

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT
MET IN THE WARATAH ROOM, PARLIAMENT HOUSE, SYDNEY, ON
WEDNESDAY 26 NOVEMBER 2008.**

DISCUSSION WITH Mr HARVEY COOPER, INSPECTOR, INDEPENDENT
COMMISSION AGAINST CORRUPTION.

CHAIR (Mr Wilkinson) - Thank you very much for coming along today, Mr Cooper.

Mr COOPER - I would be very loath to tell Tasmania what it should or should not do because my experience of Tasmania is limited to visits lasting in total about three weeks. I love the place but I am no expert.

Whether you need a thing in the form of ICAC is a matter for you. I think every State does need some form of independent body to watch out for corrupt, dishonest conduct. I place emphasis on the word 'independent'. What you have and what many other jurisdictions have are procedures for investigating improper conduct, but not independent of the civil service or the agencies. That is where the problem, we feel, lies. A person who may have a legitimate complaint feels that he or she has nowhere to go because, if there's something he perceives as dishonest with his superior, he perceives that as going right the way up to the top. That is the advantage of having an independent authority.

It was created here by statute of 1988 and commenced in 1989. The office of inspector was not created until 2005. The speech by the Premier in introducing the amendments to create the position of inspector was quite interesting. In it he quite properly points out that the powers given to the commissioner of ICAC far exceed those of any other law-enforcement officer. They are capable of abuse. I suppose, by analogy, when you have high powers you always have the possibility of abuse and it is for that reason that he set up the inspectorate. The function of the inspectorate is to watch over the activities of the commissioner, not to tell him what to do or what not to do but to receive complaints from people against the commissioner and to see if those complaints give rise to justified findings of impropriety of the type that the act describes - and nothing else. Most of the complaints that I have received in the just under two months I have been in this position have been from people who have been upset because their complaