding them to a watchlist, where they have to meet with government representatives in the room. So the range of enforcement mechanisms is broader and also the willingness to use those enforcement mechanisms. In Canada, there's a Commissioner of Lobbying that's dedicated to regulating lobbying. You can see very strong enforcement actions that happen in Canada as well.

Senator DAVID POCOCK: Thank you. Earlier you said that just 20 per cent of lobbyists are captured by the lobbyists register. We obviously know that there are thousands of people on sponsored passes. Why do you think it is that we have a system where only 20 per cent of lobbyists are captured?

Dr Ng: I've done a historical analysis of lobbying regulation across the Australian federation. What we've seen—and you'll probably see it in these proceedings—is that every time there's a call for increased regulation the lobbyists come and appear and say: 'No, we don't need to regulate this area. Everything is fine. There's nothing to see here.' So the lobbyists have been quite effective in constraining the scope of regulation for the last 40 years, and that's why we've seen a very narrow scope of lobbyists.

The requirement to disclose is very low as well—they just have to say their name and who they're representing—compared to what you can see in other jurisdictions, such as Queensland and the US and Canada. The US and Canada have had schemes for more than 50 years where they disclose each and every lobbying contact. So, if we've contacted the mining minister 20 times and met with them 20 times in the last month to try to get our mines approved, that all has to be logged and registered. Another way to do that is to disclose ministerial diaries, so the ministers proactively disclose their diaries every month. In doing so, you can see who is getting the meetings with the ministers, and people can come to lobby as well. So, if there are 20 meetings with the mining minister by the mining groups, then the environmentalists can come to lobby and come in and put their submissions forward as well.

Senator DAVID POCOCK: Just finally, one of the things that struck me in your submission was your call for a ban on MPs receiving remuneration from any third parties, including lobbyists, for parliamentary speeches, questions, motions, introductions of bills or amendments to motions of bills. Are you aware of any examples where this has happened?

Dr Ng: Yes. This is the idea of a ban on quid pro quo corruption, where you're trying to exchange something in exchange for something else. There are bans on success fees by lobbyists in several jurisdictions, including Australian jurisdictions, because that's saying, 'Oh, I'll only get my money contingent on success,' and that encourages unethical or illegal behaviour by the lobbyists in order to receive remuneration. In the UK and the European parliaments, there have been scandals where members of parliament were found to take bribes in exchange for asking questions in parliament that the lobbyists had put forward. That was a big scandal that exploded in the UK, and that led to a ban in receiving money for asking questions in parliament. That's this idea that parliamentary time is a scarce resource, and we shouldn't let people pay for such access. So that is quite common as well. This is the idea that a ban is only required for this exchange that can lead to direct corruption. For the broader notion of fairness, the regulatory method of transparency is good, as well as disclosing the activities of lobbying, not just the identity of the lobbyists.

Senator PRATT: I would like to ask Professor Twomey about parliamentary privilege and past examples in the Australian parliament of people seeking to use things like footage from corridors of people coming and going from people's offices as evidence that someone is the source of a particular whistleblowing leak. I'm thinking of Stephen Conroy and NBN Co some years ago and the kinds of examples where who has registered someone to give access to the building creates particular inferences about someone's relationship or the source of information et cetera. Professor Ng, you might care to comment on that as well.

Prof. Twomey: My first observation is that, if you don't want an inference of your relationship with a particular lobbyist, then don't sponsor them for a pass. That's really a choice of members of parliament in terms of sponsoring them. I honestly don't see why lobbyists need to be sponsored for a pass. The reality is that if you are the minister for whatever you could have formal meetings with people who make an appointment to meet you and get a temporary escorted visitor pass. You've got staff in your office who can escort them from the public area to your office, and there's really no problem with that. I'm less concerned about people drawing inferences from who members of parliament sponsor for a pass, because no-one is forcing you to sponsor them for a pass. That's really the choice of the member of parliament. Equally, if there are questions about inferences being drawn as to who visits who, in terms of lobbying, we can resolve that with transparency—ministerial diaries being published.

Senator PRATT: I'm talking about the backbench, or the opposition in this case, as was the case with Stephen Conroy.

Prof. Twomey: Right. In any event, if it's a matter of ministers opening their diaries—as happens in New South Wales—for meetings and appointments, I can't see why backbenchers and the like shouldn't be open about those sorts of matters as well.

Senator PRATT: I think the inference in this case was that a government owned agency leaked information to the opposition on the basis that the information being given by government or traded by the government wasn't transparent and wasn't the true take on the information and that parliament was then leaned on to disclose the identity of the particular individual who had provided that information to an MP.

Prof. Twomey: Right. I'm not terribly clear on what the question here. But it's obvious that if members of parliament want to receive information from whistleblowers then they don't want to be the source of the whistleblower being publicly revealed, but presumably that can happen outside of Parliament House. Again, there are opportunities to do that in other ways. I would have thought that if you're a whistleblower leaking information and you trot up to the office door of someone in Parliament House, then that's your choice to make.

Senator PRATT: You would presume that it would become public?

Prof. Twomey: If you are wandering around Parliament House, where there are a whole lot of people from different parties with different interests who will observe your movements in Parliament House, I think one should assume that you will be seen wandering around there with your orange pass and that it's quite possible that someone might mention it. If you were whistleblowing and wanting to do it confidentially, presumably you wouldn't do it in a public place—or a semi-public place—of that kind.

Senator PRATT: I've had past experience of this, where I've had to rely on third parties to collect information under parliamentary privilege for me, and the value of that information has seen it leaked before I was able to give it privilege. There were a whole range of complexities around this because of the third party that received it. I think it was still found that the information was protected by privilege anyway, but it's not uncomplicated in that context. You don't see any issues arising in those kinds of dynamics? Do you think there should be a limit on the number of passes? I think I've sponsored 70 or so, at least. Most of those are from civil society. I've got no issue with the details of who I have sponsored being public, but I'm concerned that particular inferences might be drawn from the fact that you might be a sponsor, or have been a past sponsor, to high numbers of people who you think generally have a legitimate reason to open and transparent access to the building, particularly with a focus on access for civil society and access for people who do government relations jobs, for example. Do you think government relations is one of the titles that should automatically be on the register?

Prof. Twomey: In my view, yes; those people involved in government relations should either be registered or at least subject to the code of conduct. I just don't understand why we have a code of conduct applying to some lobbyists, those who do third-party consultancy types of lobbying, and not to others. If it's part of your professional job to be lobbying members of parliament then, in those circumstances, I think you should be subject to a code of conduct.

My only hesitation in relation to registration is simply one related to what are the burdens of registration. I'm a person who, as a general principle, prefers to avoid imposing lots of unnecessary administrative burdens on people and those sorts of registration things can, from time to time, be very burdensome. But if it wasn't, if it didn't have excessive requirements like paying fees or having to do regular reports then I think the wider, the better. If, however, it is burdensome, then I think you should have an incentive mechanism and that would be, 'Well, if you want to have an orange pass then you have to go through the burden of being registered,' so that we ensure that all people who do have an orange pass for purposes of government relations, lobbying et cetera do have to register. In that case, people would have a choice. If they don't want to register, they can just choose not to have a pass. If they do want the pass, then they take the burden of registration.

Senator PRATT: Does that perhaps mean we need more categories for passes? For example, I've got a party member in another state who likes to holiday in Canberra because he's a political nerd. He's got a disability and it's good community inclusion for him to be able to come here. I've sponsored him for an orange pass, and he knows how to conduct himself accordingly. There's a whole range of different types of relationships that people can have that are a legitimate part of an inclusive parliament that has a broad range of people that have access to it. Should there be further categories of passes, for example, or—

Prof. Twomey: I'm sure people can think of another colour! Yes; there's no problem with confining types of passes to different categories as, indeed, we do now. In those circumstances, if the reason you have your pass is because you're there to lobby, you're there as a part of government relations et cetera, then you should be on the

lobbyist register. There's no reason you can't have other categories of passes—for family members and political party relationships et cetera—where they're not there for the purposes of lobbying other members of parliament to achieve particular ends in a way that excludes other people who may also have legitimate reasons to lobby. Certainly, you could have different categories of pass. I'm sure there are enough colours in the rainbow to accommodate that.

Senator PRATT: I'm sure there are. Dr Ng, do you have any comments on that?

Dr Ng: Yes. In terms of who should be on the lobbyist register, I agree with Professor Twomey that there is a Goldilocks level of regulations. You don't want to capture every small bit player that doesn't actually do much lobbying. So what we see in the United States and Canada is this threshold of significance of the lobbying activity: if you spend 20 per cent or more of your time lobbying then you should register, or if you spend a certain amount of money on lobbying activities or receive a certain amount of income above a certain threshold then you should register. I think that's a good way to filter the small people who are just approaching their local MP for one matter from those who are actually engaging in lobbying as an industry, either as third-party lobbyists or as in-house lobbyists. That's how I would reform the law, and that's been done in the United States and Canada.

Senator PRATT: So, for example, if it's a salaried or a commissioned role where there's a financial element—being paid to do a job, whether it's a purely environmental foundation, the gay rights lobby or a mining company. Is volunteerism something that should be separate?

Dr Ng: Yes. There's a way of doing it in terms of the amount of time spent lobbying. That could include environmental groups, NGOs and so forth where 20 per cent or more of their time is spent lobbying. Another method is to go on risk and exempt low-risk groups. If you think charities might be a low-risk group, you can exempt them from the requirement to register. I've spoken to some civil society groups, and some are quite well resourced and quite willing to register if they need to, but others might struggle if they are smaller organisations. So, yes, this idea of significance of the activity is important, I think, but so is the level of risk. If you think certain groups are lower risk, you could possibly exempt them.

Senator PRATT: Would you be concerned, if a disclosure of passes created too much complexity for both MPs and those who already have business in the building for legitimate purposes, that you might see a reduction in the number of passes or in civil society participating, just because the system had become more onerous for people to participate in? One of the things where I compare the federal parliament to state parliaments is that, because of the size of the building, there is a lot of space for people to hold events and meetings, do media and hold briefings, as well as coming to the offices of members of parliament, and it really does support a vibrant democracy. I guess I still have some concerns that in seeking transparency, which is one thing, we might create different problems for our democracy in administering that.

Dr Ng: Certainly we don't want to wrap people in red tape, but, if we're only requiring the significant players, the repeat players, to register, they already have sophisticated records, so writing it down or submitting something that they already have is not as burdensome as it would be for a very small and not-well-resourced organisation. The regulation that I'm proposing is only for those who do spend quite a lot of time and money on lobbying. They do have the resources to undertake that administrative burden.

Senator PRATT: I'm also concerned about the administrative burden on MPs in that context. For example, could we be asking existing members on the lobbyist register to disclose if they have a pass? I'm trying to work out what the difference is between, on one hand, the lobbyist pass and access to the building and, on the other, the lobbyists register overall. There's a pretty significant difference between the two currently.

Dr Ng: Yes, certainly, they could be married up so that the register and the passes are aligned in terms of disclosure on the register of who does have a parliamentary pass. It raises an interesting issue about members of parliament as well, because at the federal level are not currently covered as officials to be lobbied whereas in New South Wales, for instance, it does cover the MPs being lobbied. What we see in research in Canada is that members of parliament are logical targets for lobbyists as well, especially those that are on parliamentary committees—like all you wonderful people—as are those that hold quite significant positions in the political parties. They are also logical targets for lobbyists; therefore, they should be covered by the lobbying regulation.

Senator PRATT: But isn't that just members of parliament doing their job—talking to a wide range of stakeholders and making disclosures? For example, we are now required to make disclosures to our committees of any potential conflicts of interests we might need to disclose, which might even include whether we have had a meeting with someone where a potential conflict arises. We will just disclose that now as a matter of course. I can say it very rarely comes up and committee members do actively disclose it. The committee can deliberate around whether they do think there is a perception of conflict.

Dr Ng: Certainly, it is a good thing for members of parliament to meet a broad range of people and represent a broad range of interests. It is good as well to get that disclosure of conflicts of interest and the code of conduct that is robust and in place. Certainly, they are all good things. The question is whether the broader public should know as well who MPs are meeting. If people know other people are meeting with MPs, it might actually broaden the scope of who might want to choose to meet with them.

CHAIR: Professor Twomey, I am a bit curious about the concept of there being a whole heap of people running around Parliament House dropping into people's offices without appointments, particularly ministerial offices. That is well beyond my life experience, having been a minister, a backbencher and a member of a committee. If you want to see an MP, you make an appointment to see an MP or a senator. There are a few tourist traps, if you want to call them that, around the building where members of the lobbyist corps tend to congregate. If you want to avoid lobbyists, you avoid those places. But it is not a free-for-all that exists within this building; it is an organised process. I want to dispel the misconception that might be there that there are people sticking their heads inside your door all day distracting you from business. It is an ordered lifestyle we live here to a large extent.

Prof. Twomey: Yes, if it is ordered and if that is what happens—that people are making the appointment beforehand—there is no reason they need the pass because they can make the appointment, have a temporary visitors pass like everybody else and be escorted to your office and back again.

CHAIR: My one staffer who is here with me during sitting weeks would spend all their time walking backwards and forwards to the foyer signing people in instead of doing business or preparing information for me in my role and in my work. I would be happy to accept if the Prime Minister offered me additional staff to do that. But there is a practical side to this. There are people who are in and out of the building on a regular basis. I would also be interested in the concept that someone having a pass actually excludes someone else because that is not the case in my experience. There are lots of people who come to see me who don't have a pass. They do have to be signed in at the foyer. We make an appointment, and they turn up at the foyer. My staff member goes and gets them and signs them in. So, there is a logistical aspect to this, and one is not to the exclusion of the other—certainly not in my experience.

Prof. Twomey: I'm not saying it's to the exclusion of the other. I'm saying it gives one a benefit over the other. One has the benefit of being able to go around the building, do multiple meetings on a particular day and run into people at Aussie's coffee shop et cetera. And one doesn't. There is a distinct unfairness in how that operates.

Senator PRATT: Usually they would just have to—

CHAIR: Hang on, Senator Pratt. The CEO of Dementia Australia, for example—who is someone I have worked with significantly over a period of time—would have cause to have several meetings in the building and come to events here on a regular basis. It's a practical element of an important organisation, and there are probably a number of people from Dementia Australia who have passes—in fact, I know there are. It's not, as has been put on a couple of occasions that here are all mining companies or organisations whose business may be contested in such a way. It's people who are here making important representations or, in fact, interacting with people in the building on a regular basis. It's efficient for all of us for them to have access without having to go through the process of signing in individually for each meeting.

Prof. Twomey: If that's the case and those people are spending significant amounts of time in the building, one would imagine the very least they could do is register.

CHAIR: I take that as a point, but I also want to make the point that it's not to the exclusion of others. Others have reason to be here on a relatively regular basis, and others don't. The system caters for that. The issue that you're having, I think, is the visibility. That would be the point that I would take from your evidence today: the visibility of those who do have regular access. Am I right in saying that?

Prof. Twomey: That's certainly an aspect of it: the transparency aspect. There are two aspects. One is transparency, and the other is fairness.

CHAIR: I understand the perspective that you're putting to me. Do you discern a difference between advocacy and lobbying?

Prof. Twomey: Probably yes. When I'm talking about lobbying, I'm talking about people who are doing it as part of their business; it's what they're being paid to do. Occasionally you'll get people like me. I might advocate something, but I don't regard myself as a lobbyist. That's because I'm not being paid to do it; it's not part of my job. There may be occasions where I am asked by a parliamentary committee to give evidence—as, indeed, you have. On nearly all occasion when I've made submissions to parliamentary inquiries, it's because I've been asked by the committee to do so. On those occasions where I'm asked to lend my expertise and evidence and the like,

where it's not part of my job and I'm not being paid for it—that's not lobbying. But if I were part of an organisation who were—for example, if I were part of the university administration and were advocating on behalf of the university and lobbying government to get legislation to help universities, that would be a different matter. If I were doing that professionally, on behalf of the university, then I would be a lobbyist. There is a difference between the two.

CHAIR: Associate Professor Ng, you talked about the administrative processes in other jurisdictions. Currently, the process of issuing passes is administered by, effectively, the parliament. It is a function of the parliament rather than of the lobbyists code, which is clearly different to what occurs in other jurisdictions such as Canada. How might that be varied, based on the models that you've researched?

Dr Ng: The models I've researched are based on a lobbyist register, so lobbyists publicly register their details and the details of each lobbying contact that they have made. That's what we've seen in Canada, the United States, Scotland and Ireland. They are comparable liberal democracies. Their focus hasn't been on the pass system as such. But I think that, because we already have a pass system, we can integrate that with the lobbyists register and broaden the requirements consistent with the other jurisdictions and introduce a significance threshold where if you spend 20 per cent or more of your time lobbying or you receive a certain amount of money over a certain period or you spend a certain amount of money lobbying then you should register. That can be integrated into the pass system and then that would be consonant with what we see overseas.

CHAIR: While the pass system here in Australia is one that is managed and administered by the parliament itself, a link to the entitlement, if you like, to receive a parliamentary pass could be managed through the lobbyists register in the context of lobbyists receiving a parliamentary pass?

Dr Ng: Yes. We could introduce an independent statutory authority. It could be a dedicated commissioner for lobbying, or it could sit with one of the existing independent regulators like the National Anti-Corruption Commission, for instance, to have better enforcement of the register and the pass system. Certainly that would require some changes to the way things are administered right now.

CHAIR: So you don't believe that the parliament, made up of elected members, is an independent process?

Dr Ng: It could be put in the parliament with some authority to administer it, but that would require the transferring of the whole lobbyists register to the parliament. It depends on whether the parliament wishes to take on that part of the register as well, in terms of integration, or whether it should sit in a different entity. That's obviously up to the wisdom of the parliamentarians. As long as it's independent and enforced it doesn't quite matter exactly where it sits within government.

CHAIR: Okay. That's taken us just past our time. I thank you both for your evidence today. It's been useful, I think, to the committee. I don't think you have taken any questions on notice, so you're probably free of homework. We set Friday 19 April as the due date for answers to questions on notice. I again thank you for your submissions and for your evidence today.

Dr Ng: Thank you.

Prof. Twomey: Thank you.

BROWNE, Mr Bill, Director, Democracy and Accountability Program, The Australia Institute

CLARKE, Ms Vivien, Researcher, The Australia Institute

GRIFFITHS, Ms Kate, Deputy Program Director, Budgets and Government, Grattan Institute [by video link]

[09:53]

CHAIR: I now welcome Ms Kate Griffiths from the Grattan Institute and Mr Bill Browne and Ms Vivien Clarke from the Australia Institute. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I invite you to make short opening statements, and at the conclusion of those we'll go to questions from colleagues. Ms Griffiths, I might start with you.

Ms Griffiths: I welcome the opportunity to appear before the committee today. Grattan Institute's submission to the inquiry encourages transparency around lobbying activity and draws directly on our 2018 research report called *Who's in the Room?* which is publicly available on Grattan's website.

So why is transparency needed? Lobbying is a normal and important part of the democratic contest of ideas. We absolutely recognise that. The problem that transparency is helping to solve is that some groups have a lot more access to decision-makers than others and therefore more opportunity to influence public decisions. Transparency around lobbying activity can help to level the playing field and protect the public interest. It can encourage policymakers to seek out a wider range of views and alert underrepresented groups to speak up. The goal of increasing transparency is not to deter advocacy; it is to underscore the responsibilities of public officials.

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Grattan's submission focuses on how to improve transparency around lobbying to enable greater public scrutiny of who has access to policymakers and, perhaps more importantly, who doesn't. The Australian Government Register of Lobbyists is intended to provide that transparency, but, in reality, it only captures a narrow group of people who lobby—that is, third-party lobbyists who lobby for a client rather than those who lobby for themselves or their employer. So the current transparency regime misses direct lobbying by businesses, unions and peak bodies, to name a few.

This inquiry is focused on access to Parliament House. Sponsored passes to Parliament House provide some of the most privileged opportunities to try to influence decision-makers on a regular basis. Grattan's submission argues that lobbyists who hold these passes should be publicly registered and should be required to abide by the Lobbying Code of Conduct. Passholders who breach the Lobbying Code of Conduct could then have their pass suspended or withdrawn.

An expanded lobbyist register that includes sponsored passholders should also include more public information lobbying activity—who was lobbied, when, what topic, and that sort of thing. These measures would improve public visibility of lobbying in Parliament House. But, of course, lobbying can take place anywhere, so Grattan's submission also calls for broader reforms. In particular, I want to point out that ministers could be publishing their diaries and that that would provide visibility of who is getting access to Australia's most senior public policy decision-makers. Expanding the register to include sponsors' passholders and publishing ministerial diaries would substantially improve transparency around lobbying activity because they cover the main corridors of power and the highest levels of decision-making. That's a brief summary of Grattan's recommendations. I'm happy to provide more details.

Ms Clarke: The Australia Institute's submission is focused on proportionate and targeted regulation of lobbying. Limiting access to Parliament House would be the wrong way to regulate lobbying. The most powerful commercial interests don't need access to Parliament House to access ministers and parliamentarians. It's civil society, academics, trade unions, community groups and other members of the public who depend on access to Parliament House in order to access decision-makers.

At the moment, you have to be an insider even to get the forms to apply for a sponsored pass. This information should be public. In addition, the proliferation of sponsored passes is in part a consequence of unescorted day passes being abolished. Since a representative of a smaller interest group is unlikely to travel often and more

likely to fill their day at parliament with multiple meetings, bringing back unescorted day passes would be a practical step towards more equitable access to Parliament House and reduced use of sponsored passes. We also propose other limited passes that could be sufficient for some individuals who currently hold sponsored passes, such as those who need access only to press areas of parliament.

Lobbyists' influence could be revealed and possibly reduced by publishing ministerial diaries and requiring documents produced as part of representations to government to be proactively disclosed. This allows public scrutiny of who is telling government what and when. Four out of the six states have already disclosed ministerial diaries or have committed to do so.

Regulation being limited to third-party lobbyists, as is current practice, allows in-house lobbyists to operate without oversight. Third-party lobbyists are a small minority of all lobbyists, so the lobbyists' register should be expanded to in-house corporate lobbyists. Even the oversight of third-party lobbyists is weak, relying on individual public servants to take the initiative to report violations to the code of conduct. The only listed sanction for violating the code of conduct is being deregistered. There is no listed sanction for lobbyists lobbying while unregistered. We recommend a review into possible stronger sanctions for non-compliance.

Senator DAVID POCOCK: Earlier we had a discussion about lobbyist access, and the chair talked about how lobbyists are not just walking around. It absolutely has been my experience that in-house lobbyists and sponsored passholders will waltz into your office unannounced and seek a meeting. At times when votes are happening in the chamber, even representatives from groups like the Minerals Council are camped out in front of the office wanting to chat about an upcoming vote. I think there is an issue there.

I might start with Ms Griffiths. Your submission calls an expanded lobbyist register to include sponsored passholders and also include more public information on lobbying activity, including who has lobbied, when and on what topic. I'm wondering if there's a working model that you can point to that the federal jurisdiction could be looking at as a starting point.

Ms Griffiths: Queensland does this. That would be a good starting point. They publish lobbying contacts, which is the extra piece of information. It is beyond the names of people with the passes; it's what sort of contacts they're making as well. It's really valuable, because it helps you distinguish the most regular lobbying activity from the more infrequent activity. I think nearly anyone can be considered a lobbyist if they're advising or advocating for a particular position, but some people do this very actively and much more frequently and are paid to do so and do it in a better resourced way than many others do. You can start to distinguish some of that. It's important because the groups that may be less active in lobbying or not active at all—totally underrepresented in many public debates—are often unaware that a particular policy issue that affects them is being discussed or is on the table.

Information on lobbying contacts—not just who is lobbying but also the lobbying contacts—is really valuable to some of those groups, who may have very few resources to represent. It helps them see, perhaps, when the right moment is to put their voice out there, when the right time is when there's a campaign building or a particular policy issue on the table. It helps them identify that and jump in when they can. We recognise that a perfect leveling of the playing field is probably not realistic, but some level of transparency does help to level the playing field for those underrepresented voices.

Senator DAVID POCOCK: In your opening statement and also in your submission, you talk about the link between more transparency on the lobbyist register and the publishing of ministerial diaries. I'm interested in what that relationship is and why you think it's so important.

Ms Griffiths: The sponsored passes, given that they exist and they represent a form of very regular lobbying activity, provide a practical means of expanding the lobbyist register. In an ideal world, the lobbyist register would represent all repeat players. It's quite difficult to identify repeat players. Sponsored passes are a way in which you can practically identify some of the repeat players. We've already got a narrow lobbyist register because it's practical to identify commercial and third-party lobbyists. They're required to register. It's really quite difficult to identify everybody else in the lobbying scene. Sponsored passes are a practical way to expand the lobbyist register. When you expand the lobbyist register and include lobbying contacts, you're getting a sense of the most active players.

The other part of the picture that ministerial diaries help to illuminate is who is getting access to the most senior decision-makers. That is actually quite a different dynamic, and it is also a much more valuable influence opportunity than your regular corridor catch-up in Parliament House with someone else. Those two things complement, because they may illuminate different kinds of lobbying activity. They are also valuable complementary measures because they're a check on each other. If you are lobbying unregistered, that may show

up in the ministerial diaries. Equally, when ministers say they are meeting with both sides, there are checks for the public on whether they are. There are a number of different ways in which that transparency helps improve public debate and discussion, and that's ultimately what lobbying is all about—improving the contest of ideas.

Senator DAVID POCOCK: Finally, your submission sets out that all sponsored passholders should be subject to transparency, even if they are academics or experts. Do you anticipate any issues if individuals who are not professional lobbyists are placed on the register and there is transparency about who has access to the building?

Ms Griffiths: If you've got regular access to the building through one of these passes because you're providing advice or advocating in some way, it is just a basic measure to be publicly registered and, I would add to that, to provide your lobbying contacts. If you're only occasionally called on to provide advice, that can be recorded in your lobbying contacts—that it's not very often that you're called on, rather than that you called them; that information can be included. As someone from a think tank or someone from the world of academia, I don't see any issue in being publicly registered on the positions you're taking. If you're saying you're providing expertise, you should be able to then back that up with your expertise—and that is hopefully also on the public record so that other groups can understand what position you might have been speaking about to the decision-maker or policymakers.

Senator DAVID POCOCK: Thank you very much. Much of The Australia Institute's submission goes to democratising access to Parliament House, including making process and procedures around applying for passes clearer and more accessible. Why is this important? Why did you recommend that?

Mr Browne: In part because civil society groups, community organisations, academics, trade unions and so on depend on coming to the press gallery, ministers and parliamentarians at their place of work in order to make representations. They don't have the capacity to arrange access with decision-makers outside of this building with nearly as much ease as some of the more powerful groups. It also preserves Parliament House as a place of democratic debate and discussion that people feel like they can access. There was quite a valuable paper, one of the Senate discussion papers, about 20 years ago, where Francis Sullivan talks about how, if people better understood parliamentary processes, people might trust the democratic system and how decision-making works a bit better. Getting people into the building and having them see that and be part of it is an important part of increasing trust.

Senator DAVID POCOCK: You recommend restoring the unescorted day pass system and, potentially, as you said in your opening statement, the creation of a new pass restricted to sections of the building—say, the press gallery. Can you explain the history of the unescorted day pass and why you think it would be a good thing to bring it back?

Mr Browne: The unescorted day pass required the person applying for a pass to have a meeting to be signed in, but they were then free to walk around the building unescorted. In 2014 the Abbott government abolished it, with the support of the opposition—or, at least, they didn't object to it. I think national security reasons were cited, but I didn't see a particular case that had precipitated that decision. After the abolition of the unescorted pass, we saw dramatic growth in the number of sponsored passes. It's hard to tell correlation and causation, but it seems likely that people who used to be able to rely on the unescorted pass ended up applying for a sponsored pass instead because it made their work possible in this building. I think bringing that back would help reduce demand on the sponsored pass system.

Senator DAVID POCOCK: Finally, one of the things that's blown my mind about the system we have in Australia is the lack of any penalty for breaching the code of conduct—deregistration for a maximum of three months. There is no fine. In some jurisdictions they look at criminal penalties. At estimates, the A-G's Department told me this hasn't even happened. Do you have a view on why the penalties appear so inadequate, so weak?

Mr Browne: I'm not sure if it's just that it has never been pursued decisively enough that this problem exists. We've suggested an inquiry into what sanctions could exist. I think that's particularly important. If the definition of a lobbyist is expanded, you'd want to make sure it is proportionate to all the different types of people who might then be covered. But I don't know what the history is there or why it has remained so weak.

Senator DAVID POCOCK: Ms Griffiths, do you have anything to add to that? It seems other jurisdictions have much stronger punishments. There must be reason.

Ms Griffiths: I think it's because there are potentially minor breaches and potentially very major breaches of the Lobbying Code of Conduct, and there has never been an easy way to deal with the minor ones. The minor ones might be things like forgetting to register yourself when you're supposed to register or potentially misrepresenting something and some discussion around how serious that is. If it were linked to the sponsored

passes, then the sponsored passes would provide a very obvious sanction. They're quite a valuable pass to have, and, if you lose your pass or have your pass suspended, that's a real sanction; that's something that would really encourage compliance.

On the major side of things, like engaging in corrupt conduct, that's where we now have a national anticorruption commission. But we've had a vacuum there where those sorts of concerns have had to be of a seriousness that the Federal Police would get involved, in the past. I think we haven't really had the tools to deal with this. We do have some of these tools here. The minor breaches could be dealt with through the sponsored pass system, and the major breaches could be referred to a national anticorruption commission.

CHAIR: Senator Pratt.

Senator PRATT: Do you think there would be particular risks to marginalised communities, sex workers, drug users, particular asylum seeker groups if people receiving a pass becomes politicised in some way?

Ms Griffiths: I'll take that question as for me. I would say that there is always the option, under the current system, to not have a sponsored pass and to access Parliament House by the means of any member of the public, if you wish to remain anonymous or need to remain anonymous. I'm sure that the sponsored pass is a level of privileged access and a level of repeat access. If you required that and you're listed there for your general advocacy, you might be able to distinguish your lobbying contacts and the topics on which you're lobbying, but it's not always necessarily going to be clear exactly what the details of those conversations are. So I think there are a couple of measures there where someone could maintain privacy where they need.

Senator PRATT: But they would be registered on behalf of a particular organisation. I deal with a lot of marginalised communities. It wouldn't be unusual for me to be escorting multiple people from multiple groups around the building already to help them see people, and I do rely on them having passes to get around. My office couldn't keep up with escorting and supporting them all, even though quite often my office would be the primary point of contact for them.

I guess, when I reflect on debates, if you were to go back to the 1990s on HIV, for example, and how you would translate that, there could be risks that arise in trying to get a genuine bipartisan position where you're trying to work across the crossbench or work across supportive backbenchers in what is a highly politicised environment where you might be trying to talk to people using their lived experience about why they should cross the floor on abortion or IVF or HIV. There could be particular risks that arise in the future in the context of the politicisation of passholders and the fact that they have a pass become part of the political debate on a particular issue because particular MPs are seen to be close to particular groups of people. I know in part we are trying to highlight that when it comes to commercial or financial interests, for example, but I want to make sure we're able to balance that up so we are not creating a lack of access for marginalised communities, who, in all likelihood, can't get to government in the same kind of way through lobbyist firms et cetera. If we completely level the playing field, the losers will be the people we want to include.

Ms Griffiths: I would say transparency if anything helps those sorts of underresourced and underrepresented groups understand what the competition is, what issues are on the table, who's talking to who, the broader landscape. Because the well-resourced groups already know all of that because they are there, they have that information and they have the ability to pick up the phone to call whoever they need. I'd say that additional information, greater transparency, is—

Senator PRATT: You don't see Catholic bishops wandering the corridors of Parliament House even though they're highly influential in many debates but you don't see LGBTI law reform advocates and other kinds of advocates who might have very different positions to other groups in the building as often.

Ms Griffiths: Yes, that's where I would say that we need expanded measures of lobbying transparency so we can't just be focused on sponsored passes as the whole answer, because obviously the corridors of Parliament House is not where all the lobbying activity takes place; it's just where some of it takes place. I think those unescorted passes are quite a privileged opportunity to influence, to bump into people et cetera. But lots of lobbying activity takes place elsewhere.

I would say the best complementary measure is publishing ministerial diaries because they do illustrate access to the most senior decision-makers. That means that someone who might not need to walk the corridors of Parliament House but can pick up the phone to the relevant minister is on the books as well. It also means that I think the two should match up so they provide a bit of a check. They will cover slightly different things, but in some cases they will overlap and that provides a check, a sort of incentive to disclose.

Senator PRATT: Thank you.

CHAIR: I might go to both groups in relation to the relationship between the passes and the lobbyist register, which are very separate at this point in time. Do you see a value in perhaps linking lobbyists and advocacy groups? I think, listening to your evidence and reading your submission, that you're bringing the two into a broader category of people with access to the building providing information to MPs, senators and ministers. So as a requirement for those who are seeking an orange pass, if we want to call it that for that purpose, registration would be a prerequisite for that process, which then starts to deal with some of the transparency issues that you've been talking about. We might go to you first, Ms Griffiths.

Ms Griffiths: Yes. I see the sponsored passes as being a very practical way of expanding the lobbyists register, and the lobbyists register has needed expanding for a long time. It really captures only a very small slice of lobbying activity, and it creates something quite unequal between very active and well-resourced lobbyists who work for commercial firms and those who work directly for their employer. One is on the books and one's not, and one's obliged to abide by the Lobbying Code of Conduct and one's not.

The Lobbying Code of Conduct, I think, is a bare minimum. It's asking people not to engage in corrupt activity, not to mislead our policymakers et cetera. So I really think applying that to everyone lobbying would be a good thing. It's just a question of who we should ask to register—that extra hurdle. If you only make one representation once to your local MP, that's probably not the level we want everyone registering at. We probably need something higher than that. How do you get the repeat players? Well, the sponsored passes are a practical way of expanding the existing register. I'd say how you do it is to say, 'Yes, to get a sponsored pass you must be registered as a lobbyist on the lobbying register.' That means not that everyone on the lobbyists register has to have a sponsored pass but that everyone with a sponsored pass does have to be on the lobbyists register. Everyone on the lobbying register already has to abide by the Lobbying Code of Conduct, so that brings every passholder under the Lobbying Code of Conduct, which I think is a perfectly reasonable requirement of anyone.

CHAIR: Mr Browne and Ms Clarke?

Mr Browne: I think there's a distinction between lobbying and being a lobbyist. In our submission, we've taken the Lobbying Code of Conduct definition of 'lobbying' as perfectly good to represent what it means to lobby, but many people who do that will not themselves be lobbyists. I think Senator Pratt's point about disadvantaged groups and people with lived experience is a classic example of that. It would be very natural to talk to an MP or minister about your own experience and then outline some recommendations for what the government should do to address family violence or the treatment of asylum seekers or whatever else and end up lobbying them without yourself being a lobbyist. I don't object to making more people be required to follow the Lobbying Code of Conduct or, necessarily, even to be on the register, but maybe then it needs to be a lobbying register rather than a lobbyists register to avoid creating that association.

I think the sponsored passes point does represent repeat players, but it does include people whose work in the building is not primarily about making representations to government—for example, accessing media areas of the building. But perhaps a combination where you do create alternatives to the sponsored passes and then create more obligations for those who do still keep their sponsored passes is a good way to strike a balance between those two.

CHAIR: Your point about access to media areas of the building is an interesting one, but, if you give someone access to the media areas, you're giving them access to the building, effectively, as it stands at the moment. So how do you make the distinction?

Mr Browne: All, at this point, we've—

CHAIR: Unless you're going to put RFID trackers or something like that on them to make sure they don't go where they're not supposed to be, and I think we're starting to get into dangerous territory there.

Mr Browne: Yes. I think it would be, to some extent, self-enforcing. The model we had in mind was something like how access to the ministerial wing is already limited. You could have an expectation that those with the media passes don't go into—

CHAIR: That's not right. Someone who has access to the private areas of the building has access to the ministerial wing.

Mr Browne: My understanding is that, if I don't have a meeting, I'm not supposed to go into that wing. But I could be wrong.

CHAIR: That is probably what it says somewhere on a piece of paper but there is one corridor in the building, the PM's corridor—I'm probably breaching security protocol by saying this—that's monitored in a security sense; the rest of the building is accessible.

Mr Browne: I guess—

CHAIR: We don't need to debate it; I'm just making the point. I want to go on to something else. In respect of the publication of ministerial diaries, there are possibly different levels of that, and Queensland has been mentioned on a couple of occasions. Is the publication based on meetings with lobbyists or is it in any way redacted in any of the various jurisdictions you looked at?

Mr Browne: I can jump in. It does depend on the jurisdiction. I haven't delved into each of them. For example, whether meetings with public servants are disclosed or not seems to vary based on the place. I think there is also debate over what constitutes a meeting or an official diary entry. Are they things that have been arranged earlier, or does someone go in afterwards and fill in things that have occurred that weren't scheduled? You would need to look at how it is done in practice and what the potential omissions are to see—without breaching confidences. For example, I think most of them distinguish between meeting with a constituent to talk about the constituent's business and someone's ministerial duties.

CHAIR: Ms Griffiths?

Ms Griffiths: Yes, there is certainly variation between the New South Wales publication of diaries and the Queensland publication of diaries. One example of that would be whether attendance at events is considered worthy of publication. It is in Queensland but not in New South Wales. I would say that what you are aiming for with publishing ministerial diaries is to capture all meetings in an official capacity, whether it is a phone call or an event. I can see how an event can involve lots of smaller contacts, but just having that the event was there in the diary is a really good starting point as is visibility of the sorts of contacts that could have taken place. You would also hope that meetings that are held in an official capacity with someone like an adviser representing the minister, with the minister not present, would also be included in the diaries because it is under the function of what the minister is doing in an official capacity, even if they are not present.

Ms Clarke: I want to add, Ms Griffiths, in your 2018 paper, you mentioned real-time disclosures, or as close to real-time, are important in the ministerial diary case. Because if we are talking about decisions made a year ago or 18 months ago and you're only finding out in a few weeks that the minister has had all kinds of meetings with specific lobbyists or interest groups, it's not good enough to find out 18 months later; you're not able to hold anyone to account on that kind of time line.

CHAIR: That goes to the point made a couple of times about the capacity of somebody or an interest group that sees a series of meetings with a particular party then being able to make an attempt to put their perspective forward as a part of the decision-making process?

Ms Clarke: Yes.

CHAIR: Is that with an expectation that they should be able to put their position forward?

Ms Clarke: Yes, of course. Anyone should be able to put their position forward.

CHAIR: I would like to take that a touch beyond ministerial diaries; there's been a strong focus on that. It's not just ministers, particularly in the current parliament. In Tasmania, we had an election where the outcome has presented a very different parliament, which we're seeing increasingly around the country. So what about those who are in balance-of-power positions, for example, who have the capacity to influence the direction of legislation and decisions of the parliament? What about the transparency of their meetings and interactions and how they might utilise those things in their decision-making process?

Ms Griffiths: I would like to see transparency around meetings with public policy decision-makers, way beyond ministerial diaries. I think the reason to start with ministerial diaries is that they're the most senior decision-makers and they have better resources for compiling and publishing this information on a regular basis and getting it out there in a timely manner et cetera. Ideally, all parliamentarians would publish their meetings. It's just a question of the resourcing capacity of crossbenchers and backbenchers to influence something like that, so I would say you start with ministerial diaries, you test the model, and you find out how many resources it takes. It really shouldn't take too much but you establish that at that level and then you could expand beyond.

CHAIR: But if you're going to build a system, why don't you just build a system?

Ms Griffiths: You would need to be able to establish what the resourcing required was, and it may well be manageable within existing resourcing budgets.

CHAIR: You were going to say something, Mr Browne?

Mr Browne: I think the case is clearer for ministers because of their resources, and that when you start weighing in the privacy considerations—for example, the more frequent meetings with constituents that you

probably don't want to disclose—that's when the balance may shift. I agree that starting with ministerial diaries and working out from their makes sense.

CHAIR: But as a backbencher I get a backbencher's staffing allocation. Others in this place get additional resources because they are power-deciding crossbenchers. They have significant additional resources compared to what I do as a backbencher. They are sometimes even more significant than a minister in influencing the decisions of the parliament. If I'm a farmer, for example, who's having my property trampled over by a transmission line development and I want my voice heard and I can't get my voice heard, and someone who can influence whether I do or not won't talk to me, why should they be protected more than a minister?

Mr Browne: I think there is still quite a distinction between the resources available to the government of the day in terms of capacity, employees, workforce and the decision-making power. I take your point that crossbenchers—

CHAIR: But these people are making the decisions. They are doing that, and they're being given additional resources now. I know they will argue whether they're being given sufficient resources, and I've had those conversations with some of them personally, so I get that, but why differentiate in that circumstance? If someone won't meet with the Minerals Council, for example, so the Minerals Council camp outside their door, or the farmer I've described—

Senator DAVID POCOCK: Just for the record, I've met with them a number of times.

CHAIR: Thank you for the declaration—as have I. In today's parliament, where you've got significant crossbench power, why wouldn't you have the same requirements?

Ms Griffiths: I would like to see transparency of meetings with decision-makers, essentially, so I think it is a good idea to extend beyond ministers. The caution on the resourcing side is a question of figuring out what resources are required. Perhaps it would be as simple as looking to examples like Queensland and New South Wales, and understanding, from their perspective, if it is a huge burden on ministerial offices already or if it's quite manageable, and then I would absolutely support a broader measure.

Senator PRATT: I've seen examples in parliamentary committees where someone has been trolled on social media for giving evidence at a committee when they've done so in public. I guess I am concerned that disclosure of them having a pass might also result in trolling, online abuse and those kinds of things because they are representing particular marginalised groups who wouldn't otherwise have access to well-resourced lobbyist organisations. Do you think there are ways of balancing that out—increased transparency of lobbyists and making them publicly visible? It can result in both members of parliament and members of the public and opposing interest groups ascertaining their identity and using that to further stigmatise and harm particular marginalised groups of people.

Ms Griffiths: There are number of options here. One would be, where individuals' names are part of the problem—an individual privacy issue—the organisation could be disclosed without necessarily disclosing the individual's name.

Senator PRATT: And not necessarily registered organisations. They don't have access to them, necessarily, either.

Ms Griffiths: I do think that there's the potential for deterring the use of a sponsored pass at all, in the sense of them not wanting to be publicly registered. I think that's true if sponsors' names are also publicly listed. I think sponsors might be deterred from sponsoring passes for a number of reasons as well.

Senator PRATT: It's been put to me that we don't want to deter marginalised communities from seeking sponsored passes, because their visibility in the building is really important. But it could very much result in online trolling and public abuse if their identities are made public in some way.

CHAIR: Mr Browne, do you have anything to say about that?

Mr Browne: Just that potentially the unescorted day pass being brought back would be an option for people who have many meetings from time to time but who wouldn't need a full sponsored pass.

Senator PRATT: Thank you.

CHAIR: Okay. Thank you. I'm going to draw this session to a conclusion now. Thank you for your evidence. I'm not sure whether you've taken any questions on notice, but, if you have, could you please have your responses back to us by 19 April. Thank you all for your evidence today. It's appreciated and of use to the committee.

Proceedings suspended from 10:37 to 10:51

BANKS, Mr Simon, Managing Director, Hawker Britton Group Pty Ltd

COX, Mr Andrew, President, Australian Professional Government Relations Association

MACKENZIE, Ms Sally, Vice President, Australian Professional Government Relations Association

CHAIR: I now welcome representatives from Hawker Britton and the Australian Professional Government Relations Association. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I invite each of the organisations to make a short opening statement, and at the conclusion of that we'll take questions from members of the committee. Mr Cox, it looks like you've won the step backwards competition.

Mr Cox: Thank you, Chair. I'm currently the deputy managing partner at GRACosway, which is a public affairs and corporate finance communications services firm. Sally, to my left, is vice president of the APGRA and runs her own firm called Delta Advisory.

We're here today speaking on behalf of the members of the APGRA. Our association, established in 2014 by a number of longstanding firms and senior practitioners, is a professional association for consulting and in-house government relations practitioners around Australia. For example, a consulting firm like mine is engaged by different companies and organisations to assist them with government relations activities or by in-house government professionals who work for a range of businesses, not-for-profits, charities and industry bodies et cetera to represent the interests of their individual employer.

Our association promotes high standards of, and greater transparency and public confidence in, the provision of professional government relations services. To support the interests of our members, we regularly provide submissions to inquiries and regulators across the country on issues directly impacting our industry. We also meet quarterly with the Attorney-General's Department and regularly engage with state and territory regulators.

A key part of our role is to educate key stakeholders about our industry, including, for example, at the end of last year, writing to every federal MP and senator and providing them all with a hard copy of our code of conduct.

We firmly believe that lobbying is only a small part of the role of a government relations professional. We also assist in, for example, researching and advising organisations on current policy settings; assisting in the formulation of a case to government on legislation and other matters; monitoring ongoing developments in public policy and the parliament; community consultation, education campaigns, preparation of submissions and reports; and general research.

APGRA members are committed to dealing with clients and government representatives in an ethical and transparent way. It is an area of significant focus for our members. We agree that there are some in the industry who don't operate in an ethical way, but these individuals do not represent the broader profession or our organisation.

As outlined in our submission, we support transparency where measures seeking to achieve it are additive to existing arrangements and do not unreasonably add to administrative burden or create a chilling effect on members' activities. For example, we think there is merit in having stricter scrutiny of who is eligible for a sponsored parliamentary pass and the terms of use for that pass. If a passholder has acted inappropriately then there should be a more robust system in place for that pass to be suspended or cancelled by the department which oversees it.

Fundamentally, we believe the work of government relations practitioners is an important undertaking in a free and open democratic society. The Attorney-General's website states:

Lobbying is a legitimate ... and ... important part of the democratic process.

Lobbyists can help individuals and organisations to communicate their views on matters of public importance to the ... Government. In doing so, they can ... improve outcomes for the individual and the community as a whole.

CHAIR: Your turn, Mr Banks.

Mr Banks: We've been a lobbying firm in Australia since 1999. We practice across all jurisdictions in Australia and New Zealand. We regularly participate in public policy debates around the regulation of the profession. We've been strong advocates throughout our history for greater transparency and anticorruption measures, including, for example, the establishment of the new national anticorruption body.

In short, we support the expansion of the definition of lobbying and lobbyists to encompass individuals currently overlooked by Lobbying Code of Conduct, shifting the focus from people's business or organisational models onto the actual activity that they undertake. This should include in-house lobbyists, including those representing industry, unions, environment, social and civil society groups.

We support transparent guidelines for those who have some form of pass or privileged access into Parliament House. They clearly should be accompanied by a commitment to the code of conduct that we have to sign up to as registered lobbyists. Certainly, in relation to anyone who's engaged in lobbying inside this building, they should be covered by the code of conduct and some form of transparency in what they do.

There is a range of broader measures that we support. We support that the regulation of lobbying should be done on a legislative basis to ensure fair and equal treatment, enforceable penalties, and administrative and judicial review where required. Wherever possible there should be consistency of regulation across Australian governments and parliaments. This should include between the executive and parliaments wherever possible. The administrative actions needed to implement these arrangements should, first and foremost, actually sit on government decision-makers. Why? Because they're ultimately the people that the Australian community want to repose their trust in. Where there are duties imposed on third parties, including lobbyists, they should be the reasonable but minimum necessary, and proportionate, to achieve the public policy purpose for which it's required. I think the committee's already heard evidence today that perhaps unnecessary requirements, particularly on smaller organisations, could impede their ability to be able to engage in lobbying.

A couple of very basic practical suggestions: we support orange passholders being published, particularly where they are lobbyists; all lobbyists, no matter the form of their engagement in employment or otherwise, should be on lobbyist registers; the Foreign Influence Transparency Scheme, which currently applies at the Commonwealth and New South Wales government levels, should be expanded to all jurisdictions; and the unescorted pass, or something similar, should be brought back so that there's not just formal and technical means, such as the orange pass, in order to have access to this building, but to increase access to Parliament House. Senator Colbeck, as you and I were discussing a moment ago, it's one of the restrictions that came about, unfortunately, due to national security requirements. It has had an impact and others who I think should have free and fair access in this building maybe don't get the access they should.

CHAIR: It has certainly chilled over the last decade at least.

Mr Banks: Agreed.

CHAIR: Senator Pratt?

Senator PRATT: Thank you to the witnesses here today. I'm particularly interested in how we meet the public policy goals that you've outlined, and, at the same time, being able to protect marginalised and disadvantaged communities in accessing decision-makers—for example, if you were someone on a bridging visa, supported by a not-for-profit, who wanted to regularly advocate with MPs about what that experience is like, or if you are HIV positive or a sex worker or someone with hepatitis C. On how we have a system that's able to separate commercial or big institutional interests from those who might be more disadvantaged, and, as already been said before, that chilling effect that not being able to get an all-day unescorted pass has had for those communities in accessing the building: how do we create a win-win system in meeting both objectives?

Mr Cox: Thank you for the question. Investigating the possibility of reinstating the unescorted pass is a valid point that should be considered; I think that should be on the radar. Fundamentally, we agree there should be more access, not less, to decision-makers in this building, and we should be looking at ways that it is fair and reasonable for everyone. Government and parliamentarians should have access to stakeholders from all walks of life, to ensure they are hearing all voices and making the best public policy they can.

Ms Mackenzie: APGRA members represent a range of different interest groups. Some will be corporate interest, as you've suggested, but some are not-for-profit and charity groups. They want a pro bono basis, and I think it's a really important part of the way in which government relations and practitioners support the functioning of democracies by being able to help educate those types of groups you've mentioned about the way in which they can have a voice in the public policy debate. We would be supportive of measures that would encourage more of that.

Senator PRATT: Could you think of examples?

Mr Banks: I can add some very practical things. One thing government and also the philanthropic sector more generally can do is fund public interest advocacy centres and the like; they can provide a valuable resource to a lot of these organisations and people. You could have a system for exemptions, where people's personal identities are not disclosed. I don't think you would want to have that as the general rule; the system should be in favour of disclosure. But, where someone is in fear of some form of persecution or hardship by virtue of engaging in that activity, I think there should absolutely be a mechanism to enable them to apply to not have their name made public—but at least it's known to the authority authorising the activity that takes place.

There are range of activities that could be done that could facilitate access. We already have lots of people who come and advocate effectively on behalf of themselves anyway; if you are a member of a patient group, for example, you regularly turn up and you're not really regarded as a lobbyist because you're speaking about yourself and your circumstances and issues. There are plenty of opportunities for people to engage in the broader public policy debate through that without even needing to be a formal lobbyist as such.

Senator PRATT: So we should be able to distinguish between a formal lobbyist and people who could be trolled or subject to an overpoliticisation in the parliament in a way that harms stigmatised or marginalised communities. So you're quite firm in seeing that we should be able to make that distinction in how passes are given out. I am concerned because I've seen examples of someone who's given evidence to a parliamentary committee who just happens to be transgender and, as a result of their evidence, they've been trolled on social media, vilified and threatened. Do you have examples, perhaps, of groups of clients within your own firms, from that pro bono work that some of you do, where that could indeed be a risk?

Mr Cox: Just one example of pro bono clients that my firm works with is people who've suffered significant illness. It might not be a security issue but be more related to just protecting them, their voice and their evidence that they want to give. I think there's merit in something like that, yes.

Senator PRATT: So they wouldn't want their health status disclosed publicly just because they were associated with a particular organisation on their pass?

Mr Cox: Yes, and it's about making sure that they feel as comfortable as possible in engaging with parliamentary stakeholders on the issues of interest to them.

Senator PRATT: Who should vouch for those people when getting access to a pass? I do so all the time; I suggest to different groups of people that they should ask me to sponsor their pass when they come from a wide variety of these kinds of organised interest groups. Do you think we can properly mitigate those risks through preventing the parliamentary pass system being either politicised in that way or used as a source of information to harm or troll someone?

Mr Banks: I think the parliament could establish that process if it wished to. I think reasonable people would apply it reasonably. I can say as a lobbyist that in other environments there are other circumstances where you need to notify an authority that you're undertaking an activity but there is a genuine public interest reason why it's not yet at least in the public domain. That happens, certainly, in commercial environments, for example; there's a mechanism there where the lobbyist register determines what is actually published even though the relevant authority is clearly kept informed about what is actually going on. There is a transparency and a disclosure into the process about what happens, but it's only made public, if you like, at a point where a genuine public interest reason as to why it's been kept out of the public domain ceases to exist. Otherwise, I think the general rule that should apply is that these systems should be as transparent as possible.

Senator PRATT: Do you see any examples of where that transparency puts at risk an individual's capacity to access a discussion with a MP or senator using parliamentary privilege?

Mr Banks: Senate committees, for example, can conduct in-confidence hearings if someone wants to come and give evidence but doesn't want to, or it isn't appropriate to, do that publicly or doesn't feel safe doing that in a public environment. I think there are a variety of mechanisms in institutions within the parliament already where, again, if reasonable members and senators applied themselves to it and created a space where that could occur, people could be allowed to come forward and tell their story but are not exposed to the risks that might otherwise occur. But, as I said, the vast majority of people think transparency's a good thing, and in fact for many of those organisations I'd say that public acknowledgment and recognition that they are who they are and that they genuinely have a right to be heard on the issues that they are advocating for can be an important and powerful message for the parliament to send in its own right.

Senator PRATT: I don't know if any of you recall the incident many years ago when Senator Conroy, I think, received some information from NBN Co and it became quite politicised that members of parliament had sought access to footage from the building—I can't recall the specific circumstances. It seemed to me that the issues around passholders could potentially invoke similar kinds of circumstances in making a register public. Do you have views in relation to the part of our parliamentary work in talking to whistleblowers?

Mr Cox: I'm not aware of the incident you're talking about, but, fundamentally, we should be doing everything we can to protect whistleblowers, and parliament should be doing everything within their power to do so. It's critically important in a functioning and healthy democracy that whistleblowers have a right to a mechanism to reveal information to key people, so we should be doing everything we can to protect them.

Mr Banks: I should disclose that I think I was working for the opposition at the time, and I think whistleblowers should be protected.

Senator PRATT: How do you think they could be protected in that context, if the information about who has sponsored their pass is already public? Even though information might have been given under parliamentary privilege and used by a senator or an MP under privilege, the inference might be made just because they happen to sponsor a pass associated with that information.

Mr Banks: If it's in relation to an orange pass, that might be an issue where you might need some sort of formal mechanism to apply for non-disclosure of the individual's identity to protect their position if they're going to be coming in and out of Parliament House or not because of the nature of the whistleblowing activity that they're engaged in. It's more usual—

Senator PRATT: You don't always know beforehand. Sometimes it's not till after you've worked with someone for a while and built up a relationship with them, but you might have already sponsored the pass before there's a level of trust to share the information—

Mr Banks: Correct. But in that case, the awarding of the pass to the person occurred outside of the circumstances of their whistleblowing. The mere fact that they have a pass doesn't, in and of itself, give rise to a suggestion that they've engaged in that activity, for example. One of the reasons why the day pass concept is a useful one, because it provides a mechanism for people to come into the building without that same degree of transparency, if you like. If it was in relation to a person who you felt needed to come in and out frequently, the issuing of the pass could be part of finding the evidence that they are there for a parliamentary purpose, so it could strengthen the protection that individual has.

Senator PRATT: Thank you. That's very helpful.

CHAIR: Senator Pocock?

Senator DAVID POCOCK: Senator Pratt, I'll welcome you to the next crossbench press conference when we call for more whistleblower reform. I think it's a really important piece of the puzzle when we're talking about transparency. Mr Cox, you supplied this committee with a copy of the APGRA's Code of Conduct

Mr Cox: Yes.

Senator DAVID POCOCK: In your submission you suggest that your code forms part of a co-regulatory regime with the government to maintain professional conduct. Has the government ever expressed the view that your code of conduct forms part of their regulatory regime for lobbyists?

Mr Cox: It's been discussed and raised by people that we have met with. It's also something we've discussed as an industry—

Senator DAVID POCOCK: In the Attorney-General Department?

Mr Cox: I don't recall if that has been discussed directly, but it's something we would have no problems with if that was a direction the government wanted to go down.

Senator DAVID POCOCK: When you say a 'co-regulatory regime', that's your view. Is that the government's view as well?

Mr Cox: That's our view. You'd have to ask the government whether they think the same.

Senator DAVID POCOCK: Sure. Your code obviously covers in-house lobbyists—

Mr Cox: Yes.

Senator DAVID POCOCK: which is something the official lobbying code doesn't. Can I take it that you are concerned that in-house lobbyists are not bound by any ethical standards and that you want them to fall under some sort of code?

Mr Cox: I might ask Sally to answer that question.

Ms Mackenzie: Our view, which we've expressed in our submission, is that we don't think that in-house lobbyists need to be on the Lobbyist Register that's maintained by the Attorney-General's Department. The reason for that is the reason that is published on the Attorney-General's website, which is that, for in-house practitioners, it's sufficiently transparent whose interests they're representing. If you're an in-house lobbyist and you go to meet with a member of parliament, it's very clear, based on who your employer is, whose interests you're representing. When it comes to third-party lobbyists, such as Mr Cox's firm or me, we often represent multiple clients, so I think it's really important that stakeholders understand whose interests we're representing in that particular meeting.

Senator DAVID POCOCK: The interests may be clear, but do you not see any need for a consideration of the manner in which they conduct themselves—whether or not it's ethical; whether or not it meets some sort of standard? I'm interested. If there's no issue, you know that Qantas government relations obviously have Qantas front and centre. Everyone would acknowledge that. But in my mind, you having some sort of code acknowledges that you can be lobbying for Qantas but you also should be lobbying in a manner that is respectful and is all the things in your code.

Ms Mackenzie: Yes, absolutely. That's why we encourage in-house lobbyists to apply to be members of the APGRA. Our code is different from the Attorney-General's code of conduct, in that it does speak to how government relations practitioners go about their work, so it is holding government relations practitioners to a particular standard, and they have to conduct themselves according to the code of conduct and according to our membership rules.

Senator DAVID POCOCK: What happens if they don't meet that standard? What sorts of remedies or punishment can you—

Mr Cox: It's grounds for having their membership of our organisation cancelled. The management committee of our association meets monthly, and the first agenda item of every meeting is any reports of breaches of our code, of inappropriate behaviour and of any conduct unbecoming for our association, and we consider that at every one of those meetings.

Senator DAVID POCOCK: Do you know how many have happened in this parliament—in the last 18 months?

Mr Cox: Do you mean in terms of reports of behaviour?

Senator DAVID POCOCK: Reports on how many people you've removed from your membership.

Mr Cox: I don't think there have been any, and that's just in the nature of the people who want to join our association. They are attracted to the increased threshold for ethical behaviour and scrutiny. For example, there are limitations—which you may have seen in our submission; I think we put it in there—and restrictions on your ability to have senior roles in a political party or to have worked on an election campaign. You can't be a member of our association if you have done that and then conduct your role as a lobbyist—amongst a whole range of other things.

Senator DAVID POCOCK: What percentage of in-house lobbyists are members of your association?

Mr Cox: I think approximately over half of our paying members are in-house, but then there's—

Senator DAVID POCOCK: Do you have the number for the in-house, just for comparison?

Mr Cox: I think we have slightly over 40 paying members. That represents over 120 individuals. I think 25 of that is in-house.

Senator DAVID POCOCK: That's 25 in-house lobbyists out of 2,100.

Mr Cox: Yes. I don't know what the exact figures are. We're in an association where we hold ourselves to a higher standard, and we're very keen for new members to join as long as they're willing to sign up to our code of conduct.

Senator DAVID POCOCK: Lastly, on the code of conduct, say someone does breach the code of conduct, you remove them as a member—

Mr Cox: Yes.

Senator DAVID POCOCK: but they've still got an orange pass and they can just crack on without being a member?

Mr Cox: Yes. We're an association, so that's a breach of our rules, but we do think that if someone has breached the Attorney-General's code of conduct there should be action taken there as well.

Senator DAVID POCOCK: In your submission you also say that publishing a list of sponsored passholders would be duplicative to the existing lobbyist register; how is that so, because in-house lobbyists aren't on the lobbyist register?

Mr Cox: That is correct. I'm a third-party consultant, so everything that you need to know about my firm is listed on the Attorney-General's website—who works for my firm and all the clients we represent. In terms of the publishing of information about passholders and sponsors, we subscribe to what the department has said on this issue. I think this was in response to a question that you put: it does not publish Parliament House passholder information owing to privacy, parliamentary privilege, and security considerations. We think that is a fair and reasonable response to that question.

Senator DAVID POCOCK: Going back to your submission, where you say it would be duplicative to the existing lobbyist register, what would be duplicated?

Mr Cox: I guess the administrative side of it and the requirements of the individuals or firms.

Senator DAVID POCOCK: But are these not two totally different things—

Mr Cox: Exactly, yes.

Senator DAVID POCOCK: in-house lobbyists and lobbying firms who lobby on behalf of clients? What's being duplicated?

Mr Cox: Yes. We're saying there's a regime with the Attorney-General's department, there's a system in place with the Department of Parliamentary Services, and by adding to the requirements of that with what you're suggesting we would add to the administrative burden.

Senator DAVID POCOCK: I don't see how it duplicates, but it would add some sort of transparency. In the Attorney-General's Department's submission they say they meet with you to discuss the code.

Mr Cox: Yes.

Senator DAVID POCOCK: How often does your organisation meet with the AG's department?

Mr Cox: Roughly, quarterly. A lot of those discussions are about logistical issues—for example, the website where you have to fill in your details of clients and the compliance regime. We share feedback if there are glitches in the system, they give us advice—as is required by registered lobbyists—to sign a stat-dec every year, as sometimes people don't fill them out properly. We're making sure there's a two-way communication that we can then share with our members and supporters. I should add that there are 600 people who are on our email and distribution list and who receive all of this information. Predominantly, what we talk to the department about are those logistical issues of making sure that we're doing everything we can as members of this association to fully adhere to the compliance regime, and fixing any bugs or tweaks in the execution of that.

Senator DAVID POCOCK: When was your last meeting?

Mr Cox: Towards the end of last year—I can't remember exactly. We will be meeting with them again reasonably soon. It hasn't been scheduled.

Senator DAVID POCOCK: Mr Banks, you're sitting next to the peak body which, I assume, represents your interests, in theory.

Mr Banks: We're not actually a member.

Senator DAVID POCOCK: Clearly, there are some competing views here. I note that in your submission you are in favour of increased transparency around the lobbying regime, including transparency around sponsored passes. What concerns do you have that led you to say, 'We would like more transparency, we think it's a good thing'?

Mr Banks: We don't have fundamental concerns in one sense other than we think that transparency around this activity is good for civil society and trust in how the system operates. Just going back one step, one of the reasons why, in a sense, we have a federal lobbyist regime and really nothing equivalent other than the pass system for passholders is, of course, that there are constitutional separations of power between the executive and the legislative. It's one of the reasons why I said in my opening statement that I'd actually really encourage the two arms of government to work together and try to find common mechanisms through which these things can be put out in the public domain.

The reality is, yes, there's a bit of paperwork you have to go through in order to get an orange pass. You have to fill in a form, you have to provide a police and security check—basically to say that you haven't committed a serious criminal offence—and you have to have a sponsor. But it's not a particularly onerous task, and publishing that, whether it's done as a standalone document or, in an ideal world, as part of a unified register for lobbyists, I don't think should represent a problem. The most important point that I think you were getting to with your question, Senator, is that the standards of practice that you engage in as a lobbyist shouldn't matter through the legal form through which you engage in that lobbying. It shouldn't matter whether you're a third-party lobbyist like me; it shouldn't matter whether you're in-house for a commercial firm; it shouldn't matter whether you're doing it on behalf of a community, an environment or a civil society organisation, the standards are pretty basic and reasonable minimum standards and I don't know why anyone would have a problem signing up for them.

Senator DAVID POCOCK: I agree. I don't think we've had a major breach, so that says a bit. The current lobbying regime extends to interactions with the government, not any other MP or senator. Clearly the opposition, and we heard the chair talk about the crossbench, play important roles in the political process. Do you see a need

for the lobbying regime to be expanded to cover interactions with all parliamentarians rather than just ministers, their staff and departments?

Mr Banks: You're important decision-makers in the political process, Senator, so, yes, it should. I think the arrangements could be put in place which are not, therefore, particularly onerous or administratively burdensome. I've heard not only from yourself but from other members of the crossbench about the scarcity of resources that you have. I've certainly heard from Senator Colbeck and Labor backbenchers who are deeply concerned about the disparity of resources they have. So I'm not advocating a massive administrative or bureaucratic process that people have to go through. I think there are already some of these very basic systems that really could just be slightly expanded or just made public in many ways—things that almost happen anyway. I think they certainly would be a very easy first step for the parliament to take. Other parliaments already do it, so it's not like there's a barrier, if you like, in either a philosophical or an administrative sense. I'd say: take these processes, adapt them slightly to make sure that they're suited to public transparency and publish away.

Senator DAVID POCOCK: Thank you. Finally, one of the things that stuck out in your submission were your concerns that not all lobbyists are bound by the code of conduct. You included what you call an 'ambiguous category of government-contracted consultants retaining external clients'. Do you have even just a general example of this form of arrangement and the specific integrity issues?

Mr Banks: It depends a lot on jurisdiction, for example. Some jurisdictions cover a wider view of who these people are. The truth is that there are a lot of professional services firms around this country that engage in what I think any reasonable person would regard as lobbying, but if you go and search the Commonwealth lobbyist register, they do not appear on the register. They're not turning up in this building just advocating on behalf of their businesses. They're not like a BHP or Medibank Private, or whatever. They're not turning up and saying, 'Hi, I'm here on behalf of BHP; I'd like to get an approval to build a mine.' These are organisations that are lobbying on a wide range of issues that impact on their clients, and I can't see how those firms are any different in any way from what I do as a third-party lobbyist.

Senator DAVID POCOCK: I agree, from what I've seen. Finally, something that came up earlier was the unescorted day pass. Senator Pratt obviously has concerns about marginalised groups being named and open to—why do you think the unescorted day pass is a good thing to bring back?

Mr Banks: If, for example, you come to this building on a normal day-to-day basis, even if you're still escorted, that material is not published, for example. I'm not advocating that that necessarily take place. This would be like a middle house, where you give someone the ability to come into the building and, as she said, be able to wander around and visit multiple people within the building. I think that would be helpful. But it would also mean then that there's a separate class, if you like, for people like me, who are up here a lot—I'm not going to deny that. But, as Senator Colbeck, I think, quite rightly pointed out, there's nothing stopping someone getting an orange pass today if they wish to. I think it would create a variety of means that would suit particular persons' circumstances but still give as open access as possible to this building.

As I started off in my comments, I think one of the reasons why this place has become a bit more closed—and I wish it wasn't—is understandable national security reasons. I think we need to think through the tension between those things but still provide as much access as we can, and an unescorted day pass, structured properly, could be a very good means of doing that.

Senator DAVID POCOCK: Thank you. Thanks, Chair.

CHAIR: Thanks, Senator Pocock. I might start where you just finished, Mr Banks. As we discussed earlier, this building isn't as accessible as it was when we both started coming here. It's changed for a range of reasons, with security being one of them. But the unescorted day pass did provide the capacity for, let's say, the casual or single-issue based person or group who wanted to come to Canberra to seek meetings and have consultations on a particular matter to actually do that in an efficient way, if you like, rather than going through a process of being escorted backwards and forwards from the Marble Foyer, as they currently are with the process that exists. It's not an onerous thing, but it would still require the core entry requirements to the building.

Mr Banks: Correct. It would still, for example, need to be signed off by someone who already has permission to allow other people in the building. For example, as third-party lobbyists, we can't bring anyone else into this building. We can only bring ourselves in. If we want to bring a client into this building, it ultimately has to be signed off by you or one of your staff. You can still place controls around who those people are. If people abuse even a temporary right like that, you can put them on a watchlist so that they're not granted a subsequent approval if they misbehave when they're inside the building. So there are mechanisms you can use to control and police inappropriate behaviour. But I think that it would be a practical measure to increase access to the building.

CHAIR: You made the point before in relation to the difference between activity and business and also about a number of other management tools that we have at the moment—you talked about the Foreign Influence Transparency Scheme and the NACC that is now in place. It would seem that the environment has evolved somewhat, necessarily, over a period of time and yet there aren't necessarily clear linkages in the way the various elements of our process operate in that sense. The parliamentary pass process is one of the parliament. The lobbyists code is managed through A-Gs. But you have a number of other different moving parts. How do you efficiently tie those together so that they can work appropriately in the interests of what we're seeking to achieve through this discussion?

Mr Banks: I've said there'd need to be cooperation between the various parts of government, if you like. But I think the simplest way of doing it is to put it in legislation—create a common legislative framework that all parts of government can connect into and create common standards. For example, the code of conduct could easily be legislated, and the range of penalties and fines for the abuse of that process could also be established through a legislative framework. Ultimately, the best way to do that, if you're going to have some kind of flexibility in how those fines operate, is to do it through a proper legislative framework as well. So legislation, I think, is the core of that answer, because it inevitably involves cooperation between the executive and the legislature. But you are still going to need administrative cooperation between the two arms of government as well.

CHAIR: Between the two groups of you here now, there's a difference in relation to in-house lobbyists and third parties. Mr Banks, you make a very good point in relation to other organisations, often contracted by government, who have a significant influence through their work as well. I've asked a number of witnesses a question around registration being a precursor or prerequisite for an orange—I'm going to call it an orange pass because I want to distinguish it from the other classifications of passes that do exist in the parliament for good reasons, and perhaps there's reason for us to consider additional elements there. I'm interested in your views around registration as a precursor to a lobbyist's or an advocate's pass in that sense. It's a way of tying these things together.

Mr Banks: If the scheme under the Register of Lobbyists administered by the Attorney-General's Department were a precursor to getting registration for a parliamentary pass, that would be one option. But I'm also conscious that there are plenty of, for example, registered lobbyists who never step foot inside this building. They're dealing with other parts of government and would never want or dream of having an orange pass. They'd probably be horrified at the thought of having one. And there may be people in reverse who are only ever going to be dealing with the legislature and don't feel that they've got any proper role or function in dealing with the executive. But I think there are simple ways of doing that, and it operates not only between the two institutions but across governments. The New South Wales ICAC, for example, is turning up here this afternoon, as I understand, and has said essentially there should be some form or system of mutual recognition to operate between the various schemes. I think those things can be settled and negotiated between the various arms of government so that they work in conjunction with one another.

CHAIR: Another glorious example of the federated process. Mr Cox and Ms Mackenzie, do you have a comment on that?

Mr Cox: I think we always should encourage the regulators and decision-makers to communicate, particularly on areas of interest such as what we're talking about. I think there's merit in looking at what you have said but also beefing up the powers of the department to look at unregistered lobbying—something that we know happens; those that are working for companies and not going through the proper processes that are prescribed by the department. I think there's merit in looking at that as well. But, from what you've said, better communication and collaboration between those two entities is something worthy of consideration.

Ms Mackenzie: If I could add to that, I think it's important for people in the government relations profession as it is, and any profession, to understand what the regulatory requirements governing their profession are. I note, for example, if you look at the Attorney-General's website where it talks about obligations around the lobbyists' code of conduct and the lobbyist register, it does reference the FIT Scheme as well, so there is some kind of connection there.

One of the things that APGRA does on behalf of its members is publish information about the various rules and laws in the different jurisdictions that apply to lobbyists, so we have an important role in educating our members and the industry about what their obligations are when it comes to the various jurisdictions.

CHAIR: I think that covers my issues. I'll just ask one specific question of both of you that I have asked other witnesses: do you discern a difference between advocacy and lobbying?

Mr Cox: If you are trying to influence or provide further information to government or stakeholders about a particular piece of legislation or decision the government is about to make, then I don't see where they cross over each other. I understand your question. But someone coming to this building or meeting with someone outside of this building who is a decision-maker is trying to achieve the same goal, which is to educate the minister, ministerial staff, senators, parliamentarians on the issue they are talking to them about, so I think that is difficult.

Ms Mackenzie: To add to that, Mr Cox, in his opening statement, talked about the range of activities that government relations practitioners undertake on behalf of their clients. Sometimes there is a misconception about the role lobbyists can play. Sometimes it does involve lobbying or advocating for our clients' interests with decision-makers but there is a broad range of other services and other types of advice we offer clients that are about helping them understand the way in which public policy process works and how they can advocate for their interests and participate in that public policy making process, as well as doing research and advisory work, strategic communications—the whole range of activities that government relations practitioners undertake.

Mr Banks: To elaborate on that, I think there are two basic differences. If it was someone like me coming to speak to someone like you, the answer is I am both an advocate and a lobbyist at the same time. I think they are one and the same measure. We have already heard some good examples from Senator Pratt about people who might be coming and telling their personal stories. I think they are advocates. I don't think they are lobbyists. I think that is an easy way to understand the distinction there.

At a more professional level, there is a whole realm of what I would describe as public affairs, where you are trying to more broadly influence public opinion about matters, not necessarily a direct decision-maker. That is definitely a form of advocacy that is not covered by the lobbyist register. If people want to think about how that is regulated, it is another issue. but those activities are covered by things like, for example, the Trade Practices Act and other things. There are issues there for professionals engaged in those activities about how they conduct themselves.

CHAIR: The web becomes deeper and more complex. Thank you all for evidence; we appreciate it. I don't know if you have taken any questions on notice but, if you have, if you could have those back to us by Friday 19 April.

BAALMAN, Mr Malcolm, Senior Policy and Advocacy Adviser, Public Health Association of Australia

CULLERTON, Dr Katherine, Private capacity [by video link]

HEATH-PAYNTER, Mr Dash, Chief Executive Officer, Health Equity Matters [by video link]

LACY-NICHOLS, Dr Jennifer, Private capacity

WATTS, Dr Christina, Private capacity [by video link]

[11:43]

CHAIR: I now welcome representatives from the Public Health Association of Australia, Health Equity Matters and others in a private capacity. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. Before we continue, is there anything any of you would like to say about the capacity in which you appear today?

Dr Lacy-Nichols: I'm a research fellow at the University of Melbourne.

Dr Watts: I'm a research fellow at the Daffodil Centre at the University of Sydney, which is a joint venture with Cancer Council NSW.

Mr Heath-Paynter: Health Equity Matters is a federally funded agency and national peak organisation for the HIV and LGBTIQ+ response in Australia.

CHAIR: I'm going to invite each of you to give a short—and, if we can do that, please keep it short—opening statement, and then we'll go to questions from colleagues. I might start with you, Mr Heath-Paynter.

Mr Heath-Paynter: Sure, and thank you very much for the invitation to participate in this inquiry. As I said, we're a national peak agency, and we believe in greater transparency of lobbyists' names and greater transparency of the issues and interests that lobbyists and people with sponsored passes have. However, we argue that there is a tension at play here and that as a body that represents people who represent marginalised communities and, in particular, criminalised communities—what I mean by that is as a peak body our member organisations include organisations representing sex workers and people who use drugs, but also people with HIV and LGBTIQ+ communities, who have been historically misunderstood and are at risk of being framed through outdated and inaccurate stereotypes. As a consequence of this, we argue that there should be exemptions to full transparency.

We would argue for a public interest exemption to ensure that people who have lived experiences of marginalisation, particularly people who are sex workers and people who use drugs, and are from criminalised communities who wish to attend Parliament House to advocate to parliamentarians and elected officials should be able to do this in a way where their identity is not disclosed. The issue is that, if we have full or unfettered transparency, there is a risk that these people will feel uncomfortable because their names are in the public domain, and they are at risk of being exposed to unwanted and very unfortunate commentary. We've seen this recently, particularly with the marriage equality debate, but we've seen it across the life course of the HIV epidemic, where these communities have been exposed here in Australia and internationally to inaccurate commentary, which drives and repels people from engaging with our political system.

The other point is that it could have the effect of repelling elected officials from wanting to sponsor these people to have parliamentary passes for fear that it could create an issue for their own reputation or their career ambition as elected officials. I'll leave my opening statement at that.

CHAIR: Thank you very much. Dr Watts.

Dr Watts: Thanks very much for the opportunity to speak here today, and I really commend the initiative of the committee to address some of the loopholes in lobbying regulations in Australia. I'll keep my opening statement very brief. I research the ways that tobacco companies and their allies attempt to influence policymaking in Australia. My PhD was on this topic, and I have published research extensively in this area. My latest publication looks specifically at the revolving door between government and tobacco companies, and I've outlined the results of that research in detail in my submission.

I think we can all agree that tobacco companies and their paid allies should have no place in influencing Australian policymaking. Yet, the fact that, still today, tobacco lobbyists can meet with ministers or their advisers and hold parliamentary passes without any public record or oversight just clearly illustrates that the current regulations regarding lobbying are failing. When it comes to the tobacco industry, history has shown us time and time again that when there is a loophole to be exploited it will be exploited.

Thank you again for the opportunity. I am happy to answer any specific questions.

Dr Lacy-Nichols: Good morning. Thank you so much for the invitation to be here. I echo Christina's commendation of the committee for holding this hearing. We have a tremendous opportunity to improve this and to generate some landmark legislation.

I research corporate political activity. I spend a lot of my day-to-day time digging through lobbyist registers, political donations and other public datasets, and trying to put it all together. As part of that, I'm personally frustrated sometimes with how challenging it is to do this. I've spent a lot of time looking internationally to identify best practice examples for how we can do transparency better; I'm very happy to talk about that.

I'd like to briefly state my four recommendations, if I'm going to talk about what I think is most important here. First, we've talked about the definition. We only look at consultant lobbyists in Australia. There's only one other country internationally that does that—the UK. I would say it's a woeful standard. We shouldn't be aspiring to the lowest common denominator; we should be aspiring to international best practice. On the same measure, we need to have contact logs. If we're looking internationally at the lobbyist registers that have the strongest regulations, the core component of that includes detailed contact logs of records of meetings not just with ministers but with chiefs of staff and others in the Public Service.

The other two recommendations are around transparency of representative groups. Christina talked about some tobacco lobby groups having access. We have no transparency of who they're actually representing. I know the Attorney-General's Department talked about interoperability—the idea that registers should be able to talk to the parliamentary passes or to the donations. Right now the data is incredibly disorganised and could be done so much better. Please embrace open data and open government principles in the political space. It would do wonders, and Australia could be a global leader in that space.

Mr Baalman: Thank you for holding this inquiry in the first place. It's an important topic. My organisation is a civil society NGO and a registered charity. We're concerned about the interests of a select number of industries, largely those who are responsible for unhealthy products and services—tobacco, alcohol et cetera. The public's trust is being degraded by the fact that the lobbying on those issues to do with human health take place in darkness, so I'm glad you're holding this inquiry.

I would reflect, however, an overview that this matter isn't on its own; there is a wider collection of issues to do with money in politics and the role of corporate campaigning and public influence campaigns. There's a debate about truth in political advertising. Other matters are connected to this. As you design, hopefully, a very good response of a better system of regulating lobbying, please keep that in mind. The apparently small matter of secure access to this building by the people who need to be in it seems to be isolated, but it's not. I think it's important that whatever you decide about how that matter is dealt with fits into a well-structured scheme of regulation of lobbying and those other matters.

CHAIR: Thank you, and thank you all for being brief.

Senator DAVID POCOCK: Thanks for your time here this morning. Dr Lacy-Nichols, I note your work published last year where you looked at the integrity of lobbyist registers across the federation. There was, I thought, a pretty startling finding that 96 lobbyists said they'd both worked and not worked in government. Could you give us a brief run-down of the main findings of your recent research and the major concerns you've identified?

Dr Lacy-Nichols: Sure. The very short nutshell is that I'm trying to find a way to monitor corporate political activity—something that Transparency International does internationally, and TobaccoTactics, and the US Right to Know organisation. As I've said, it's important especially when harmful industries such as tobacco, alcohol or other organisations have access and it's hidden. This risks government decisions not being made in the public interest. There's a risk we'll lose public trust in government. I'm trying to find a way to make it easier to monitor and put this in the public domain. In terms of that paper and some of the other bits that I've done, I looked at all the lobbyist registers across Australia—all the jurisdictions except the NT have one—and I guess the main finding is that they don't provide very much information. I went through and looked at what international best practice could have. We have maybe, in the best case, 30 per cent of what information is disclosed internationally. Queensland—I'll give them a shout-out—had the most information out there. The federal government doesn't do very well compared either to the states here or internationally.

In terms of some of the anomalies that we found, I had a very dedicated research student who manually copied and pasted every piece of data from all of the registers—something like 60,000 unique data points. As part of that, we just found that, for the revolving door in particular—and Christina can talk about this more, I imagine—there were inconsistencies across this. Names are spelled different ways; we have the same thing across the donations. I

guess the crux is that there's not very much data, and what data is there is disconnected and sometimes inaccurate. Maybe that should have been my short answer. Sorry.

Senator DAVID POCOCK: Thank you. That's great. Are you able to share any examples of where you've seen dubious lobbying activities or suspect that lobbying led to a poor public policy outcome? I know that in the past you've commented on the role of lobbying in chilling reforms around pregnancy labelling. Are there any other examples?

Dr Lacy-Nichols: I think the short answer is no, because the data is all really disorganised. I think some of the richest examples we have of the smoking gun, or the really juicy stories that are quite upsetting and get the public attention, come from investigative journalism. They come from people disclosing, in confidence, information that they've been privy to. We certainly saw that with Sportsbet and the donations to the racing minister last year. A lot of investigative journalism brings this to light. I think it's terrific that we have investigative journalism doing this, but I think the fact we have to rely on that for information that, in other countries, is just part of the public record so that citizens or others who are interested can have this is a shame.

Senator DAVID POCOCK: Thank you. Dr Watts, you obviously have done extensive research tracking influence of the tobacco industry. In your submission, you say you found evidence:

... that tobacco companies have attempted to influence public policy behind closed doors through strategically using "revolving door" lobbyists.

Could you explain to us the basis of this finding and the deficiencies it highlights in the current lobbying regime here in Australia?

Dr Watts: Yes. What we did in that study was gather information from various sources. Just to go back to that point that Jennifer was making, it is a real jigsaw puzzle to collect this information, but we were looking specifically at the movement of lobbyists—those being, obviously, the lobbyists working on behalf of tobacco companies in consultancy firms but also those lobbyists who are in-house lobbyists. We found that close to half of those employees had previously held government jobs, and I guess the most staggering finding from that study was that almost half also had moved into or out of government within a year of working for a tobacco company or as a direct lobbyist, which breaches the Lobbying Code of Conduct.

I want to bring it back to the issue of the definition of lobbyists and the fact that in-house lobbyists—the people working directly for tobacco companies—do not need to register on any lobbyist registers within Australia. Therefore they're not bound to the Lobbying Code of Conduct, so any cooling-off periods that are listed in the Lobbying Code of Conduct do not apply to them. We obviously have an issue of enforcement of the cooling-off periods and also the fact that they are very minimal, but it just doesn't apply to those people working directly for tobacco companies, and we have extensive evidence of those people being in and out of Parliament House and working for the financial interests of big tobacco.

Senator DAVID POCOCK: You mentioned people working for tobacco companies getting sponsored passes. Is it your view that by sponsoring a pass for someone in the tobacco industry we as a nation are potentially in breach of our obligations under the Framework Convention on Tobacco Control? How do you see that working?

Dr Watts: Yes, as you said, Australia is definitely a party to the World Health Organization Framework Convention on Tobacco Control. Article 5.3 very specifically says that we must protect public health policies from the vested interests of tobacco companies. On top of that, in 2019, the Australian government released its own guidance for public officials interacting with the tobacco industry, saying:

The tobacco industry should not be in a position to influence the implementation of tobacco control measures and policies.

We really need that guidance specifically outlined in the Lobbying Code of Conduct as well. To answer your initial question, yes, the parliamentary passes that have been issued to tobacco companies would indeed be a breach of article 5.3 of the FCTC.

Senator DAVID POCOCK: Referring back to your comment about the revolving door, in your submission you talk about international best practice of having a cooling-off period of five years. I would be interested if you could expand that a little bit more. Which countries are doing that and why does that benefit Australia?

Dr Watts: I believe there are quite a few countries that are doing much better than Australia. Jen could even speak to this as well. Canada, in particular, has a five-year cooling-off period that is independently policed as well, which I think is really important. The minimal period of 12 months or 18 months is just not sufficient. People are able to maintain contact with the people they have worked with over time. It is not a long period of time when you think about it. A year flies by in a second it seems like at times. For them to have a year off

lobbying and then go straight back into a position where they are influencing government on that particular topic is not okay. Jen, did you have anything else to add around international best practice?

Dr Lacy-Nichols: I would add that, if we were looking particularly at the question of public integrity and the revolving door, many of the countries in the European Union have some excellent examples. I would be happy to take that question on notice and provide some, if that is of interest. For instance, committee oversight around this in addition to the particular time frame, they have dedicated groups to provide oversight around that to try to really protect the integrity question.

Senator DAVID POCOCK: Mr Baalman, returning to the question I asked Dr Lacy-Nichols, do you have any examples of where you see failures in the current lobbying regime contributing to poor public health outcomes and decisions by the executive?

Mr Baalman: Vaping is a live debate right now. It is an industry that is mutating. What was initially invented, apparently, as a smoking cessation tool 20 years ago but has become another nicotine-addictive product, and we have not caught up adequately with the way we regulate that form of the tobacco or nicotine industry's influence on the public policy choices that the parliament is dealing with right now. We do not know the extent of the vaping and nicotine tobacco industry's influence on the current debate. This is why I said at the beginning what we want is transparency. Whatever the public policy outcomes on all these questions to do with unhealthy products, they will be better served if done in visible circumstances. We need to know what is going on.

I commend the parliamentary committee that looked into the tobacco bill last year. It attempted to impose some implementation of the framework convention's requirements and this committee has done likewise. That is commendable. We need to actually make sure that that convention is being faithfully honoured and is being honoured in the registration of lobbyist firms and access to passes to access this building. We are not seeing the transparency we need to have that public debate properly.

Senator DAVID POCOCK: Mr Heath-Paynter, you talked about the need for a public interest exemption in any transparency reforms to protect marginalised communities. I'm interested in how you think we weigh up transparency and, hopefully, over time, normalising advocacy from marginalised groups with protecting those individuals. One of the things that have been raised a couple of times now is the potential to have one-day unescorted passes. You could come in for the day, be essentially anonymous and go round and advocate. Do you think that would solve a large part of that issue, or do you think there's a need for 24/7 every-day-of-the-year access passes as well?

Mr Heath-Paynter: I think there's a need for 24/7 access passes. We have member organisations who distinctly and discretely represent particular interests, such as sex worker member organisations and another member organisation who represents people who use drugs. These are organisations that visit Parliament House regularly—not just once or twice a year, but regularly—to meet with elected officials. I think it would be inconvenient. I don't know what the processes would be for applying for a day pass, but I think it would be inconvenient for them to have to rely on a day pass to fly under the radar of visibility. That's my point in response to how people representing marginalised communities might access Parliament House.

But I think that the point here is that we're all trying to create a level playing field in terms of access to Parliament House through the use of sponsored passes. The concern we have is that this could repel. I absolutely agree with all the other speakers and absolutely agree that we need greater transparency, particularly for industries that stand to benefit from regulatory reforms, but, from our experience, if you look at Australia's HIV response or if you look more recently at what happened with Mpox, the advocacy was led by affected communities, and they need ongoing access to Parliament House. It's not just once or twice a year.

We also often bring with us people with lived experience to Parliament House to discuss their experiences of living with a particular condition or identifying with a particular issue to engage with the system to ensure that policymaking is properly informed, not just by evidence but by observational data. So I would argue that it's best to have available for these people ongoing passes rather than just day passes.

Senator DAVID POCOCK: What risk does it pose to have someone who works for a sex work advocacy organisation on the register? I assume all the people who come and meet with parliamentarians with them are all signed in as day passes. We heard earlier from Professor Twomey that sponsored passes provide privileged access and that, if people don't wish to be identified as having a sponsored pass, then there are other avenues. They could meet outside of sittings. They could be signed in. There are a range of things there to deal with specific requirements for anonymity.

Mr Heath-Paynter: I think that just continues the exclusion and erasure that some of these communities have experienced. I think they should have access, like anyone else, to a sponsored pass. Sex workers and particularly

people who use drugs—and I will say people with HIV. That's not criminalised, but this is a particularly misunderstood area. We have people in our network who advocate for issues relating to people with HIV who are not open about their HIV status to their family but are very good advocates. And some of these people have sponsored passes and are regularly in parliament. I think saying to these particular communities, 'If you want the same access, you have to find innovative ways to access Parliament House,' really reinforces the sense of otherness that these communities have experienced for a long time. I would argue that they should have the same access to sponsored passes, but we need to accommodate or consider the fact that having their names very visible does increase the risk of these people being exposed to online hateful messaging and opportunistic parliamentarians falling behind parliamentary privilege to attack them. This has happened. There has been a history of this happening in parliament, and we would argue that to protect these people and to protect their wellbeing, a public interest exemption needs to be available.

I would say that any public interest exemption should not be available to any commercial interest or also to certain religious interests. It should not be capable of being exploited by those interests. We argue that this needs to be available to protect our community so that they can engage in the political process in ways that are equal to any other person.

CHAIR: I'm reluctant to do this, but it may also have a chilling effect on people being willing to sponsor them for their pass, which I think would be a restriction to access that would not be desirable.

Mr Heath-Paynter: Absolutely and I make the point in my submission that there is a risk that we have a system that's still very much focused around major parties, and people are ambitious and if they were asked to sponsor someone who was advocating for the rights of people to use drugs, a certain politician may not do that for fear of being criticised for sponsoring someone who has a history of conduct that may be inconsistent with certain laws. It's a real problem that could be an unintentional effect of unfettered transparency.

Senator DAVID POCOCK: I hope we'd see a bit more political courage than that, but I do take your point there. My concern would be around who this would apply to. I can have sympathy for the cases you raised, but I think there are ways in which other organisations, where it's probably genuinely in the public interest to see if they do have sponsored passes, would potentially also apply for this type of exemption. I think it's something to think more about. I appreciate your time today.

CHAIR: I want to make one point. Under the current program, nobody comes into the place without being identified in some form. In case we've given the perception through our conversations that that might be the case, we should dispel that.

Senator PRATT: I'm keen to explore how we can find a win-win here. I don't see an easy way through it in the context of: can we manage these issues by people who have paid employment attached to their advocacy in the building? I want to ask Mr Heath-Paynter if that presents the same level of risk. I frequently meet with Health Equity Matters, sex work organisations, the injecting drug users league et cetera. I can totally see people could be trolled online. I've seen examples of that happening. But if someone's advocacy is already public, is that mitigating, or if someone's in a paid role that translates to it being a more public role. Does that same level of risk present itself? If so, I would be very reluctant to go down that level of transparency. At the end of the day, we may end up with the tobacco lobby rocking up as being represented by drug users. As you know, they duck and weave and dive in every way possible. In that context, does payment for your advocacy become the threshold for disclosure? In which case, Mr Heath-Paynter, we would have to see organisations like yours be able to distinguish between those who are able to have a public face and those who aren't, even though there may well be marginalised groups who don't have access to a civil society organisation that is able to peak over them to provide that transparency.

Mr Heath-Paynter: I think it's an interesting concept. The situation for sex worker and drug user organisations is quite complex because some states have funded bodies and other jurisdictions actually have networks that may have degrees of funding, so they might have some program funding but the people who deliver the activities are often doing it on a voluntary basis or for very low rates of pay. I think it is an interesting question—

Senator PRATT: They don't have the organisational protection should they be trolled or end up being defamed by an MP under parliamentary privilege et cetera.

Mr Heath-Paynter: Yes. For my organisation, there will be an expectation from my board and from my members that I would be visible. If this public interest exemption became available, someone in my role would not be seeking an exemption from being transparent because there's an expectation that we would be doing advocacy in Parliament House. But for the organisations that do represent criminalised communities, I think this

is a very real and live issue. Even for organisations that represent people with HIV, not all people are, as I said, open about their status and that's for a range of complex reasons. I really do think that exemption should be available to those populations whether they are paid or whether they are accompanying senior members of the leadership of the organisations into Parliament House to advocate. I just don't see a way around it for those particular communities.

Senator PRATT: In the context of a busy day in parliament, where you have multiple meetings and you have a diverse set of, for example, visitors who don't have a pass, can it be quite onerous, sometimes, to get around the building, getting picked up from one office to go to the next, to go to the next? It certainly can be onerous for our officers, as willing as we are to want to see that happen. What level of complexity does that add in access for these marginalised groups to parliamentarians and democracy?

Mr Heath-Paynter: It just takes a lot of organisation. You have to arrange for a staffer to come down, and that can be a 10-minute walk depending on where you are in Parliament House, and escort someone. I actually think it's a really inferior way of dealing with this, to say that you need to arrange for someone to come down and sign you in.

Senator PRATT: It can result in being late for meetings cascading, can't it?

Mr Heath-Paynter: Exactly, and these people don't have the understanding of Parliament House that I do. I'm quite familiar with where offices are and how to get to certain places. It also means that someone is cycling in and out of Parliament House on a given day to attend multiple meetings. I actually think it reinforces a sense of exclusion. I just don't think it's a sustainable response. We have an option in place to enable people to access parliament to engage in lobbying, and everyone should have access to that, but we need to accommodate the interests of particular groups to ensure they can do this in a way that is safe for them.

Senator PRATT: It wouldn't be uncommon for advocates to be escorted from the Marble Foyer three or four times in a day because they don't have a sponsored pass and they have to be escorted in and out for every individual meeting, would it?

Mr Heath-Paynter: Yes, that will be the case. It would just add a lot of time and would also be a burden to the officers to have to send a staffer down to sign them in. I just don't have—

Senator PRATT: We do a lot of that already and it has become harder since those changes came in. I want to put it to all four of the panellists here today: how can we look to resolve some of these issues?

Mr Baalman: I can't help but observe that it's as if we're discussing two separate subjects a little. When we're dealing with the civil society and the marginalised groups that Mr Heath-Paynter mentioned, we feel one set of responses are focused on trying to make sure that democratic communication happens, but when we discuss the corporate industries, lobbying and commercial interest we have a different set of reactions. What I would suggest to you—Senator Pratt, you mentioned earlier that you were wrestling with how to find a comprehensive solution—is that you should first build a logical system about access to the building that serves the interests of a flow of democratic communication and the visibility of civil society, and the other good objectives we have. Design that well so that it matches the needs of the building, the members who work in it, and other functions that take place in this building, including meetings and media events et cetera, and then add on another layer to deal with the problem of commercial interest. Be clear about the additional strictures and obligations that you might make, and then, both for the purposes of your rules for access to this building and, separately, for the regulation of the lobbying system—which most of the submitters to this committee have said needs urgent reform—you will end up with a system that functions successfully to meet all your goals. But if you try to do the two things in your mind simultaneously, you just keep finding contradictions. That's what I'd observe is a way for you as a committee to frame a report that tries to move this debate forward.

Senator PRATT: So the commercial purpose needs to be distinguished more clearly. I imagine an offshoot of that will be the tobacco lobby activating more citizens inside the building about their rights to access nicotine products—so be it, at least if there was some more disclosure around official passes where there is a commercial interest attached to them. Is that kind of where you're going?

Mr Baalman: Yes. I agree with Mr Heath-Paynter that there are cases where a degree of privacy and protection make sense, but they do not apply to commercial lobbying or commercial access to—

Senator PRATT: It's more than the degree of privacy in the context that there's also that conflict—it's not conflict. You can have transparency at the same time as that right of citizens to access their parliament under the protection of parliamentary privilege. They won't be disadvantaged.

Mr Baalman: Yes. In the respect of the access of the tobacco industry to the building, which was discussed a bit earlier, I don't know to what extent the pass office is seized of those international obligations that government

instrumentality should help implement. I don't understand what they might be doing, but surely it is not too difficult for them to craft a solution, just as your committee has, where there is a checking process to make sure that applicants for passes truthfully confirm that they are not acting for an industry that we have agreed in international treaty we will not accept.

Dr Watts: I'm not offering a solution, unfortunately, but emphasising the point that Senator Pratt was alluding to: the tobacco industry and their allies very much use astroturf campaigns. They will very indirectly support various individuals and pose them as, perhaps, people in the public who are concerned about the issue. They strategically distance themselves from those individuals, so actually tracking, financially, back to big tobacco is a very difficult thing to do. I wanted to make that known and to raise that point: funding is often sought through various different channels. I guess a clear conflict of interest statement saying, 'No, I have no connections to big tobacco,' might not completely capture those individuals that have funding through five or six different sources that can be linked back to big tobacco companies.

CHAIR: I'm really interested in this particular point about exclusion, effectively, which is what you're talking about in relation to tobacco, and I'm not diminishing the damage that the organisations have done over a long time, in that sense. But in the broader democratic sense, and the loss of visibility and transparency, surely we are better off to understand what they're doing, which is what you have been trying to do through your research, and driving a transparency to that process because, as you just very eloquently said to us, they find other ways to have their influence. A transparency of the reality of their presence, I think, in a democratic sense, you're starting to get on dangerous ground by excluding people by saying, 'You can't be here', knowing and understanding that they are. So having a way to deal with that would have to be preferable to sending them underground and conducting the practices you have just described.

Dr Watts: I think at the very minimum there needs to be some transparency around that. In the research we have done, as I mentioned earlier, it was very complicated trying to even to get the information together. We had to rely on LinkedIn and media reports and, as Jennifer also said earlier, we really rely on investigative journalists to uncover some of this information. The current publicly accessible information through lobbyist registers and whatnot is just not giving us the information we need to even get that transparency. In order for Australia to be fulfilling its obligations under the UN treaty on tobacco control, we should not be giving these parliamentary passes to tobacco companies and their lobbyists.

Dr Lacy-Nichols: One other point: when thinking through managing conflicts of interests with a diversity of commercial actors, it's around influencing the creation and implementation of public health policy in the case of tobacco, but we could be talking about fossil fuels or any other sector there. There are points within the policy process where you're creating the policy or you're designing how it's implemented, and those are especially susceptible to influence. I think in most cases around the world at some point you will engage with an industry sector or commercial actor, once you have created the policy and are taking it to them and implementing it with them. This is around protecting the earlier part of the policy process. Perhaps that might be the middle ground in thinking through how we engage.

CHAIR: How do you build trust in the policy development process if you are locking people out of it?

Dr Lacy-Nichols: I'm happy to defer to Christina around this. There are a very, very small number of organisations that are viewed as especially harmful whose core interests are not in line with the public, and tobacco is one example of that. But my sense—

CHAIR: I agree with you on that side of it but, in a transparency sense, knowing what they're saying and that being transparent through the process makes it easier for you to deal with. Having sat in the decision-maker's chair, as I have, you learn to read a pitch; it's part of the job—for anyone in this building that doesn't know how to read a pitch. People will come in with different perspectives. I have colleagues who still smoke and who fervently defend their right to do so. I will disagree with them 100 per cent on that as someone who has never partaken, apart from when I wasn't in good condition. But in that sense, your arguments in respect of transparency really do open this up. But if you exclude, you then create the circumstance for the capacity to criticise the process and then undermine the public trust we're seeking to impose or see in the process by the way that we're operating.

Dr Lacy-Nichols: I think maybe there are two elements. Transparency is never the goal. Transparency is part of the process to achieve a larger goal.

CHAIR: Yes. We're on the same page.

Dr Lacy-Nichols: With regards to the exclusion part, I think back to what I said earlier in terms of conflict of interest and the policy process. Part of what transparency can achieve is that visibility that we all have the sense that there is unfair access right now, that there's imbalance and that we don't have the right sort of balance of

representation and that some have very preferential and very good access. Maybe we're uncomfortable with that, whether it's tobacco or fossil fuel or whichever particular sector it is.

CHAIR: That's the perception that exists, so the lack of transparency and the process—which is what we've discussed—is dealt with by having a process that everyone understands that is transparent but has an understanding of what people are saying.

Dr Lacy-Nichols: I suppose the idea is that once we get that transparency we can look at the whole system and say, 'It looks as though particular tobacco or vaping interests are having a whole number of meetings with these senators who are writing the bills at this very sensitive part of the policy process, and maybe some money also flowed there as well. But until I have all the data at my fingertips I can only speculate, which, as a researcher, I never want to do.'

CHAIR: Or you try not to. I understand. Does anyone else want to make a comment?

Mr Baalman: Just on what you were just discussing about whether there is some harm in excluding the tobacco industry from—

CHAIR: I'm not talking about tobacco. I'm talking about exclusion. It's a principle of democracy. If you exclude one, it's very easy once you've cracked the nut to say, 'Who's next?' It's almost like the process of cancelling. It, in itself, can create a lot of the circumstances that are degenerative to the trust in our democratic process. Conspiracy theory is and can be rife, so by excluding somebody and saying, 'Whose voice should we not hear?' is the question. When you open that concept, where does it go? That's my question from a purely democratic process.

Your point in respect of transparency, which I understand and I'm accepting—and Dr Lacy-Nichols, you've just enunciated that—is once you can see your concerns about having to speculate dissolve because you can see what's happening inside. My point is the danger of commencing the process of—in a democratic system—whose voice should not be heard is one that we need to think about seriously.

Dr Lacy-Nichols: I agree wholeheartedly.

Mr Baalman: Provided you have transparency, you can answer those questions.

CHAIR: Correct. Did you have any other questions, Senator Pratt?

Senator PRATT: Yes. I wanted to ask Mr Heath-Paynter about the real concerns of harm to advocates because of trolling or being publicly identifiable because you have a pass. There's a reason Mr Heath-Paynter can show up here today and represent members of Health Equity Matters, as opposed to the smaller organisations that he's speaking for who might run a very really risk of being trolled and of experiencing real personal harm if they have to be, in effect, on a lobbyists' register or a pass register of some sort that's visible.

Mr Heath-Paynter: We're seeing this a lot at the moment with the trans community, particularly in the US, but we're seeing it here. I was speaking to a colleague the other day who was telling me about his engagement with one of the state jurisdictions, where they wanted to bring a parent and a minor, someone under the age of 18, to see an elected official. I won't mention the jurisdiction—but the amount of work they had to do to ensure that the parent's name and the child's name were not disclosed, for fear of perpetuating already-high levels of online trolling that other trans activists and people who are trans have experienced in Australia. We know this is a community that is at huge risk of very poor mental health outcomes and suicide. So that is a community that absolutely has to be protected. But this has also happened to sex workers, it has also happened to people who use drugs and it has happened and it still happens to people with HIV and gay men who are engaged in this process. Having their name at risk of being exposed to the public is really something that will repel many people from engaging in the process.

Senator PRATT: In that context, with the current examples of when people see that kind of thing happen to people, it can make them reluctant to show up to parliament at all. I've seen it, when people go, 'Oh, you're so brave for going.' There becomes a sense that you can't show up to parliament to show your face at all.

Mr Heath-Paynter: Well, parliament becomes a place that isn't safe for those types of communities. It is the product of parliament becoming something that is actually not safe for these communities to engage with, and that perpetuates a sense of exclusion that's being experienced by these communities.

Senator PRATT: In that context, what can we do to give the diversity of Australian marginalised communities the ability to show up to parliament and access it either privately or even, in time, more publicly because it is a safe place and doesn't result in other ramifications inside or outside the building?

Mr Heath-Paynter: I think this idea that marginalised communities become normalised—that's something that happens over a long period—

Senator PRATT: A long time.

Mr Heath-Paynter: and any ability to identify people publicly is simply going to continue to put these people at risk. That's why I say this. Again, I'm providing advice to this inquiry on what needs to be accommodated in any reforms. I agree this isn't easy, but simply the fact that it isn't easy isn't a reason not to do it. I agree that there is a risk that certain industries could exploit this, and I say this in my submission. There need to be guardrails around this that limit this to particular marginalised communities. At that point, I raise a risk around naming these particular communities, because sentiments do change over time, and new communities come into play. That makes it very hard. So I'm against naming particular marginalised communities.

Senator PRATT: Yes. It could be someone on a bridging visa. It could be—

Mr Heath-Paynter: It could be someone on a bridging visa. It could be someone with a particular faith or racial identity that is suddenly at higher risk of being exposed to online trolling or doxxing because of a particular moment in history. That may not exist now but could exist next week, so there needs to be a level of openness or a capacity of decision-makers around providing exemptions to have a level of arbitrariness to give people an exemption. But that level of arbitrariness needs to be limited to avoid it being exploited by commercial interests such as the tobacco industry, who may seek to use citizens to progress their own advocacy in a way that conceals actually who they are.

CHAIR: Thanks, Senator Pratt. Dr Lacy-Nichols, you talked before about levels of information on the public record in other countries. Would you be able to provide us, on notice, with some examples of that? I think that would be useful for the committee in preparing what we're doing, so that we can see what you see as best practice.

Dr Lacy-Nichols: I'm happy to provide a shortlist, I suppose, of some of the countries with the strongest regulations. Sure.

CHAIR: Thank you. I appreciate that. That is a piece of homework and a question on notice, so you are subject to our request to have that information back to us by 19 April. I thank all of you for your evidence today. It has been really useful for the consideration of the committee.

Proceedings suspended from 12:40 to 13:32

O'HARA, Mrs Dianne, Director, Industry Operations, Federal Chamber of Automotive Industries

WEBER, Mr Tony, Chief Executive, Federal Chamber of Automotive Industries

CHAIR: Good afternoon, everybody. I welcome representatives from the Federal Chamber of Automotive Industries. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I invite you to make an opening statement, and then we can go to my colleagues for questions.

Mr Weber: The FCAI has, to date, not been involved in any of the inquiries and did not lodge a submission. We are an industry association, not a lobbyist. The FCAI is the peak industry body representing Australian importers and distributors of passenger motor vehicles, sports utility vehicles, light commercial vehicles, motorcycles and off-highway vehicles. FCAI members supply about 99 per cent of new vehicles to the Australian market each year, with in excess of fifty brands offering more than 350 models of light vehicles into the market. Our membership is broad, with manufacturers of diverse technologies and vehicle types, from utes to side-by-side vehicles for farm use to electric vehicles, which are a growing part of the Australian fleet.

Our role in representing the interests of members is broad and is set out in the objectives of the FCAI constitution as follows:

- a. to represent and advance the interests of the Members and the Australian automotive industry in dealings with all stakeholders, including the Australian Government and the governments of the Australian states and territories;
- b. to promote the development and implementation of effective and well-designed public policy and regulatory outcomes which are of benefit to the Members and the Australian Automotive Industry, including in the following:
 - i. vehicle design and safety;
 - ii. environmental performance;
 - iii. trade and industry policy;
 - iv. business and consumer regulation;
 - v. taxation, customs and excise; and
 - vi. transport policy and the provision of key economic infrastructure;
- c. to raise awareness in the general community of the interests of the Australian Automotive Industry and its contribution to the Australian economy;
- d. to collect and disseminate statistical and other information relating to the Australian Automotive Industry ... and
- e. to do all other things which are incidental or conducive to these objects.

Like most of the parties that have given evidence today, the FCAI recognises the role robust, transparent and genuine advocacy has in contributing towards positive policy outcomes for Australians. The automotive industry in Australia is global, large and complex. It's vital to our economy. Australia does not manufacture vehicles. It's a small component of the global industry and it is a technology taker. The life cycle of models and the processes involved in bringing new models into Australia are long and complex. An important aspect to our role is to ensure that the nuances and practicalities of the global automotive industry are well understood by policymakers, whether they be departmental officers or elected officials. To that end, the FCAI does actively look to engage with policymakers, their staff and other key stakeholders on matters which are of importance to the automotive industry in Australia.

CHAIR: Thanks, Mr Weber. Thank you for being with us today.

Senator DAVID POCOCK: Thank you for your time today. I note that you said that you are an industry association, not a lobbyist. I was interested in whether you have a sponsored pass.

Mr Weber: I do.

Senator DAVID POCOCK: Which parliamentarian sponsored that?

Mr Weber: I would have to take that on notice because I've been in this role for a long time. I could guess who it was. I'll have to take it on notice.

Senator DAVID POCOCK: I think it's on the pass.

Mr Weber: If it's on the pass, I could have a look.

Senator DAVID POCOCK: You can take it on notice if it's not.

Mr Weber: Whereabouts on the pass is it? I don't think it is on the pass, I'm afraid. No, it doesn't appear to be there.

Senator DAVID POCOCK: Okay. Maybe just take that on notice.

Mr Weber: I won't say who I think it is. I'm pretty sure, but—

CHAIR: You don't want to be accused of giving false evidence to a senator.

Mr Weber: I have had a number over the years, so I can't remember.

Senator DAVID POCOCK: Okay. Just over a year ago there were documents released under FOI that revealed your association's strategy and playbook to weaken proposed vehicle emissions standards. As an aside, I really applaud the impressive work done by InfluenceMap in trying to shine a light on lobbying in this area. I'm interested in whether implementation of that strategy was made easier because you have a 24-hour pass to come in and meet with people.

Mr Weber: Let me go to the first part of your question. I take it you are talking about the article that appeared in the *Sydney Morning Herald*?

Senator DAVID POCOCK: About a year ago, yes.

Mr Weber: That came from, as I remember, freedom-of-information requests.

Senator DAVID POCOCK: Yes.

Mr Weber: That article was fundamentally derived from the perception of a brief that went to ministers' officers from a departmental officer about what that bureaucrat thought we were doing. That was released. We never saw anything about that. I certainly don't agree with what was written in that documentation. I certainly don't agree with what was written by the journalist.

Senator DAVID POCOCK: So there were no documents of yours FOIed?

Mr Weber: If we're talking about the same document, my memory is not at that point. They've had a lot of freedom-of-information requests in the last 18 months, though.

Senator DAVID POCOCK: Sure. I was keen to ask you about another FOI request that former senator Rex Patrick uncovered last week—and to his credit, he does incredible work shining a light on areas that need a bit more sunshine and seems to spend his life now as the transparency warrior doing FOIs. Maybe I'll table these documents for the benefit of the committee, because I was keen to ask you a few questions as they relate to access to this place and the ability to meet people and give them documents.

For context, former senator Rex Patrick put in an FOI to the Minister for Climate Change and Energy, the Hon. Chris Bowen, seeking any documents provided to the minister or his office this year by the Federal Chamber of Automotive Industries—then he clarifies to narrow the scope—related to fuel efficiency standards et cetera. One of the documents provided, document 1, outlines the political risk of ambitious fuel efficiency standards. But, quite worryingly, I see no indication on the document that it's from the FCAI. There are no markings as to the author. As I understand it, they were just provided in hard copy to the minister's office. Can you confirm if this was provided in hard copy to the minister's office?

Mr Weber: I haven't read this document.

Senator DAVID POCOCK: You've never seen this document?

Mr Weber: I just got it then. I'd have to read it, Senator.

Senator DAVID POCOCK: This is not a document that you have seen?

Mr Weber: I don't know. You've just handed it to me.

Senator DAVID POCOCK: Sure. Take a minute. This is a document that Minister Bowen's office said came from the FCAI.

Mr Weber: I'm not disputing that. I just haven't seen it until now. Do you expect me to read it now and comment on it?

Senator DAVID POCOCK: I assume, if you're representing the FCAI, that you've probably seen documents that are provided to the minister, or am I mistaken?

Mr Weber: With all due respect, Senator, we produce an awful lot of documents.

Senator DAVID POCOCK: Do they usually have FCAI on them, or is it—

Mr Weber: Well, it depends—not internal documents, no, not ones in the office. Anyway, I'm happy to answer your questions. If the minister's office said it came from us—is that what you said?

Senator DAVID POCOCK: That's what the FOI request says.

Mr Weber: Okay. It could well come from us.

Senator DAVID POCOCK: Is it unusual to provide documents to a minister without some sort of indication of who they come from?

Mr Weber: It just depends a bit on the nature of—sometimes you are in meetings, and people ask questions and, we say: 'We've got it here. We'll give it to you as a backgrounder.' As you said, I haven't read this, but—

Mrs O'Hara: And you don't know whether it's a subset—

Mr Weber: Is this the full documentation?

Senator DAVID POCOCK: This is one of the documents that was provided. I guess I find it strange that a minister is getting a hard copy of a document. It would seem to me that a way to potentially get around FOI is a hard copy, in person, with no markings. For me, one of the concerns is, when people have the sort of access that sponsored passholders have, that makes it very possible to hand over these documents. So I'm keen for you to clarify—

Mr Weber: Well, I would suggest to you it wouldn't get around FIO since it's being picked up through FIO.

Senator DAVID POCOCK: Yes, it has. But I assume some documents didn't get scanned. So I can take it that you weren't in the meeting or you weren't the person who gave these documents to the minister's office?

Mr Weber: I don't know what meeting this was from. I might have been at the meeting. I might not have. I don't go to every FCAI meeting. Do we have a date, Senator?

Senator DAVID POCOCK: I think it was this year.

Mrs O'Hara: Everything was this year.

Senator DAVID POCOCK: Yes, that's the scope of the FOI request.

Mr Weber: The meeting with Minister Bowen was this year? In Parliament House? I don't think I've met with the minister this year.

Senator DAVID POCOCK: I'm not sure. Or his department.

Mr Weber: I just need more clarity.

Senator DAVID POCOCK: Sure. Maybe on notice you could have a look at the document and work out how you think it was given to the minister's office. It outlines the political risks to the government if they proceed with strong fuel efficiency standards, but, as I said, there is no author. As someone who is concerned around the lack of transparency with access to then see that these are the sorts of documents that, if you came across them, you'd never know they were FCAI documents. You'd never know it's essentially putting forward the message that's good for you and your members. When it comes to lobbying, having access to be able to give this to the minister obviously facilitates that. On notice, if you could find out how it got to the minister's office, that would be helpful. I think the document's dated 8 November 2023, if that's helpful.

One of the real grey areas—and it was raised by witnesses earlier—is you're not the first person to say, 'I'm not a lobbyist', but clearly you're seeking to influence decisions that are good for you and your members because that is your job.

Mr Weber: To educate, anyway.

Senator DAVID POCOCK: Sure, to educate. There is really no transparency around that. I'm interested in your views on whether Australians deserve to know who is accessing Parliament House and whether you'd be happy to see more transparency around who these 2,000 people with sponsored passes are.

Mr Weber: I certainly would have no problem as a representative of the FCAI in having meetings that I or other members of the FCAI have in this building put in the public domain. I think that would be fine. Obviously, there is an administrative burden in that, but I have no problem from that at all.

Senator DAVID POCOCK: So that's ministers' diaries being published—

Mr Weber: It's not just ministers; I would have thought all meetings. I've got no problem with transparency right across the board.

Senator DAVID POCOCK: The other thing, in terms of lobbying and ways to access power, is through business forums. I was interested in if you're a member of the Labor Business Forum.

Mr Weber: We're a member of—

Senator DAVID POCOCK: All of them?

Mr Weber: I apologise because I can never remember the terms, but we—that's the FCAI—are a member of the Labor Party business forum. We're also part of the Nationals business forum and the Liberal Party one, and we have been for a number of years.

Senator DAVID POCOCK: Is it publicly available how much that costs? Do you know how much it costs?

Mrs O'Hara: It wouldn't be publicly available.

Senator DAVID POCOCK: No?

Mr Weber: I'm not sure.

Senator DAVID POCOCK: Maybe take that on notice, if you're happy to provide that.

Mr Weber: Yes, okay.

Senator DAVID POCOCK: I also understand that you provide manufacturer reporting and all the data behind that.

Mr Weber: Do you mean sales reporting?

Senator DAVID POCOCK: Yes.

Mr Weber: VFACTS—that's, in essence, the only reporting of sales in the country.

Senator DAVID POCOCK: Does the government pay you for that data? How does that work if you own it?

Mr Weber: No. We collect that data on behalf of our members and then we do commercialise that data to some bodies. Obviously there are a number of commercial entities who use that for business purposes. We give it away to some bodies, such as the police forces. My understanding is that a lot of the police forces in Australia, for instance, have a capacity in their police vehicles to pick up number plates. That number plate is then connected to the vehicle through the VIN and then it goes to things like outstanding warrants. So we provide that service as well through VFACTS and then we commercialise it and give it to some people.

Senator DAVID POCOCK: Okay, thank you. That's useful. In terms of industry associations, for example, say one of your members had a government relations person who was also lobbying versus—one of our earlier witnesses was the lobbying firm Hawker Britton. Say one of your members engaged that firm to lobby. Do you see a difference between the work you're doing, what Toyota or Mitsubishi are doing and what a lobbying firm is doing on behalf of one of those? Do you see a difference between those three?

Mr Weber: Do you mean in terms of transparency?

Senator DAVID POCOCK: In terms of what they're doing and the outcome that they're seeking to achieve, like education and trying to ensure people are across your perspective on legislation and potential changes?

Mr Weber: Obviously different people come from different perspectives. My members—some of whom have government relations activities and have enough staff to employ government relations personnel—come and speak for their brands' perspective, which obviously doesn't always align with the FCAI perspective. There are very few brands in what is a much tighter and more competitive market now than we've probably had that have the resources. There are very few of my members who actually have government relations people. The other thing about lobbyists is that it's important that there's transparency about who they are representing when they're just talking to people. Does that answer your question, Senator?

Senator DAVID POCOCK: Yes; it does. Thank you. One of the challenges I see is that you've got those three types, essentially, wanting the same ends, which is a good result for you and your members as the lobbying firm getting a good result gets them more work. But there are very different ways of regulating, and for the first two there's basically no transparency or visibility over what's happening there. And for the third there's a lobbyist register.

Mr Weber: I'm not sure I agree with your comments, Senator Pocock. If one of my brands comes through the door, it is clear that they represent the OEM. If I come through the door, then it's very clear I represent the Federal Chamber of Automotive Industries. If someone engages a lobbyist, it's not clear at the outset who they represent.

Senator DAVID POCOCK: But in terms of the actual lobbying, I think that Australians would probably want to know about all three, not just the third one. Don't you think?

Mr Weber: I don't have any problem with that.

Senator DAVID POCOCK: You don't have a problem with Australians knowing about the first two?

Mr Weber: About them coming into this parliament?

Senator DAVID POCOCK: Yes, about having transparency.

Mr Weber: No. That's why, regarding your earlier question about calendars, I have no problem with that.

Senator DAVID POCOCK: What about publicly disclosing. I chuck up on my personal website who I sponsor passes to because I think people in the ACT deserve to know who I'm giving access to. It's also a check

on me because if someone comes in sponsored on my pass, I know it's going to be public. Would you support that sort of check and balance where it was publicly available information?

Mr Weber: About who supplies them?

Senator DAVID POCOCK: About who sponsored your pass.

Mr Weber: I don't have any problem with that at all.

Senator DAVID POCOCK: On notice, if you could check if document 1, which you now have, was cleared by your members or was tested with your membership before it was given to the minister or the minister's department, that would be great.

CHAIR: Senator Pratt?

Senator PRATT: In the context of passes for your industry, as a peak body you've sometimes got competing interests inside your organisation and you've got to choose what representations to make on their collective behalf or whether you withhold some. There would be a diversity of passholders from different parts of your industry because they've sometimes got separate views to, perhaps, the peak body view. Would that be correct?

Mr Weber: I want to make one comment before I answer your question. The way the FCAI works, and within our constitution, we have a board. Ultimately the policy stance of the FCAI is determined by the board. Whilst individual members may have different positions on certain issues, ultimately the decision is made by the board.

Senator PRATT: Which is why some organisations would leave or seek to influence the board. I've seen examples of this not just in the recent emissions debates but on things like importing companies verses the Motor Trades Association and specific car retailers about franchising codes and all sorts of things. The point I'm trying to illustrate is that there can often be a diversity of passholders in an industry and a diversity of views within an industry and you're accountable to that diversity of views and, in effect, the way you use that pass is part of how you're performance managed by the board in terms of the positions you put forward and the satisfaction of stakeholders.

Mr Weber: Ultimately, I'm sure some of our members have orange passes. I suspect not very many of them in the whole scheme of the magnitude of the industry. We come to Parliament House to try, as I said to Senator Pocock, to educate people and put our position on these issues.

Senator PRATT: Yes, and in some cases that might—

Mr Weber: In some cases, that won't be across the board. A famous example of that was rollover protection systems on all-terrain vehicles, which was a very substantial issue for us as an industry association, in which one of our members left because they didn't agree with the collective position. They've subsequently come back, as it turns out.

Senator PRATT: Yes. In some cases, you may not put a position as an association because you know there are a diversity of views, and you may just facilitate that diversity of views being presented to government, for government and other processes to then go away and make the decision. Would that sometimes be correct as well?

Mr Weber: Absolutely, because that's part of the education process, as I raised earlier. Quite often the industry is complex—sorry, the industry is always complex. We are a taker of technology, as I said in my introduction. We need to understand not only what the policy objective is but also the pathway to get to that policy objective. I think this is one of the concerns that we have on a number of issues, about understanding the complexity, our role—especially when we're talking about motor vehicles, as a right-hand drive market, with the limitations that incurs—the geography of Australia and the limitation that imposes, and also the other elements that interact with the industry, such as—if I go to electric vehicles, for example—what recharging infrastructure is in place today and in the future and how that will interact as the industry evolves. These are things that are sometimes outside our domain but need to be considered as part of a successful policy discussion.

Senator PRATT: And in some cases you would use that pass, really, to gather information to give back to a diversity of stakeholders. It might be getting briefed on a particular process or something that's going to happen, and you take that information back. I guess I'm trying to highlight the fact that the use of that pass is not always just as a lobbyist, necessarily; it's also as a conveyor of information about the complexity of what's going on to your own diverse set of stakeholders.

Mr Weber: Absolutely. Obviously, in meetings it's a two-way street: you learn information that is useful and understand the environment which our industry operates in, and that enhances your view about what good public policy should look like in your domain.

Senator PRATT: Yes. So you could be called in for a meeting, as opposed to seeking a meeting at which you would seek to influence an agenda too, couldn't you?

Mr Weber: Absolutely.

Senator PRATT: Whilst you've got no problem with being on the public record—I guess I'm just trying to use this as an example. If someone's called in for a meeting, how do we engage in transparency around those kinds of issues as well? If ministers and backbenchers are all saying, 'Right, we want to meet with the Federal Chamber of Automotive Industries,' the purpose of a pass is to facilitate all of that exchange. It's not just about lobbying. Sometimes it's about teaching—coming into parliament to be part of what? An event on road safety?

Mr Weber: Yes, absolutely. I've been to a number of events on road safety in the parliament building. I've learned a lot, you know. I would have to say there have been a lot of discussions I've had with Western Australian members and members from northern Australia that have educated me about the complexities of the automotive industry, which is very different to someone who lives in Canberra, as I do, or in one of the major capital cities, because the challenges are very different.

Senator PRATT: I've seen organisations hold all sorts of meetings in Parliament House where their intention is for parliamentarians to be one set of participants in a wide diversity of stakeholders who are all there to talk to each other and learn from each other all at once. That also happens in parliament, doesn't it?

Mr Weber: Absolutely. Our mission statement at the FCAI talks about the interaction between mobility, the energy sector and communications because those three sectors internationally and domestically are on a path where they are emerging to facilitate higher standards of living moving forward, and you can see that happening right around the world at the moment.

Senator PRATT: And those are the kinds of conversations that happen between diverse and complex stakeholders inside Parliament House, aren't they?

Mr Weber: Absolutely. And even discussions, when you meet with other industry associations, even at Aussies and places like that, facilitate the thinking in these areas.

Senator PRATT: So it's a place for civil society and discussion at a broad level. Do you see a danger in conflating access to a pass as being just a simple proxy for political influence in that context? It might be great, yes, to have transparency but you need to find a way of getting transparency around the pass system and passholders so as to not get in the way of a vibrant democracy, civil society and engagement with diverse sets of stakeholders.

Mr Weber: Absolutely, Senator. It's a dynamic environment. There are multiple dimensions to being a participant here. I agree entirely with you.

CHAIR: Thank you, Senator Pratt. Senator Pratt asked you about being called up here for certain events, meetings and consultations. Have you ever been required to sign a confidentiality agreement as part of that process around, say, the development of a new set of reforms?

Mr Weber: No.

CHAIR: It's cropped up in another inquiry. I thought I may as well ask while we're here. Do you know how many of your employees hold a sponsored pass?

Mr Weber: I believe it's four.

CHAIR: How often would you suggest one of your employees would be here?

Mr Weber: I probably come up two times every sitting period. I probably come up here 30 times a year. My technical director, for instance, has a pass. He would never come here out of his own volition. He would typically come here because of a complex technical issue that needs to be understood, which I can't articulate to the level that he can, given his level of expertise. He clearly comes here on a 'needs only' basis. He probably comes into the parliament for three or four meetings a year. So it just depends on the individual.

CHAIR: Do you as an organisation do all of your own education and representative work, or do you have a third-party lobbyist organisation who also supports you?

Mr Weber: We normally do our own work in the parliament, but, at times, we have had lobbyists to assist us.

CHAIR: Do you have any particular examples?

Mr Weber: Yes.

CHAIR: You have talked about the difference between you as a representative organisation, if you like—you're in the building, people know who you are and why you're here because you're here to represent your members. But I'm curious to understand the circumstances where you might need support to do that.

Mr Weber: If you remember a few years ago, there was the Takata recall. We engaged a lobbyist for that activity, and that was fundamentally to give us the capacity to organise a strategy around addressing that because we had to replace airbags in over three million vehicles.

CHAIR: Your members did.

Mr Weber: Sorry, our members did, yes. There were multiple brands involved in that, and we engaged a lobbyist at that stage to assist us through the process just because it was such a mammoth task. It had to pick up so many dimensions, both in technical and in an advertising campaign, and all the other things that were put in place at that stage by the ACCC, with whom we worked extremely closely, and we were able to successfully round off the recall process. That's where we engaged a lobbyist.

CHAIR: So it would be in circumstances of significant capacity requirements?

Mr Weber: It would be in significant capacity requirements or in expertise that we didn't believe that we had in-house capability. We only have 11 staff, so our capacity to roll out something of that magnitude is limited.

CHAIR: So your organisation is not listed on the lobbyist register?

Mr Weber: No.

CHAIR: What would your perspective be in relation to the expansion of the current system and the requirement for you to then follow a code of conduct in relation to the work that you do here as part of your representations on the hill?

Mr Weber: I've never looked at the code, but I think there's transparency. We don't hide behind anything. Every time we come here it's clear to who we meet with who we are and if that was extended to applying to a code, as long as the conditions of the code were appropriate, I don't see any problem.

CHAIR: What about the question of then effectively being registered as part of the lobbyist register process? In your opening statement, you clearly differentiated yourself from a lobbyist as such, and I think that's understood, but, in terms of broadening the scope of the current process, what would your perspective on that be? I think it was you who referred to the definition of lobbyist under the code in your statement. Is that right?

Mrs O'Hara: Not initially.

Mr Weber: No, I don't think—

Mrs O'Hara: We don't fall under the definition under the code as it currently stands.

CHAIR: No, I understand that.

Mrs O'Hara: But I don't think there's anything in the code that we would object to. We also wouldn't object to being on a public register as a passholder as such. Those sorts of transparency measures, I think, are totally acceptable to the FCAI.

CHAIR: And clearly in the context of evidence that you've given to Senator Pocock and Senator Pratt, people understanding your meetings and events is likewise not an issue for you in terms of that information being published?

Mr Weber: No, I don't see any problem with that at all.

CHAIR: There's some homework coming your way, some questions on notice, that will be submitted by Senator Pocock. I thank you for being here today. We ask you to answer those questions on notice by 19 April. Again, thank you for your attendance and evidence here today.

HATZISTERGOS, the Hon. John, AM, Chief Commissioner, New South Wales Independent Commission Against Corruption [by video link]

[14:14]

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I now invite you to make an opening statement. You're on mute. We still can't hear you, unfortunately. No, that didn't work either.

Mr Hatzistergos: Can you hear me now?

CHAIR: Yes, that's good; thank you. We can't accuse you of breaching any secrecy provisions, for sure. Would you like to make an opening statement and then we'll go to questions.

Mr Hatzistergos: I thank both the chair and the committee members for the opportunity to provide evidence today as part of the committee's inquiry into access into Parliament House by lobbyists. In line with the principal functions of the New South Wales ICAC, our submission to your inquiry focused on part (a) of the terms of reference, which is 'current transparency arrangements relating to the lobbyist register'.

Lobbying and its regulation has been the subject of various parliamentary inquiries over the years in many countries around the world. Lobbying is fundamentally seen as a bad thing, often associated with some form of corruption and backroom deals. Indeed, political scandals have helped foster a perception of lobbying as influence peddling in which self-serving entities exercise greater sway over policy outcomes. Such views often creep beyond negative connotations and to feelings of outright distrust and disregard for lobbying and lobbyists.

In relation to these perceptions, lobbyists are sometimes regarded as coming from prominent public positions who claim to resolve policy problems for clients, often through means which might be regarded as improper. The commission is of the view, however, that here in New South Wales, and in other Australian jurisdictions, lobbyists are not only an accepted but also a necessary element within a democratic society. Lobbyists provide crucial input and feedback into political systems and proposed legislation and, when conducted ethically and honestly, help shape policy outcomes that are in the public interest.

Evidence presented to the commission in two inquiries that we have conducted on the issue have demonstrated in general that professional lobbyists who act ethically and lobbying when done well can enhance rather than detract from good decision-making by public officials. In this way, lobbying is essential to the success of representative government. That's not to say that lobbyists may not lie or intentionally mislead political decision-makers or present misinformation to their own ends. Promoting the transparency of lobbyists actions can shed light on the black box of policymaking, but also serve to make political officials more accountable.

The primary aim of the lobbying regulatory system must be to improve transparency and address other corruption risks in a manner that is practical and not unnecessarily onerous, one that does not unduly interfere with legitimate access to government decision-makers. An effective regulatory model would make the public aware of the interests behind the policy proposal and the links between lobbyists and policymakers. I'll leave my comments at that, Chair. I'm happy to take any questions.

CHAIR: Thank you very much. Senator Pocock.

Senator DAVID POCOCK: Thank you very much for your time today and for very your helpful submission. I think the work you alluded to there, through Operation Halifax and Operation Eclipse, is of significant value to this committee in this inquiry, because clearly lobbying is something that you've looked at very closely. I'm interested to know why you think regulation of lobbyists is such a significant issue for a corruption commission. What role does it play? Why should we have more transparency?

Mr Hatzistergos: As I indicated in my opening statement, I think lobbyists provide an essential function to the operating of a democratic government, but the shrouding of it in secrecy has led to situations of distrust, and it permeates, I think, a lot of the anecdotal information and perceptions about lobbyists and the activities that they engage in. In our report in Operation Eclipse, we outlined some of the corruption risks that are associated with lobbying, particularly when the lobbying activity is conducted in secret and no-one is aware of it. What we're seeking to contend for, particularly in our context in New South Wales, is greater transparency to, I suppose, dispel some of that distrust which exists around lobbyists and lobbying activities.

Senator DAVID POCOCK: Through the work that you do, do you have a sense of why we've seen this lack of transparency at a federal level? We've heard evidence that the states and one territory are well ahead of the Commonwealth or the federal jurisdiction. Do you have any thoughts on why that's the case?

Mr Hatzistergos: I'm not as able to comment on the situation at the federal level. I can say to you that at the state level we have had two reports. The first of those reports did result in some action. The second of them,

Operation Eclipse, which made a large number of recommendations, has yet to be actioned. The previous government in New South Wales did commit to the various recommendations by either agreeing to the majority of them or agreeing to them in principle, but there was no follow-up action taken, and the new government that was elected last year has not picked up the ball from earlier, though I have written to them and drawn the recommendations to their attention.

There are some deficiencies in New South Wales. I know you consider the action that's been taken in the states praiseworthy, but there are deficiencies that exist in the New South Wales situation which I wouldn't want to see replicated in any regime that the Commonwealth may decide to embark upon. There are two principal ones. One is the scope of the act in terms of lobbying activities being effectively confined to third-party lobbyists and not embracing in-house lobbyists, which we think is a major deficiency. The second thing is that the act as it stands at the moment provides a code of conduct for lobbyists but not for those who are being lobbied. One of the recommendations made in Eclipse is that there be a code of conduct which relates to the activity of lobbying as opposed to just the lobbyists, the people who are lobbying.

Senator DAVID POCOCK: So those two things are adding in-house lobbyists and having a code of conduct for those who are actually being lobbied. Are there any other key points or things you think we need to change in order to begin to re-establish public trust?

Mr Hatzistergos: Yes, there are, and we've identified those in the Eclipse report. It flows from the second of those two matters that I referred to earlier. You recall I said that it should apply both to the lobbyists and to those who are being lobbied. The concern that we have at the moment is that there is no regulation of the expectations that should be followed through by those who are being lobbied, particularly in relation to the disclosure of when the relevant meeting took place, what was the request made and the detail of the discussion that took place.

We do have in New South Wales ministerial diary disclosures but, as you point out, they are quite frankly deficient. In many cases, the ministers will on a relatively infrequent basis—on a three-monthly basis, I might add, not on a monthly basis—publish their diary entries and will put next to the person who attended the particular meeting 'discussions on policy', 'portfolio matters'. Not all of these would be covered by the act. I have to mention that quite clearly because some of them are not conducted with lobbyists to whom the act applies. The act only applies to third-party lobbyists. Some of them are third-party stakeholders or direct stakeholders, so they wouldn't be covered by the act at the moment. What we are saying is that the act should cover both the lobbyist and the person being lobbied and should be identified—in significantly more detail than at present—in the ministerial diaries.

Senator DAVID POCOCK: Thank you. That is really helpful. In terms of enforcement, currently the Lobbying Code of Conduct, which is just for third-party lobbyists, is administered by the AG's department. For a serious breach, the worst thing that can happen is a three-month ban from lobbying, which doesn't seem to me like a huge disincentive. If you look overseas, there are civil, sometimes criminal, penalties. I would love your thoughts on who should take carriage of something like a lobbyists' register and the enforcement of it. But then how do you work out what sort of penalty should be attached, not only for lobbyists but for people being lobbied and their non-disclosure?

Mr Hatzistergos: In our *Operation Eclipse* report there is a chapter devoted to that subject. At the moment in New South Wales, the requirements of the lobbying register are policed by the Electoral Commissioner. We pointed out that the responsibility is far broader than the Electoral Commissioner's remit and recommended the case for the New South Wales lobbying commissioner. That is chapter 9 of our report. We detail there that the mechanisms of a carveout would be a disincentive to operate.

Senator DAVID POCOCK: Earlier we heard multiple witnesses put forward the need for it to be housed in an independent body rather than in the AG's department. That is kind of what I'm hearing from you as well. Would you agree with that?

Mr Hatzistergos: Please don't read anything into what I'm saying suggesting that I am critical in the slightest of the Electoral Commissioner and the functions that the Electoral Commissioner performs, but the view that the commission took when the *Operation Eclipse* report was written was that the responsibilities pertaining to a lobbyists' register and the enforcement issues you referred are outside of the remit of an electoral commissioner who is essentially focused on electoral matters.

Senator DAVID POCOCK: Thank you very much, Commissioner. I appreciate your time.

Senator PRATT: Where have you seen either legitimate or illegitimate invoking of parliamentary privilege in the context of transparency and your powers to overview appropriate ethical conduct?

Mr Hatzistergos: I'm not sure I understand the question. Our act requires us to operate subject to parliamentary privilege.

Senator PRATT: I understand that. I am just seeking to understand how you go about navigating that in the context of we are here talking about a building with people to access to passes inside it. How do you do your work while upholding parliamentary privilege?

Mr Hatzistergos: We're very sensitive to the question of parliamentary privilege. We haven't had a problem with the question of passes so much. In the context of NSW, in relation to passes, it's, I think, somewhat different to that of the federal parliament. I can go into that, if you wish.

Senator PRATT: I think it would be useful. The NSW Parliament has a fair level of civil society access to it, but in the federal Parliament House they run their own events and do a whole range of their own things here. I'm trying to understand the context of making sure we don't do anything that impinges on transparency for the purposes of avoiding corruption—having transparent processes—while also accepting the fact that there are some conversations that need to take place in secret, under parliamentary privilege, with those protections, because that's an important part of democracy.

Mr Hatzistergos: Could I say this to you: we've not had issues that have come to the commission's attention relating to parliamentary passes. When we did—I think it was—Operation Eclipse the issue was raised, but the commission did not feel at the time that it was necessary to say anything about that matter. We haven't raised any criticism of the issue of parliamentary passes. I'm not sure that the context is necessarily the same as for the Commonwealth. I say that because, as you'd be aware, ministers in New South Wales have ministerial offices that are away from Parliament House. As I understand it, the ministerial suites are located within the precincts of the parliament. So, effectively the issue of parliamentary passes arises more on parliamentary sitting days than on other occasions.

Senator PRATT: That's helpful context.

Mr Hatzistergos: I had a question about the issue of parliamentary passes in New South Wales directed to me when I addressed the New South Wales committee on budget estimates. It was raised with me by a Greens MLC Abigail Boyd, and I responded to the committee—and you can read my letter of 12 March 2024, which is on the website. If you go to the commission's budget estimates papers, you will see what I said about that matter.

People can have meetings. If they want to evade the act, and they want to have meetings in cafes and restaurants and other venues, they can do so. My view is that it's probably more suitable to have them in an office. Provided that the lobbyist complies with the requirements of the Lobbying of Government Officials Act and if the changes that we have proposed to extend those to in-house lobbyists and to also extend obligations to the persons being lobbied were adopted, I think that could be a suitable method of regulating lobbying activity without necessarily having to withdraw access to passes.

Senator PRATT: Great. To what extent—and it may not be relevant to your work because you're trying to prevent commercial corruption or corruption of a decision on the basis of some benefit being given to an official for making that decision. I guess what I'm trying to unpick is how you define an in-house lobbyist when there are civil society and human rights groups and others who we do not necessarily want to start restricting access to parliament to at the same time as wanting to take a strong stance against all forms of corruption.

Mr Hatzistergos: When we made the recommendation we looked at three other jurisdictions which we cited as being indicative of best practice in this area. They are Canada, Scotland and the Irish Republic. We detailed in our report on Operation Eclipse how the regimes in those jurisdictions operate, and we embraced in one of the recommendations in our report a number—a list—of exemptions for groups of a kind that you have mentioned so that they would not be governed by the act.

Senator PRATT: That's great.

Mr Hatzistergos: That extends to, for example, industrial organisations involved in disputes.

Senator PRATT: That's very helpful. Thank you.

Mr Hatzistergos: But there are others as well.

Senator PRATT: I wondered if you might have a look at the Health Equity Matters submission. There are people who have a legitimate reason to lobby government for changes in the law because their activity is currently unlawful. You could be a sex worker, an injecting drug user or someone who doesn't have a visa. While we as parliamentarians want people to comply with the law, we also have to receive the arguments about why the law should change and to make that safe for people to do so.

Mr Hatzistergos: As I indicated, there are a large number of exemptions. I can't rattle them all off—

Senator PRATT: No, no, that's fine. It's very helpful.

Mr Hatzistergos: I can refer you to the report, which does detail them.

Senator PRATT: That would be great.

Mr Hatzistergos: That includes small organisations. There's a threshold for small organisations that would not be required to be registered.

Senator PRATT: That's gratefully received. Thank you. Thank you, Chair.

CHAIR: The core elements of your evidence really address item (a) in our terms of reference, which is the core elements of the lobbyists register. If I've been hearing your evidence correctly, the issues that you have at this point relate most dominantly towards the scope of definition. As I understand it, in New South Wales it relates only to third-party entities, which would be similar to what we have here in the federal sphere, where the Register of Lobbyists registers third-party lobbyists, not direct representations from organisations.

Mr Hatzistergos: That's right—but also extending the code so it's not just a code in relation to the regulation of lobbyists but also the person being lobbied.

CHAIR: That was going to be my next point. Your recommendation in relation to the NSW code, and a principle which you would support applying more broadly, is that the code of conduct apply to all of those engaged in the lobbying process—the givers of advice and the receivers, so to speak.

Mr Hatzistergos: That is correct—the ministers, in effect.

CHAIR: What about other key decision-makers in the parliament as well? If you look at Tasmania—and I haven't specifically looked at the situation in Tasmania—they now have a parliament where it's not necessarily controlled by the government; it's a minority government situation. That's something that could occur in any of the jurisdictions. But you've got other people who are key players in this, in that sense, who can significantly influence the direction of government legislation.

I can recall a circumstance in this parliament, probably this year—if it wasn't this year then just prior to Christmas—when there was no opportunity for consultation on an amendment to a piece of legislation that had a fairly significant influence on the operations of a particular sector because the amendment was something that had been put up by a balance-of-power party and accepted by the government and therefore passed. How do you deal with people in the broader circumstance where you've got people in balance of power positions who can, by virtue of their roles within the parliament, influence the outcome of legislation and the direction of policy?

Mr Hatzistergos: Operation Halifax and Operation Eclipse didn't look at that question. The focus of those two investigations was in relation to the executive government who are decision-makers and obviously have influence in seeing that whatever the activity is engaged in of a lobbying nature can ultimately be reflected in executive decision-making. It did not look at the other matters that you have referred to in balance of power situations. I am aware of the arguments that you have raised. All I can say is that at this point the commission has not looked at that.

CHAIR: You haven't had a look at it, and I accept that's where you're at, but isn't it likewise a point of risk where lobbying organisations would specifically target those parties who are in those balance of power positions, specifically with the objective of influencing? I accept the difference between executive government and the parliament, but it's something that we're increasingly seeing. Ensuring that there is efficacy in the processes across the parliament—because we're talking about lobbying of all members of the parliament and access to the building as a parliament itself, if you look at the full terms of reference.

Mr Hatzistergos: There may be instances where that may be an issue. I haven't come across them. Fundamentally, members of the parliament are accountable to their constituents for their actions, and they must act in accordance with the public interest. If they are going to have meetings, and those meetings result in some decision-making that some people may view as suspicious, it may be that a response should be considered in relation to that. All I can say is that it's not an issue that has come across our attention, although I have to say to you that in terms of local government, where there is executive decision-making being made by councillors, that issue comes across our desks frequently. It is also the subject of a recommendation in our Operation Eclipse report.

CHAIR: Okay. That's something we can have a look at. Regarding the issues of interoperability, you have the code which is managed and operated by the New South Wales Electoral Commission. What is the interoperability between that and the ICAC legislation and how do those two things work together? We had some conversations here earlier today about the NACC that we now have here. We've got foreign interference powers and a range of other different elements, and there's a question about whether or not there's an importance of interoperability or

connectivity between those different elements of oversight of government process, if you like. Do you have a perspective or a thought on that?

Mr Hatzistergos: The regulation of lobbyists by the Electoral Commission—all I can describe it as is fairly basic. They're required, obviously, to provide information. They're put on a register. Their clients are identified. If there's been any non-compliance with the code, the commissioner can take appropriate action. But there hasn't been a circumstance as yet, as I understand it, where we've had referrals by the Electoral Commissioner in relation to lobbying activity. There is a provision in our act which enables us to take referrals from the Electoral Commissioner for investigation, but they don't relate so much to the lobbying as opposed to the electoral aspects of his jurisdiction. Now, that wouldn't stop us, in an appropriate case, from looking at a lobbying case, should it arise, and making reference to what is or isn't on the register. But, at this stage, we haven't had a public inquiry relating to that matter.

CHAIR: I suppose my question then goes to the desirability of interoperability of the various mechanisms that we're building in what is an everchanging climate or environment, if you like. How do you best ensure that the best elements of those things apply?

Mr Hatzistergos: There's a chapter in Operation Eclipse which describes what we've recommended, and that's to have a lobbying commissioner. I understood from the response of the previous government that that was a supported recommendation, but as yet there hasn't been any action in that direction.

CHAIR: This is just a question of information, and you may not be able to help me with this. The issuance of parliamentary passes in New South Wales is oversighted by whom?

Mr Hatzistergos: The parliament.

CHAIR: The parliament itself, in the same way that it is here.

Mr Hatzistergos: Yes.

CHAIR: Okay. Do you have any further questions, Senator Pocock?

Senator PRATT: I just have one, Chair.

CHAIR: Okay, well since you've spoken up, Senator Pratt. We'll come back to Senator Pocock.

Senator PRATT: Thank you. Could you foresee circumstances where a parliamentarian develops a relationship with a stakeholder, and they have sponsored their pass—they are the only sponsor to the pass; there aren't multiple sponsors of it—and so when a whistleblowing action takes place and that senator or member seeks to use information under parliamentary privilege to support a whistleblower that you might start to create automatic assumptions about who that whistleblower is and how that could be politicised inappropriately?

Mr Hatzistergos: I'm not following. We make assumptions on what?

Senator PRATT: It's more on media speculation et cetera. I can give you an example. I received some information from a public servant under parliamentary privilege that was used by a parliamentary committee, and that relationship was attributed to a different member of parliament as having the relationship with that whistleblower when it was, in fact, myself. But had I received that information from a list of people that you could see I had sponsored passes for, it would immediately become a new spin in the public debate about the source of that information.

Mr Hatzistergos: It's very difficult to talk about circumstances such as that because, frankly, it hasn't arisen in my time—

Senator PRATT: No, it might not have in yours, but it's arisen for me, and it hasn't arisen because passes aren't public. I can't speculate at which point it would, I just worry that it could, having had to deal with sensitive matters like that before.

Mr Hatzistergos: We're very sensitive in this office to questions of parliamentary privilege. One of the concerns that I have had since I became chief commissioner—and my two colleagues, the other commissioners, have also had—is the number of times committees of the parliament have met to investigate activity or conduct they regard as improper and, at the end of their inquiries, reach a roadblock and decide that they will send all the exhibits and all the testimony to the commission and ask it to follow on from the investigation. We can't do any of that, because it's all covered by parliamentary privilege. If we're going to embark on looking at that or the issues that are raised, we have to do that by ourselves, going around parliamentary privilege as best we can but armed with whatever knowledge we know has been revealed in the public space. That's how we go about it.

One of the problems that has sometimes is when it has become public, people know of it—and, particularly, when there has been a referral made to the commission, people know of that referral—and that could potentially lead to adverse consequences in terms of us being—

Senator PRATT: In that context, my question doesn't necessarily relate to parliamentary privilege; it relates to the potential identification of a whistleblower because of their association with a particular MP who has sponsored their pass.

Mr Hatzistergos: But what's the issue?

Senator PRATT: I might be drawing a very long bow. I'm just exploring these potential risks. They're not unforeseen for me.

Mr Hatzistergos: I would suspect that we'd need a bit more information than simply that someone is sponsoring someone's parliamentary pass. It's—

Senator PRATT: What if I were the person who raised that allegation?

Mr Hatzistergos: [inaudible] might otherwise be.

Senator PRATT: Quite probably, if I had received information under parliamentary privilege about something that needed whistleblowing, I would be better off, in the first instance, referring it to a corruption agency separately and working with that constituent about what protections they had, rather than going to the parliament to expose it, I guess.

Mr Hatzistergos: If you weren't going to the parliament to expose it, I doubt it would be the subject of parliamentary privilege. But if you received information about conduct where there was reasonable grounds to suspect corruption, reporting it to the commission could have benefits, particularly to the person concerned. It could provide a level of protection to them under the Protected Disclosures Act if that is applicable, and it could also ensure that the matter is dealt with confidentially. It could also protect the investigation by not alerting other people to what happens.

Senator PRATT: In that context, the fact that I sponsored the pass of that person should and, hopefully, can remain irrelevant and will not become politicised.

Mr Hatzistergos: By itself, I do not think that it adds much.

Senator DAVID POCOCK: Senator Pratt, I think you're making a very strong case for a whistleblower protection authority. I'm happy to—

Senator PRATT: I may well be.

Senator DAVID POCOCK: chat more about what the crossbench is proposing there.

Mr Hatzistergos: Sponsoring passes is not something that, in itself, suggests there is something untoward.

Senator PRATT: No, that's right. I've probably sponsored 70 or 80 of them, I think.

Mr Hatzistergos: There are different criteria. Corruption tends to be secretive. People don't go out and say, 'I want a pass so I can go out and engage in corrupt conduct.'

Senator DAVID POCOCK: I'm keen to get your final thoughts on something: in your opening statement and in your submission you went to the need for transparency to ensure public trust. I'm interested in your view on the relationship between regulation of lobbyists and public trust in democratic institutions. How do you see that link?

Mr Hatzistergos: I think they're interlinked. As I said in my opening statement, I think lobbying activity is something that is useful and important to enhance the democratic process. What I think undermines it is the lack of transparency surrounding it. If the activities can be appropriately documented, the activities are conducted in accordance with the code and that documentation is available to the public, I think a lot of that distrust would dissipate.

Senator DAVID POCOCK: Thank you very much.

CHAIR: Thank you, Mr Hatzistergos.

Mr Hatzistergos: You're welcome.

CHAIR: Thank you for your time today and thank you for your evidence to the committee. We shall now suspend.

Proceedings suspended from 14:55 to 15:16

STEFANIC, Mr Robert, Secretary, Department of Parliamentary Services

TUNNINGLEY, Ms Leanne, Acting First Assistant Secretary, Security Division, Department of Parliamentary Services

CHAIR: I now welcome representatives from the Department of Parliamentary Services. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I invite you to make a short opening statement if you wish to do so. At the conclusion of that we'll go to questions from colleagues.

Mr Stefanic: I don't have a formal statement to make. I want to make some remarks in relation to, for example, the media reporting around this inquiry. I know it's something the committee is cognisant of, but there is certainly a public perception about the full list of sponsored passes being for lobbyists, and the generic reference to lobbyists being made.

Our position has always been that the sponsored passes are not lobbyist passes. There are no linkages to the lobbyist register. The group of sponsored passholders is quite broad, including those that are identified specifically in terms of those with a business requirement. The list includes advocacy groups, academics, peak bodies, unions, non-government organisations, local government and faith based organisations.

I know one of the tasks of the committee is to look at what the definition of a lobbyist may or may not be. I wanted to flag for the committee's interest and attention that there is a fairly broad range of what we might call categories of passholders that hold our sponsored passes. At this point I'll leave it to questions.

CHAIR: Senator Pocock?

Senator DAVID POCOCK: Thank you for those reflections, Mr Stefanic. You said that sponsored passes are not lobbyist passes. Do you think someone who works in government relations in a company who comes in here to lobby is not a lobbyist?

Mr Stefanic: Perhaps if I can clarify. I'm not canvassing the definition of a lobbyist and what that may entail. I'm looking at the terms of what is a legal definition of a registered lobbyist.

Senator DAVID POCOCK: So the intent of the sponsored pass system is not for lobbyists?

Mr Stefanic: Correct.

Senator DAVID POCOCK: That's good to clarify. I appreciate that. I'll read an excerpt from the submission made to this committee by the Grattan Institute:

The Department of Parliamentary Services ... has previously refused to publish a list of names or organisations that hold sponsored passes on security grounds. But these security risks are manageable: the UK, US, and New Zealand, for instance, already publish lists of passholders.

Earlier today we also heard today from leading legal expert Professor Anne Twomey, and she said there's no significant security concerns that would flow from increased transparency. I'm interested in if you accept this evidence or if you maintain that transparency would have unacceptable security risks.

Mr Stefanic: Our principal position in respect of the policy is the Privacy Act and the privacy principles. The policy on private areas access has clear statements in it, as does the form that applicants for a sponsored pass complete, that provide an assurance that their personal details will remain confidential unless their consent is provided or it's required by law. As the policy stands, and based on the completed forms, publishing that information would be a data spill and would be a matter we'd have to deal with. The way around that would be seeking the consent of every single individual that has applied for a pass so that they have an opportunity to make an assessment of whether they're happy for their details to be made public. But also—and I read Professor Twomey's submission—the security risks are not so much around the pass. From where I stand, it's a foreign interference perspective. If someone is identified as a lobbyist, they may be a target. So they simply need to make an informed decision as to whether they're happy for their details to be published as being in the business of lobbying, if we defined it as that. The security is not a principal consideration. I think it's something the individual should give some level of consideration. But also importantly for the parliamentarians themselves who have sponsored the pass, if it is going to be made public, again, they need to be able to make an informed decision that they are happy to sponsor that individual and for that information to also be made public.

Senator DAVID POCOCK: But they have already decided that they're happy to sponsor that individual; it's just whether or not they want their electors knowing that they have sponsored that person, to be clear for people who may be tuning in. You mentioned the Privacy Act. Have you sought advice? Which part of the Privacy Act would this impinge on? Have you sought advice from someone on that?

Mr Stefanic: I'll have to take that on notice. I know that the policy itself is very clear on its statements about reference to the Privacy Act. Page 12, paragraph 69 of the policy says:

All reasonable steps will be taken to protect the confidentiality of personal information gathered for the purposes of assessing, granting and managing access to the private areas.

Then there are a few additional paragraphs that refer to what that personal information entails.

Senator DAVID POCOCK: Is that the documentation around sponsored passes and Parliament House access or is that the Privacy Act?

Mr Stefanic: That's the policy itself, but I will seek advice about the act. I'm sure we have received some legal advice at some point about the Privacy Act; I just don't know—

Senator DAVID POCOCK: Take it on notice. Your argument is that, if we're transparent and people know who is accessing the building, we open them up to being targeted by foreign interference. I see the risk the other way, where we have 2,000 people that we don't know publicly, but I'm sure foreign intelligence would be able to figure it out by stationing someone at one of the entrances for an hour in the morning of a busy sitting week. Professor Twomey made the point that there are greater security concerns around other types of passes—passes other than sponsored passes. Do you accept that evidence?

Mr Stefanic: I'm probably not qualified to comment on that one. All I can do is give you the position where we sit in terms of the administrators of the policy itself. Just for clarity, the concerns around foreign interference are not a reason to not be transparent; it's simply a consideration the individual applying for a sponsored pass should be aware of, if they are going to agree to have their personal details made public.

Senator DAVID POCOCK: So if it was the form that you have to fill out—I have either known this person for 12 months, or they have a legitimate reason to be in Parliament House and they'll attach a letter that then goes to DPS—there could be a box that says, 'This will be made public', and then they could choose?

Mr Stefanic: Yes.

Senator DAVID POCOCK: Or, could you say, 'This will be made public' and if they don't agree then they don't get a pass?

Mr Stefanic: Yes.

Senator DAVID POCOCK: Okay. And that would provide for that consent. We've been talking about members of parliament giving out sponsored passes. Who else can give out sponsored passes?

Mr Stefanic: Parliamentary department heads are also able to sponsor passes. For example, I did an audit the other day and I think I've sponsored about half-a-dozen people because they have a regular business requirement in this building. So they're not people that are lobbyists; they are people who I would have a regular requirement to meet with or people concerned with the work of DPS.

Senator DAVID POCOCK: How do you make that decision about who to give a pass to?

Mr Stefanic: It is purely around the business requirement. If they do need to come into the building, the decision is based on trust, I guess, and it is a conversation I have with each of those individuals. And I know that this is a complaint made by parliamentarians, that they're not permitted to be knocking on the doors of people without an appointment. So, if they're coming into the building, even if they're coming in to meet with me, I need to be aware that they are coming in so that we can keep an eye on the regularity of the—

Senator DAVID POCOCK: So these are not just contractors who are coming in to do works; these are potentially people who don't meet the definition of lobbying but could be in here to work in advocacy and, we had a witness here earlier say, 'educating members of parliament'.

Mr Stefanic: I guess that is—I'm thinking about one of the passholders that I sponsor who is involved in civics education locally. Could that person be involved in advocacy work? They could. They could get involved in advocacy, but it's not their principal purpose. Their principal purpose is administering a function that they currently have.

Senator DAVID POCOCK: That's why they access Parliament House?

Mr Stefanic: Yes.

Senator DAVID POCOCK: And there's no other pass that they could be on?

Mr Stefanic: No, because it wouldn't fall into the other categories. The person is not a contractor and they're not a staff member. They're not a Commonwealth employee, so they're excluded from the other categories of passes.

Senator DAVID POCOCK: Could you take on notice how many passes you, and maybe all the other departmental heads, have sponsored.

Mr Stefanic: Yes, I can take that on notice.

Senator DAVID POCOCK: Thank you. When it comes to the discussion around sponsored passes, one of the things that people sometimes say is, 'Obviously there are thousands of sponsored passholders because there are thousands of people who work in this building.' Could you talk us through people who work and do an incredible job cleaning or maintenance down in the basement. They are all on different passes. Parliamentarians can give their spouse a family pass. They're different. Could you talk us through the different categories of passes.

Mr Stefanic: Certainly. Naturally we have different categories of passes for senators and members. There is another category of passes for ministerial employees, which you would normally see as a blue pass. We have a protocol which is a grey colour for former parliamentarians and current serving parliamentarians of other states and territories. There is a purple pass which is a nominated pass. They are for the family members of parliamentarians. Then there is the white pass, which is the one that Leanne and I have, which is a Parliamentary Services employee pass. The staff of senators and members also have one of those. Green passes are the Commonwealth ones. These are for the staff of any Commonwealth agencies that have a business requirement to be here. Yellow passes are for the media. Red passes are for the contractors. Sponsored passes are the orange ones which are the subject of this inquiry. There is a subcategory of sponsored pass. We are calling it a turquoise pass. It's for recognised elders and custodians. That covers all the photographic passes. There are couple of categories of non-photographic ones which are for limited periods of time.

Senator DAVID POCOCK: For the sponsored passes from parliamentarians, the last number I saw was 2,144. Do you have that number?

Mr Stefanic: We have the current figures.

Ms Tunningley: The total category of sponsored passholders is 2,052. That's as of 31 March 2024. Within that there are subcategories. In terms of persons with a significant and regular business requirement for unescorted access, that is at 1,977.

Senator DAVID POCOCK: So the vast majority. Thank you. Finally, one of the earlier witnesses, the Australia Institute, recommended that there be better availability of details on the DPS website of how you get a sponsored pass. It seems like that information is very hard to find. Why isn't there much information about that?

Mr Stefanic: It's not something I have turned my mind to, but I will take that feedback on board and we will review it.

Senator DAVID POCOCK: Thank you.

Senator PRATT: Can I ask what consideration has been given—and I am not suggesting it necessarily has been given because it's currently protected under the Privacy Act—to the reason protection exists. It might be for some of the kinds of stakeholders we have been talking about today. They could be HIV-positive people, they could be transgender, they could be a whistleblower or they could be on a bridging visa and have advocacy business to do here such that, in effect, disclosing they have a pass could be a risk to their own personal security. Is that something that's been explicitly considered in the context of the policies of DPS?

Mr Stefanic: Not to my knowledge. The policy in its current form has been in place for some time. We haven't had cause to look at the basis of the privacy that we apply to it but merely compliance with the policy itself. I don't know if Leanne has any further information.

Ms Tunningley: That's consistent with my understanding.

Senator PRATT: I would argue that the basis for that need for privacy is consistent with the Privacy Act and is why it applies. For example, if your health record is leaked and you've had an abortion, or you come as a person with lived experience who's advocating for a change to abortion laws, both instances could see you become a victim of online trolling or something like that. The nature of the advocacy or your purpose for visiting the building could be quite diverse and quite complex.

I am concerned that if we move to transparency for the purposes of transparency of decision-making and accountability, that we're not making a whole bunch of people vulnerable because, essentially, it is private information and their advocacy in the building is part of their private information because they're coming to talk about their private information.

Mr Stefanic: Your comment goes to the earlier point I made about being able to make a decision in an informed way in protecting a person's privacy under the current policy and the form that people have completed. They've given us their information in the expectation that we will maintain confidentiality. If a different regime

was in place it would allow the individual to make those sorts of decisions, whether they are comfortable in having their details published in some way.

Senator PRATT: I've seen the impact of the chilling effect of the withdrawal of the all-day unescorted pass, and the pushing up of the sponsored passes as part of that. What can you see in your own data around that?

Mr Stefanic: Typically, the numbers go up and they go down mainly because sponsored passes are issued for a period of three years. However, if the parliamentarian who sponsored the individual ceases to be a member of parliament—obviously, elections are the biggest period of change—then there's a six-week transition. Those passholders are informed that their sponsor is no longer a parliamentarian, and they have a grace period to find a new sponsor. After every election, the number of sponsored passes goes down for a period, before progressively climbing during a term of parliament.

The situation you're referring to in relation to the removal of the all-day unescorted pass precedes my time here, I think, so I couldn't speak to the change that had. I know that a lot of people come in as visitors. They are signed in, which means that they are escorted visitors as opposed to unescorted, and I know that on sitting days and periods like budget week, those numbers climb quite a bit.

Senator PRATT: I've seen first-hand examples of people being subject to threats of violence or online trolling because of evidence they've given to a parliamentary committee. Now, whilst they should be protected from any harm by virtue of giving evidence, because the evidence is public, it seems that committees have been able to do very little about that. Have any of those examples been brought to you, or are they largely dealt with by Senate committees?

Ms Tunningley: We have been informed by the behaviour of some sponsored passholders, not directly in relation to committees but through complaints that get raised through the Serjeant-at-Arms or the Usher of the Black Rod generally. They are often the people who receive first advice over any complaints of that sort of nature.

Senator PRATT: I am trying to work out if that covers the kinds of complaints I am thinking of. A person who gave evidence to the reproductive rights hearing was essentially trolled online and threatened with violence after doing so. I appreciate that was not to do with their status as a passholder but was to do with their evidence to a committee. I am concerned that if the identity of every passholder was made public, it could very much result in similar targeting or even just have a chilling effect on people seeking passes when they should have access to the parliament.

Ms Tunningley: There are no complaints of that nature that I am aware of. There are none similar to the ones you have just spoken about.

Senator PRATT: They certainly do exist but they probably weren't referred to Parliamentary Services because they may have been dealt with as part of committee business. But they could certainly apply in the context of Parliamentary Services if the identity of passholders was made public. How would you go about mitigating that, because someone's details do need to be kept private, including the nature of their business in the building?

Mr Stefanic: In the case of the Senate, we do have a close working relationship with the office of the Usher of the Black Rod, so if those security concerns are raised with us, we will work with the usher's office and the AFP and with any other security and intelligence agency that we need to.

Senator PRATT: I am concerned that it wasn't resolved and that there was very little this committee to do, so in effect there is very little of the parliament could do to apply the power of its protections to people who are experiencing those kinds of attacks and that, in effect, we would be breaching that privileged relationship of some vulnerable members of the community who need to access parliament and talk to parliamentarians if the record of who sponsored them and what organisation they represented was made public.

Mr Stefanic: I don't have anything further to add to that.

Senator PRATT: I guess that is why we have the Privacy Act.

Mr Stefanic: Yes.

Senator PRATT: The principle is that it has applied, if we are going to work out how you weigh up changing that, how you go about having a process to do that.

Mr Stefanic: The private area access policy is the policy of the Presiding Officers as the custodians of the parliament. Our position has been that it would be the will of the parliament that would change the policy itself and its application. Those considerations that you raise certainly could be incorporated as part of that.

Senator PRATT: In that context the policy applies in the Privacy Act. Are there also elements of passes and surveillance of the building—who comes and goes from someone's office—that have attributes of parliamentary privilege attached to them? It might have been before your time but I recollect former senator Conroy and NBN Co, and other members of parliament seeking to get access of footage in the corridors when that was a privileged conversation around disclosure of information.

Mr Stefanic: Yes, I'm aware; I came here off the back of all those events, and I was involved quite heavily in the implementation of the CCTV Code of Practice and the electronic access code of practice. I can give you an assurance that all that information, data and footage is under lock and key, and there are considerable transparency and accountability mechanisms around the control of that.

Senator PRATT: If we've got good coverage for electronic access that says who comes and goes from someone's office is protected by parliamentary privilege—that's why you have that electronic access protocol—what will be the point of having any such protocol if all sponsored passes are public anyway? They're conflicting. The purpose of keeping private electronic access in terms of who comes and goes is quite a similar disposition of the parliament to the current practice of keeping passes private.

Mr Stefanic: The access to CCTV would only be under very limited circumstances. The purpose of the CCTV is for security purposes rather than monitoring movements within the building, so it would only be if there was an incident of some form—

Senator PRATT: Which has occurred, and there is a protocol for accessing that information.

Mr Stefanic: Absolutely. Even in that case, if there is, incidentally, a senator or member in that footage, there's immediate reference made to the Usher of the Black Rod or the Serjeant-at-Arms respectively to give due consideration to whether there's any intersection with parliamentary privilege in the use of or the access to that footage.

Senator PRATT: How would you go about applying that same principle to access to the names of passholders and their sponsors?

Mr Stefanic: It's not one I've turned my mind to.

Senator PRATT: I presume it's a question for the Presiding Officers. You've worked hard to get through a set of principles in relation to electronic access. The principles of that can go one way, yet the principles of past access and disclosure could go another way entirely.

Mr Stefanic: One possibility around it is that the organisation, rather than the individual, is identified if there were an incident and there was a need for a report. Given the individual would be representing a particular interest, that may be a way of getting around it.

Senator PRATT: I would contend that, for example, if you were someone here in Australia without a visa and you wanted to meet with a member of parliament about that, there might not be an organisation.

Senator DAVID POCOCK: They'd probably get a day pass.

Senator PRATT: No, you can't anymore.

Senator DAVID POCOCK: You'd probably just be signed in.

Mr Stefanic: Yes, to pick up on Senator Pocock's point—

Senator DAVID POCOCK: Just in case—

Mr Stefanic: which is a point I made a little earlier. There is still a visitor pass. It doesn't provide the person with unescorted access to the private areas of the building, but it does give them access if they do have someone who's prepared to sponsor them for the day.

Senator PRATT: I still have issues about whether that's adequate from an equity point of view, but also from transparency, visibility and parliamentary privilege points of view. If, for example, I've got a whistleblower who comes to see me at parliament, I could sponsor their pass, they could get through in and out of the system and I could see them in parliament or they could have someone from my office escort them everywhere they're going for all of the meetings that I've set up for them—in which case, my own reputation could in effect make visible the nature of their business in the building, I guess.

Mr Stefanic: Yes, I understand.

CHAIR: I want to ask a few questions in relation to the interactions between the various registers that we have. We've had some evidence and discussion around that today. We've got the lobbyists register, obviously. In the granting of a sponsored pass into the building, are there only two elements that are currently required as part of that process: sponsorship from the MP or senator? Is that effectively it or are there any other processes that are

gone through and looked at—for example, the foreign interference register, and potentially other security information that we might have? What are the steps that we go through from a security perspective, relating to the building, when granting a pass?

Mr Stefanic: On completing the application form, the applicant needs to certify that they have a significant and regular business requirement. It then requires the parliamentarian to attest to that. The individual—and Ms Tuntingley can correct me if I'm wrong—would be required to provide a police history check that is current. Assuming that there are no red flags that arise from that, we would typically issue the pass. If there were some red flags that came up following the criminal history check, if there were reservations about whether they were an appropriate person to hold a pass, there'd be further discussions with the sponsoring parliamentarian.

Senator PRATT: How often does that arise?

CHAIR: So there is a process to go back to an MP or a senator if questions or flags are raised, from various sources, as to whether they should be issued a pass?

Mr Stefanic: Yes. In answer to Senator Pratt's question as well—it is infrequent. It is quite rare that that pops up as an issue, but I know certainly there has been one case in recent times where we've sought further advice from security and intelligence agencies about the nature of a pass application. So we will undertake further investigative measures if we think that there may be concern about the nature of an individual pass applicant. I'm talking not specifically in reference to a sponsored pass but in respect of any pass applicant.

CHAIR: So what are the issues that a—is it a national police check?

Mr Stefanic: Yes, it is.

CHAIR: What are the flags that that might raise? It wouldn't necessarily be security, I would have thought.

Mr Stefanic: The police history check will identify any criminal conviction. The question, I guess—

CHAIR: But that only goes back a period, though, doesn't it? Having had one recently for a preselection process, I think there is a life of five or 10 years—10 years I think it is—for which records prevail or stay on the register.

Ms Tuntingley: There is. I can't recall exactly what that period of time is, but there is a period of time. I know, though, that historically we have had information that has disclosed quite a significant period of time, and then we would assess the relevance of that information, depending on how long ago the criminal conviction was. So that is a factor that we consider when undertaking a security risk assessment against the individual. I can take on notice the specific question that you asked about the period of time that comes back on the disclosable court outcomes.

CHAIR: Okay. What about other security agencies? The accessibility of this place has changed enormously in the last 20 years. There was a time when a member or senator didn't need an electronic pass or swipe code, the rationale being that this building was the parliament and therefore MPs and senators were able to come and go as they wished. Senator Pratt's made reference to issues around parliamentary privilege and information gathering that occurs as part of our business. A lot of those changes have been made in the name of security—notionally, our security. So what other checks are made apart from the police check?

Mr Stefanic: One of those examples would where it is not your run-of-the-mill criminal history check because some people do not have a checkable background. In those instances, we would seek the assistance of the security intelligence agencies to identify if there would be some concerns about the individual. In particular, if there were a concern about foreign interference, for example, that would be a matter that we would pay close attention to and seek advice on from the agencies as relevant. If that advice were adverse then the matter would be consulted on with the proposed sponsor and, if necessary, the Presiding Officers before a final decision was made.

CHAIR: So there is a hierarchy of process and a consideration at a parliamentary level rather than just an officials level with respect to a final determination on the issue of a pass, the Presiding Officers being that process.

Mr Stefanic: That's correct.

CHAIR: Do you have any stats on escorted passes versus the previous unescorted passes over a cycle of change in the approach that's been applied to access to the building? I suspect that's an on notice matter, but I'd be very curious to get a sense of what that change profile might have been.

Mr Stefanic: We can take that on notice. I think that change would have been around 2014. We can check our records to see whether we're able to reconcile those.

CHAIR: I think that's about the time I remember some grumpy conversations when people thought they were going to be able to come in here unescorted and found out they couldn't.

Ms Tunningley: In terms of the number of electronic access passes, I believe there were around 10,000 to the building when the decision was made to change the day pass. In terms of providing statistics as to the manual sign in register, is that what you mean regarding the number of people that are being signed in that way?

CHAIR: I'm curious about the way the change in the pass system has changed the way people have been able to access the building. The whole point of this place is as the seat of democracy. It's about members and senators being able to talk to people—as much as some might not necessarily like who we do or don't talk to. The whole process is about the democratic process and our interactions, so having an understanding about how accessibility to the building impacts on that is something for us as MPs to be able to reflect on and to consider when we look at matters such as this. From my perspective, accessibility rather than denying access would be something I would see as more favourable. It's easier to hide in a crowd than an open paddock. So that might address some of the issues some of my colleagues have raised today in respect of people being able to come here to conduct business.

Mr Stefanic: We can certainly look at those statistics. The only thing that may distort the process is that I know that only a few years ago we applied an audit process where we've been regularly checking the number of passes and the allocations to make sure we knock out anything [inaudible]

CHAIR: That was going to be my next question. Ms Tunningley, you said there were about 10,000 passes when we made the change, but what was the cycle of review and expiry of passes previously, for example? For me, as a senator, when I first came there was no cycle because I didn't have a pass. And, to a certain extent, when I rock up to my office every morning and swipe my pass to access and unlock my office for the first time, I object to being monitored when I come and go from my place of work. A bug goes off in the back of my head. I forget about it when I get my desk, but it goes off because the free movement and access of MPs and senators through the building is an important part of the concept of a democracy. So understanding how those flows have changed is important. From recollection, I'm pretty sure the Senate resisted the change from a key to a pass for a period of a few years after the House of Representatives, if I'm not mistaken.

Mr Stefanic: It did take a little bit longer during the security upgrades. We did upgrade—

CHAIR: I was part of some conversations where we weren't too keen on signing off on it for the purposes I've just discussed.

Mr Stefanic: Yes.

CHAIR: Other events have taken over and it has become ubiquitous, and that is what it is, but I'm interested to understand the flows of people. Do you hold a watchlist, as such, of people who might have been objected to or offended against the pass system in the past, as part of your flag process when you're doing an assessment?

Mr Stefanic: I can think of only a couple of cases where there has been removal of passes because of a specific request rather than just a normal cleansing process when people move on or change roles. Perhaps Leanne might be able to confirm that.

Ms Tunningley: It's not something that's actively checked as part of the process of an application coming in. If there have been complaints about individuals, we are putting that into the pass system so that there is acknowledgement or a record that we can reference in the event there's a repeat complaint against someone. But, as a general rule, it's not something we check every time a pass is created. It's not part of the standard process to look up someone's access.

CHAIR: So in the case that someone has had repeated complaints made against them with regard to the use of the pass or their behaviour or pestering people within the building, which is not acceptable behaviour, what is the process that goes to managing that? Is there a one-person decision-making point? Or is it like we have a hierarchy of approval, a process where you would go through MPs and/or senators, including parliamentary discussion, that have been involved in the approval process—for example, presiding officers?

Mr Stefanic: The system itself has the capacity to put flags in it. If someone has had their pass removed it can be recorded in the system, so if they apply again the system will identify that person.

CHAIR: I get that. I understand that side of it. But the process to actually remove, are there hierarchies within that? So might it go to the presiding officers? For example, David or I is sick of somebody who's camped outside our offices and they won't go away when we ask them to. We're not being unreasonable in doing that. We would go to the Black Rod or somebody of that nature, and/or write to the President or to the Speaker and say: 'We're over this. Can we have some action please?'

Mr Stefanic: Certainly in that case we would have a dialogue with the Black Rod around it, but in this instance, it would be the President who would make a decision on whether the pass should be removed, assuming it relates to a senator. If a senator was sponsoring an individual person and they said, 'I no longer wish for this person to have a pass and I revoke my sponsorship,' then that pass can be removed from that person. But in other instances, it would be a decision made by the presiding officers.

CHAIR: With respect to the data, you talked about the security cameras—and that was quite a process to bring those in. I do recall the incident Senator Pratt talked about and the conversations about that, but also the access data for officers. What's the life cycle for those?

Mr Stefanic: You're referring to the access data for the doors in the building?

CHAIR: Yes

Mr Stefanic: The system does record the information. We don't have a defined period for how long it retains that data. However, under the policy we are restricted from accessing that data after 180 days. Unless there is a law enforcement requirement, the policy does not permit access to that data.

CHAIR: So there would have to be a request for that information within that cycle for it to be retained.

Mr Stefanic: The data is retained, it's just our access under the policy that is limited.

CHAIR: So, effectively, you permanently maintain the data?

Mr Stefanic: Because the data is so small in its quantity, it accumulates in the system. CCTV, for example, is a very different kettle of fish; it consumes vast volumes of storage and it overrides itself after a period.

CHAIR: I don't think I have anything further; we'll probably see you at estimates in a few weeks anyway, so if there's anything else, we can ask then. Thank you for your evidence. I understand you have taken some questions on notice, so if we could have those back by 19 April, we would appreciate that.

BRAYSHAW, Ms Elizabeth, Acting First Assistant Secretary, Integrity Frameworks Division, Attorney-General's Department

STILL, Mr Stephen, Assistant Secretary, Transparency and Administrative Law Branch, Integrity Frameworks Division, Attorney-General's Department

[16:11]

CHAIR: I now welcome representatives from the Attorney-General's Department. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. Would you like to make an opening statement?

Ms Brayshaw: I don't propose to make an opening statement, but I want to note some updates to information that was in our submission to the committee. As at 3 April 2024, the number of logging organisations listed on the register is 331, the total number of lobbyists listed on the register is 691, and the number of clients represented by lobbyists on the register is 2,285. The numbers have gone down slightly since our submission. I also note that, in terms of AGD webpages relating to the register and code, there are 118,140 page views with 44,047 users. The number of new lobby organisations registered for 2024 is 23 as at 3 April.

In our submission we noted that the Parliamentary Joint Committee on Intelligence and Security was considering the Foreign Influence and Transparency Scheme, and they've now reported.

Senator DAVID POCOCK: Thank you very much for your time this afternoon. We heard from the Chief Commissioner of the New South Wales Independent Commission Against Corruption earlier, and he said that transparency in the lobbyist code and the lobbyist register is key to ensuring public trust in democratic institutions. I'm interested if you agree with that.

Ms Brayshaw: We would agree that lobbying is a legitimate and important part of the democratic process, and we would also consider it important that the lobbying activities are carried out ethically and transparently. That's reflected in the opening comments within the code. I also note that the code sits within a broader integrity landscape; in addition to the code, there's also the Code of Conduct for Ministers, the Public Service Act and the Australian Public Service Code of Conduct, and the Foreign Influence and Transparency Scheme—also, recently, the National Anti-Corruption Commission was established. So it does sit within a broader integrity landscape.

Senator DAVID POCOCK: So you accept that it's key to trust in public institutions?

Ms Brayshaw: I think it contributes to trust, yes.

Senator DAVID POCOCK: We've heard today from a number of witnesses that there are huge problems with regulation of lobbyists at a federal level. We've heard that states and territories have schemes in place which are better than the federal one but could be improved, but the federal level needs improvement. Your submission indicates an openness to changes to improve the interoperability between the register and the sponsored passes, but it does little to address the concerns raised by many of the witnesses today. In particular, I draw your attention to the evidence of Professor Twomey, who found that the code is failing to achieve its stated objectives. I'm interested in whether the department is confident that it has fully considered the overwhelming evidence that there's an urgent need for reform when it comes to the actual lobbyists register.

Ms Brayshaw: What I would say is that in terms of the focus of the code, which was introduced in 2008, its purpose was about ensuring that government representatives are able to know whose interests are being represented. So that is why it focuses on third-party lobbyists as opposed to a broader range of people. I note the submissions that have been made to this inquiry, and it has been useful to read those submissions. Certainly we will consider the committee's report and provide advice to government on that. But, in terms of the actual objectives of the code and meeting the objective that was sought to be met, I think it is providing a register to outline those third-party lobbyists.

Senator DAVID POCOCK: In terms of enforcement, one of the things that have been raised is that in other Western democracies there are civil and sometimes criminal penalties. I learned from your department at estimates that it's basically just a slap on the wrist: 'Have a break for a few months, and then you can get back to lobbying.' Have you been looking at ways to actually have proper disincentives to breaking the code?

Ms Brayshaw: In terms of the effectiveness, we take on board the issues raised in the submissions and certainly will give further consideration to those. The code at heart is about building greater awareness and visibility. I would note that a lot of people are accessing and viewing the website and accessing the register. We've put additional data on the register to look at making sure there's information about who the lobbyist is and who the clients are, to have some quick facts. It is available in real time. We look to make sure that the register is up to date. There's always room to consider and provide advice to government. It's a matter for them as to how to

improve it. But I would say there are a range of things that are happening to help ensure that we are giving visibility to those third-party lobbyists.

Senator DAVID POCOCK: The preamble of the lobbying code states:

This Code is intended to promote trust in the integrity of government processes and ensure that contact between lobbyists and Government representatives is conducted in accordance with public expectations of transparency, integrity and honesty.

Anyone I speak to about the set-up is horrified at just how loose it is. You have a lobbyist code with basically no penalties for serious breaches. There is a slap on the wrist: 'Have three months on the sideline.' There is actually no way to know if that same person is then getting a sponsored pass and lobbying in their capacity as a sponsored passholder. We've heard from DPS that they don't track that. They have no idea. My understanding is the only obligation we have is around tobacco control, and yet our lobbyists register doesn't even deal with that. We know we have sponsored passholders from the tobacco industry. So there are just so many loopholes in this. If it is meant to be in accordance with public expectations of transparency, integrity and honesty, do you really think that that is being met?

Ms Brayshaw: I'm not sure if there's more that I can add, other than to note that, in terms of what the code provides, it does set out expectations to register, to update that twice a year and to let us know if there are changes. It provides information around where lobbyists have government representatives who are members of their organisation. I note that consequences are limited compared to international schemes and some of the states and territories.

Senator DAVID POCOCK: I guess my question is: do you think this is in accordance with public expectations of transparency, integrity and honesty?

CHAIR: Senator, I would caution you against asking an official for an opinion, which is against—

Senator DAVID POCOCK: Sure. I'll wait for estimates.

CHAIR: You can always try!

Senator DAVID POCOCK: On the code of conduct, we've seen many jurisdictions actually legislate that, including four of the states. Is there a risk that the federal jurisdiction could be the last jurisdiction to have an actual legislated lobbying code of conduct, or is this something that is in the works at the department?

Ms Brayshaw: Decisions as to whether or not to legislate the code would be a matter for government. If we look across the Commonwealth and the seven jurisdictions, half of them have a legislated code and half don't. But I don't think I can give an opinion. That would be a matter for government in terms of legislating.

Senator DAVID POCOCK: Has the government asked you to undertake any work looking at the legislation for a code?

Ms Brayshaw: In terms of advice to the Attorney, we've provided advice on the operation of the framework, including in preparing for this, and the report that comes with that will be providing further advice.

Senator DAVID POCOCK: But, to my question, have you been asked by the Attorney-General to look at ways to legislate the code?

Ms Brayshaw: No, not that I'm aware of. In terms of the broader integrity agenda and what the government is focused on, I think the Attorney has indicated he welcomes views and suggested reforms, but I don't recall that we have been.

Senator DAVID POCOCK: We heard earlier from experts concerned that, if people sponsor passes—which I know is not part of the Lobbying Code of Conduct which you oversee—for lobbyists representing the interests of big tobacco, Australia may be in breach of our obligations under the WHO Framework Convention on Tobacco Control. Does the department accept this evidence? Is your view the same or different?

Ms Brayshaw: In relation to that issue, the Department of Health has the responsibility for that guidance. I don't think I'm in a position to be able to comment.

Senator DAVID POCOCK: Okay. My understanding is that your branch is within the integrity and international division of the department.

Ms Brayshaw: But, in terms of the responsibility for compliance with that convention, that does need to be referred to—

Senator DAVID POCOCK: It's not to do with lobbying?

Ms Brayshaw: Sorry, can you ask your question again? I might have misunderstood.

Senator DAVID POCOCK: If someone gets a sponsored pass and they either work for or represent big tobacco, we've heard a number of experts say that would mean that Australia is in breach of our obligations under

the WHO Framework Convention on Tobacco Control, which basically says that big tobacco shouldn't be anywhere near legislators and people who are regulating their industry, given the history there.

Ms Brayshaw: I don't think we can comment on that framework because we don't administer that framework; the Department of Health does. I guess, in terms of the lobbyist register, it would depend on whether we're talking about a third-party lobbyist register, and then we don't look after sponsored passes. So I'm just not sure—

Senator DAVID POCOCK: This is my concern. You look after the lobbyist register, but we know that very likely there are lobbyists on sponsored passes because they are not actual lobbyists; they just work for, say, a tobacco company. But we've got no idea. The person who sponsored them does. The police check maybe does, but they aren't looking at that. This is the one thing where we have some sort of obligation around lobbying internationally, yet we're not even tracking it. To me, this exposes just how loose this whole system is. I do accept that it's not your responsibility, because you're looking after the lobbyist register.

CHAIR: Can I just ask a question in relation to that? Sorry, Senator Pocock. Would you be able to give us advice as to how that convention applies to the lobbyist code?

Ms Brayshaw: I think they operate independently of each other. So whether or not you—

CHAIR: No, I'm not talking about the sponsored pass piece—

Ms Brayshaw: But the convention?

CHAIR: but the lobbying code and what our obligations in respect of the operation of our lobbying code would be in the context of the convention that Senator Pocock is talking about.

Ms Brayshaw: I'm happy to take it on notice and provide some further advice. I think they operate independently of each other, but I can take it on notice, and we can provide you with some—

CHAIR: But wouldn't we consider the international convention in the operation of our code?

Ms Brayshaw: There's a framework in relation to guidance with public officials on interacting with the tobacco industry, and that's managed by the department of health. That interacts with the convention, which is separate to—if an organisation who's a third-party lobbyist needs to be on the lobbyist code, then on that they would need to be able to meet obligations within the lobbyist code. I'm not sure that they quite match up, but we can take it on notice and come back to you.

CHAIR: Okay.

Senator DAVID POCOCK: Maybe you could also provide on notice, if they don't actually speak to each other, why the Lobbying Code of Conduct doesn't take into account our one international obligation when it comes to lobbying. Earlier we heard from APGRA, the peak body for government relations, and they said that they meet with the department quarterly to address administrative issues. I'm interested in those meetings. Have they advocated for or against reform to the code and the register?

Mr Still: Generally those meetings are more administrative in character. We've discussed matters such as helping lobbyists to understand exactly how to execute statutory declarations, which is part of the registration process, outreach activities to help lobbyists fully understand their obligations under the code and matters like that. I'm not aware that they have advocated changes to us, but I'd have to take that on notice to confirm.

Senator DAVID POCOCK: I was looking at a 2020 ANAO performance audit on lobbying, the register and the code. It previously sat with PM&C. When and why did that change? Why did it move to AGD?

Ms Brayshaw: As part of machinery-of-government changes, it moved to AGD in 2019. That's my recollection.

Senator DAVID POCOCK: Was there a reason?

Ms Brayshaw: That was a matter for government in terms of deciding what sat with different portfolios.

Senator DAVID POCOCK: The 2018 performance audit of the register at paragraph 12 describes delivery of compliance activity as 'low level' under the lobbyist code. I'm interested in whether that remains the case.

Ms Brayshaw: I might get Mr Still to add to this, but I think that, in terms of that report, the ANAO made suggestions in terms of how to improve it. And so, following that consideration of that report, the department briefed the former government, and amendments were made to the code in 2022. The types of things that were done were to allow the secretary to decide not to register or reregister a lobbyist; to strengthen the disclosure requirements for former government representatives, including the title and whether or not they were subject to any temporary prohibitions; and to require lobbyists to declare that they've not breached key parts of the code as part of their annual statutory declarations. Since that ANAO audit report, consideration has been given to those recommendations, and those were the amendments that were made at the time.

Senator DAVID POCOCK: Looking at the performance audit where they described delivery of compliance activity as 'low level' under the lobbyist code, does that remain the case? Could compliance still be described as low level?

Mr Still: We can only really talk to the instances of noncompliance that come to our attention. One trend which has been notable is that we are receiving an increasing number of breach reports. I think that's probably referable to an increasing level of understanding and awareness of the code amongst government representatives. One factor we have is the increasing number of breach reports that are coming to us. When breach reports do come to us, we investigate them, generally, by reaching out to the lobbyists themselves to see what they say they've done. We reach out to the person who has made the report to particularise any issues we need to know—and potentially to other people, if they hold relevant information—and consider the breaches.

What I would say is that in general, of the breach reports that are coming to our attention, a number of them relate to, essentially, misunderstandings of the code, and so they're not actually breaches. Where there are breaches—and we have found a number of breaches over the past few years—frequently they're driven by misunderstandings of obligations under the code or by, essentially, administrative sloppiness in the lobbyist.

We aim to proactively engage with lobbyists to help them understand their obligations and, in those circumstances, what's gone wrong, and we seek to make sure that they understand what their obligation was and how they've breached it and, in those instances where they've essentially misunderstood or there's some administrative problem, to make sure that they amend their internal processes to strengthen them, to prevent recurring breaches.

We do find that the registered lobbyists we've engaged with in those circumstances are generally quite eager to cooperate. Whatever you might say about the penalty, they quite clearly don't want it to apply to them, and we do get very good levels of cooperation when we undertake those breach activities.

Senator DAVID POCOCK: So you're entirely relying on people notifying you of suspected breaches?

Mr Still: We do—

Senator DAVID POCOCK: Anything proactive?

Mr Still: We do keep an eye on open-source material that might alert us to potential unregistered lobbying. For example, we actively scan the media where these issues may be reported. We also look to other sources of information that we can find that might indicate that lobbying is going on that's unregistered. An obvious source for us, because we also administer the Foreign Influence Transparency Scheme, is individuals who have been required to register under that scheme because they're undertaking activities for political and governmental influence on behalf of a foreign principal. We crosscheck those two schemes as well. We look to open-source material, and, of course, breach reports are very important tools—

Senator DAVID POCOCK: So—

Ms Brayshaw: Just one other thing, in terms of visibility and awareness of the code: the secretary writes out, annually, to agency heads and portfolio agency heads to remind them of their obligations under the code. At the start of each term, the Attorney-General writes to ministers and assistant ministers, and we also engage regularly with the Department of Finance and the APSC to embed our materials about the code into other products. So we are trying to make sure that there is awareness within the system as another additional component.

Mr Still: I should say, in that regard, one of the drivers of breach reports is that it is a requirement under the code for government representatives themselves to report breaches and for public servants to do so as well. That ties into other regulatory regimes as well. So, for public servants, we are all required to comply with relevant government policies under the code of conduct, and so there is a regime for public servants that provides some kind of substance to that requirement.

Senator DAVID POCOCK: What about monitoring cooling-off periods? Is there any work being done there? You obviously know when someone has worked for a minister. Are you then checking if their name pops up within 18 months?

Mr Still: There are a number of ways we come at that particular issue. When a new lobbyist registers—and under their continuing disclosure obligations—they're required to disclose their most recent position in one of those positions. One information source that we have is the lobbyists themselves. They're required to provide that information to us. We also undertake due diligence checks to see whether, from open source information, we can detect that a person has not declared something that they should have. Of course it's, again, potentially a breach if they don't provide that information within their registration, and it is potentially the subject of a breach report when somebody detects that.

Senator DAVID POCOCK: My understanding is that a former ministerial staffer could actually work for a lobbying firm. They just can't lobby on the relevant portfolio area. But there's a massive loophole, in my mind, and I'm really interested in your views on this. If they went in-house, it's not an issue. So, if I'm working for the health minister and there's a change of government, I can then go and work for a vaccine manufacturer in their government relations team. I get my sponsored pass. Are you monitoring that? Is that not seen as lobbying, given they have a lot of information that's very relevant to their new employer and they've got a sponsored pass? What's done in that circumstance?

Ms Brayshaw: It comes back to the purpose of the code. In terms of what the code was seeking to do in terms of giving transparency, it was about making sure that government representatives were able to know whose interests are being represented when they have meetings, and that's what the lobbyist code is trying to register in terms of a third party. Where it's in-house, the view was taken that the interests and who they were operating for are known. I note the observations and the submissions that have been made about what is covered, but, in terms of what we monitor, we focus on those that are required to be registered on the code.

Senator DAVID POCOCK: But, Ms Brayshaw, to bring you back to the preamble in the lobbying code, it says:

... in accordance with public expectations of transparency, integrity and honesty.

I understand you're only overseeing this code, but the example that I just put to you certainly doesn't meet expectations of transparency, integrity and honesty. Do we have a problem here that we need to solve? I can go one day from the health minister's office and the next day I'm working for a vaccine manufacturer, but I'm not a lobbyist because I'm in-house and I've got a sponsored pass.

CHAIR: I think you're on the ground of asking for an opinion.

Senator DAVID POCOCK: My question was whether the A-G has asked them to look at it or not.

CHAIR: That's a different question.

Senator DAVID POCOCK: Has the Attorney-General asked you to look at this really murky area?

Ms Brayshaw: During my time I'm not aware that that's been asked of us. We engage with the Attorney and his office on the framework and, certainly, in participating and engaging in this inquiry. We'll wait for the report of the committee; we'll be providing advice on the report and the recommendations.

Senator DAVID POCOCK: Thank you. Finally, that 2020 ANAO performance audit found that there was no framework to measure and report outcomes from the operation of the code to inform a view on whether the policy objectives of the regime are met. Firstly, is there now a framework? If there is, would you be willing to table it?

Ms Brayshaw: In terms of the consideration of the report, which predated me, my understanding is that this then led to the performance measures that we've put in place, and I'm just trying to find—Mr Still, did you want to go?

Mr Still: The key performance indicators that we report against essentially go to the timeliness of registration. We aim to ensure that more than 85 per cent of new registrations are published within three weeks and more than 85 per cent of updates are published within five working days. In a sense, that's a proxy for transparency as it goes to how quickly information becomes available to individuals to look at. In the 2022-23 financial year, we published new registrations within three weeks 100 per cent of the time and we published updates within five working days 98 per cent of the time, so those KPIs were well met.

Senator DAVID POCOCK: It's great to hear about that timeliness, but, in terms of actually delivering the policy objective, which, again, is to 'ensure that contact between lobbyists and government representatives is conducted in accordance with public expectations of transparency, integrity and honesty,' the ANAO said: 'Hang on; these guys don't even have a framework to monitor if this policy, this code, is achieving that. We suggest you set up a framework.' Has there been a framework set up, or are you just reporting how long it takes you to deal with breach notices?

Ms Brayshaw: I think what arose—but we might take it on notice just to make sure I'm correct—is that we set up standard operating procedures that established what the role was underneath the framework of administering the code. But we might take it on notice just to make sure—

Senator DAVID POCOCK: If you could take it on notice and if you do you have it, I'd love to see it if you're happy to table it. Thank you.

CHAIR: I just want to go through some of the interoperability elements that have been traversed and the linkages and interoperability of the different systems. You've said pretty clearly so far that you operate the Lobbying Code of Conduct, and that's separate from the process of the issuance of parliamentary passes. That's

managed, effectively, by DPS and the parliament. You look after the code of conduct. How do other elements of the broader integrity provisions that we've implemented through the parliament over recent years interact with the operation of the code of conduct, for example? Mr Still, you mentioned a moment ago that you'd seen an increase in reporting of, for want of a better word, 'breaches' of the act, but a part of that process was an obligation for public servants to self-report or report incidents. It's sort of a self-reporting role in terms of their understanding and knowledge of breaches or potential breaches of the code. What be the influence of the NACC, for example, on that, and has the arrival of the NACC created a higher level of awareness in public servants of their obligations under the various codes to ensure that all of these things are tickety-boo? Am I drawing the right linkages?

Mr Still: I think that the integrity landscape is a mosaic of—

CHAIR: And I'm curious as to how the landscape and mosaic fit together.

Mr Still: In my experience, it would be fair to say that the introduction of the NACC has heightened public servants' and others' awareness of the importance of integrity frameworks. I think each of the frameworks operate within their own particular sphere, and, of course, the NACC deals with serious and systemic corruption. There will be, potentially, elements of that at play here at the really pointy end—

CHAIR: Yes, but if the radar's a tad more sensitive—

Mr Still: Quite. Of course, there are other frameworks in play as well such as the Code of Conduct for Ministers, and I've already mentioned the Foreign Influence Transparency Scheme, which goes to—

CHAIR: That was also on my list.

Mr Still: Yes. FITS and lobbyists interaction is probably easiest for me to describe, because we administer both of them. They cover overlapping, but not the same, things. We do look to information we hold from both schemes to essentially red-flag possible breaches of the other—

CHAIR: Issues?

Mr Still: Quite. That's probably all I can say right now.

Ms Brayshaw: And probably the only other piece is that, in terms of the code, lobbyists need to be able to provide a statutory declaration, which goes to some of those elements—that they've never been sentenced to a term of imprisonment of 30 months; have not been convicted of an act of dishonesty, theft or fraud; have not previously committed a serious breach of this code—and then the code has a series of expectations. So it's on the part of the lobbyist to sign a statutory declaration in terms of their integrity, which we would also review. Then, separately, in terms of monitoring, because the same team looks after the lobbyist code and the Foreign Influence Transparency Scheme, we've got that ability to consider those two, and that's why they sit in the same area within the department.

CHAIR: We heard from DPS that to get a pass you're required to have a police check. How does that fit within the application or registration, if you like, on the lobbyist code? Clearly, from what you just said, you ask people to declare things, but what's the verification process?

Mr Still: We rely on applicants to make a statutory declaration, and, of course, there are criminal offences that apply to swearing a false statutory declaration. In our case, because we're interested in a subset of past criminal activity, that's the approach we take at present. We don't seek police checks.

CHAIR: You talked about the growth in the number of breach reports. Could you give me a sense of what that actually looks like—the numbers and proportion—over a period of a few years? I'm curious to get a sense of what that heightened radar sensitivity you might—

Mr Still: In the two years between 2019-20 and 2020-21, which were the two first years after we took over the code, my understanding is that we only received one reported alleged breach. It was a very low rate of breach reporting. The number of breach reports that have been made has significantly escalated since then. In the most recent year, as at today, I believe the number is 14.

CHAIR: In 2019-20, it was one—

Mr Still: In 2019-20, it was one. In 2020-21, it was nil.

Ms Brayshaw: In 2021-22, it was six. Then in 2022-23, it was 14, and in this year it's already at 14.

Mr Still: And we still have three months to go.

CHAIR: You had a busy start.

Ms Brayshaw: Yes.

CHAIR: Is it the financial or calendar year?

Mr Still: It's the financial year.

Ms Brayshaw: The other thing that we do—it's not so much in relation to serious breaches—but if lobbyists don't comply with the mandatory reporting period, which occurs twice a year, the secretary can delegate to the deputy secretary to remove those lobbyists. In the last two years we removed 48 in 2022-23 and 45 in 2023-24. Those are people who, having been given some opportunity to respond and meet those requirements, have not met those mandatory reporting requirements. I guess we're also trying to make sure that the currency of the system and the information on it is up to date.

CHAIR: Is there a cycle for re-registration?

Mr Still: Yes. There are two mandatory update periods under section 9 of the code. The first is that, within 10 days of 1 February each year, registrants must update their details and then do so again on 1 July each year.

CHAIR: Are those the two mandatory periods that you were talking about?

Mr Still: There are two six-monthly mandatory reporting periods. That is the principal basis on which we deregister people—for not having updated their details. In addition to that, in one of the updates that I think was made following that ANAO report that Senator Pocock referred to, we introduced continuous disclosure obligations. So, leaving aside the six-monthly reporting periods, lobbyists have to update their registration details in the event of any change to their registration details as soon as practicable.

CHAIR: So if they pick up a new client, they need to declare it on the register?

Mr Still: That's right. If you get a new client, you need to declare it as soon as possible—no later than 10 days after—and before you make any contact with a government representative on behalf of that client. There is that continuous disclosure element.

CHAIR: Okay. Senator Pratt.

Senator PRATT: Are there organisations or individuals who don't have to be registered but nevertheless have registered? It appears to me that there are some unions registered, for example, but not all unions. I would have thought that either they're in or they're out.

Ms Brayshaw: We might take that on notice. My initial view would be that we would look to only register those that are required to register. But we'll take that on notice and have a look at the particular group that you've raised.

Senator PRATT: I think the Communications, Electrical and Plumbing Union is registered. I saw Bloom-ED, which is, I think, an advocacy organisation around sexual health. It's a bit self-appointed, and it might work with other stakeholders, but it's not necessarily a charity. It could be an advocacy organisation. I don't know if it's got a business name. They're a great organisation. But, when I looked at the links about them as an organisation and whether they're registered, there was no information. I would expect that may well be because they don't have anything relevant to disclose, because they shouldn't necessarily be on the register.

Ms Brayshaw: We can check.

Senator PRATT: What do you do to ensure that people who should be on the register are, in fact, on the register? I think you said you write to government departments et cetera.

Mr Still: There are a range of measures that we undertake. As you say, one is enhancing understanding amongst government representatives and lobbyists of the obligations of the code. We undertake outreach to lobby peak bodies like APGRA, who appeared earlier today. The Attorney writes to other ministers at the start of each parliamentary term to advise them of the obligations, the secretary writes to her colleagues once a year to remind them and we undertake direct outreach to organisations. The purpose of that is that, when government representatives understand the code, they'll understand when they should be reporting to people who should have registered and have not.

Senator PRATT: Do you find that government agencies or ministers' offices are, in fact, prompting people to join before they meet, noting that some people won't necessarily understand their obligations?

Mr Still: What we see are potential breaches being reported to us. I presume in those circumstances that the government representative is making a breach report and then not meeting until compliance is achieved because obviously then they don't need a breach report.

Senator PRATT: Yes. That would make sense.

Mr Still: We do see that, yes.

Ms Brayshaw: It's quite possible that officers are suggesting that individuals go and check out our lobbyist web page. We've got an inbox and fact sheets. We might not always know what's prompted them to register, but I think your scenario's quite possible as well.

Mr Still: Circling back to your previous question, the other things we do to look for people who should have registered but have not are monitor open-source materials for people who seem to be lobbying without being registered and look to other sources of information available to us, such as the Foreign Influence Transparency Scheme register, which covers at least some overlapping conduct such as lobbying.

Senator PRATT: Yes. If a lobbyist organisation is registered, are they obliged to provide lobbyist names separately to the name of their organisation?

Mr Still: I believe so, but I might need to take that on notice to exactly confirm that.

Ms Brayshaw: Section 7 sets out what you're required to include. That would not only be your business registration details but also the name and position of each person employed, contracted or engaged by a lobbyist to conduct activities. That's in section 7 of the code. It sets out the types of information required to be provided.

Senator PRATT: But, if you're a not-for-profit health organisation representing patients, for example, and you turn up to a meeting with a drug company, you're not required to register as a lobbyist, are you?

Mr Still: Registrations are only required if you are going to be meeting with government representatives. In your scenario of meeting with the drug company, unless the drug company was I suppose a Commonwealth entity, the code wouldn't apply to them. In addition to that, the definition of lobbyists—

Senator PRATT: No it's not that it wouldn't apply to the drug company, it's whether it would apply to the charity because they'd shown up together. For example, it's not uncommon that a drug company might be working with a lobbying firm to raise awareness, but they might be also working with patient groups et cetera with, frankly, the purpose of raising awareness of a particular drug or for a particular regulatory decision.

Mr Still: Yes—if the scenario is a drug company and the NGO meeting a government representative for the purpose of lobbying. It's difficult to talk to the hypotheticals; it's hard to know what the scenario is, but there are exceptions to the definition of lobbyist that might conceivably apply. Under the—

Senator PRATT: I can see that they probably do apply, but I can also see that people seem to be, in some cases perhaps, registered anyway.

Ms Brayshaw: I think it's hard for us to comment on a hypothetical.

Mr Still: Yes.

CHAIR: It's difficult for the Attorney-General's Department to give a legal opinion, Senator Pratt—or an opinion.

Mr Still: In essence, I would say that if that NGO was a charitable, religious or other organisation, for example, they're excluded from the definition of lobbyist. If they're a not-for-profit association or organisation that's constituted to represent the interests of their members but isn't a deductible gift recipient, they're excluded. So there are a range of potential reasons why they might not be a lobbyist.

Senator PRATT: The Bob Brown Foundation is on the register. Are they there because they are being represented by—

Ms Brayshaw: It's difficult. We don't have the register—

Senator PRATT: They're not listed as a client. I have the register. I've opened it on my computer, in front of me, so I should expect that they're the kinds of issues you can talk to. I've got the Bob Brown Foundation and Bloom-ED—

Ms Brayshaw: I'm sorry, I wasn't sure what your question was in relation to that?

Senator PRATT: Is the Bob Brown Foundation required to be registered?

Mr Still: We don't ordinarily comment on individual cases. In respect of that particular organisation, I think we'd need to, in any event, take it away and have a look at their particular circumstances. I don't think I can answer the question off the cuff.

Senator PRATT: I'm trying to understand the system. In this context it would be good if you'd be able to answer what's in and what's out—because, from what I can see, there are tax deductible recipients, which would therefore make them a charity and therefore not require them to register.

Mr Still: What I can say is that there is an exemption for organisations or funds that are endorsed as deductible gift recipients, but I don't think I can comment on that particular case.

Senator PRATT: If we're going to have a functional register that you can create accountability from, surely we should know that the register's focused on organisations that should be on it, not on those that shouldn't.

Ms Brayshaw: We can take a look at that example and, on notice, come back to the committee. We just don't have the advantage of the—

Senator PRATT: I'd like you to come back on notice identifying all organisations who should potentially not be on it.

CHAIR: Wouldn't that be a matter of the organisation's own decision-making process? You did make the point earlier—

Senator PRATT: No—this is what I'm trying to understand. Are we trying to create an opt-in culture where every organisation that has an obligation to be on the register is on it but also where we're trying to encourage other types of organisations who think they perhaps should be on there—to protect themselves in some way—to opt-in? Do you accept opt-in as a principle, or would you expect to exclude organisations who aren't required to be on the register?

Ms Brayshaw: I think our view would be that the register's seeking to provide a service to give transparency to those that are acting on behalf of clients so that you can see the third-party lobbyists. There are a range of exemptions. I guess, in terms of whether people contact us and explain all their details, we may or may not always be aware—or the team that looked after the scheme at different points may not have been—of certain pieces. That's why there might be an organisation there that has opted in. But if we engage with them and they ask us questions, we would probably be focusing on them making an assessment as to whether they need to be registered, in line with the requirements of the code, to focus the code on those that need to be captured.

Senator PRATT: I guess I'm still struggling to work out how I can use the register for transparency. I can see the Bob Brown Foundation listed as an organisation. Does that mean it has representation, or that it is a lobbyist?

Ms Brayshaw: I don't have the register in front of me at the moment. That's why, if I could take that on notice—

Senator PRATT: I can tell you that they're on the same list as Bruce Hawker Consulting, Capital K Communications and [inaudible], the actual lobbying firms, but also on the list we have BHP Billiton who, if they're advocating on their own behalf, don't necessarily have to be on there. I'm very happy for an opt-in system where you create a culture of that transparency, but it makes it very hard to use if there are people on there who aren't actually obliged to uphold the obligations of the register—or perhaps if ministerial offices are referring people who don't need to be on the register.

CHAIR: If they were on the register, would they have to comply with the obligations of the code?

Mr Still: I think the code applies in its terms, and so the question would always—

Senator PRATT: Is that once you are on the register?

Mr Still: The code will apply to people who are lobbyists within the meaning of the code, and it applies obligations to them. I think the question will always ultimately be—

Senator PRATT: So if you're on the register but you don't have to be, then it doesn't apply to you?

Mr Still: I would say that if somebody has examined their own operations and come to the conclusion that they have an obligation to register, and have done so, that's not a bad starting point for thinking that they might have obligations. We've already committed to taking away and having a look at some of those examples.

Senator PRATT: Thank you, that would be helpful.

CHAIR: We're in overtime, Senator Pratt.

Senator PRATT: Briefly, I'd like to know if you've done any checking of the code or companies represented by lobbyists against not just decision-makers but the TGA, prosecutions or ASIC? Or are we really expecting that to be the public duty of those people who choose to access the register to then cross-reference it with other sources where decisions may or may not be being made? I know we're just at the cusp technology-wise of making that much simpler, but it's not easy to do at the moment. I guess if you knew a particular lobbyist was representing a particular business, you wouldn't know if they had an ASIC prosecution or if they were seeking a particular outcome on a piece of law—or a whole variety of things.

Mr Still: In relation to matters that might affect a person's eligibility to be registered—and we mentioned some of those earlier in the hearing—we do due diligence checks to see if we can find instances of that range of activities that might make a person ineligible. In terms of exposing that information on the register, the

information that goes on the register is what's required by the code to be published. That is what you'll find there. We don't separately list information about, for example, the ASIC prosecutions of—

Senator PRATT: I'm not necessarily asking that that be done. But it would be handy, for example, if you could see that a company's faced a prosecution by ASIC, and that you could then backtrack that more easily to find out who represents them, or if anybody does indeed represent them. I guess that's technically possible to do but it is also getting more possible to cross-reference data through data.gov.au, for example. I wonder if you might look to, at some point, cross-referencing the lobbyist register with some of the official government brokers of information?

Ms Brayshaw: It's not something we've considered to date.

Senator PRATT: ASIC has a whole range of data brokers. Usually they're plugged into something at the back end, I expect, which would mean that data brokers could look up various sources of information and cross-reference it with something like the lobbyist register, based on an ABN or some other identifier like the charities register et cetera. The charities register is housed by data.gov.au.

Mr Still: We haven't looked at that to date. What we do is, as part of our checks on registrations, look to ensure that things like ABNs are actually correct. Because they're a unique identifier for an organisation, they're an important way of matching organisations across data sets.

Senator PRATT: Yes.

Mr Still: But we haven't looked at that kind of deeper data integration that I think you're referring to.

Senator PRATT: In that context, an ABN will at some point have different directors, and those directors will have different director numbers attached to it which then at some point could also be cross-referenced with the ABNs of lobbying companies and the ABNs of the companies that they represent—just so that we can actually really drive the transparency that we're seeking.

Ms Brayshaw: In terms of current systems, resourcing and remit of responsibilities, I think there'd be a few things to consider in relation to that.

Senator PRATT: Thank you. Thank you, Chair.

CHAIR: Thank you. I was just about to appeal against the light, so thank you for wrapping up there. Thank you for your evidence this afternoon. You have taken a couple of questions on notice, so we would ask that you have that information back to us by 19 April 2024, please. That concludes today's hearing. Thank you to all the witnesses today. Thank you to my parliamentary colleagues. Thank you to Hansard and Broadcasting, and to the secretariat who have the job of a report to write. Thank you all.

Committee adjourned at 17:10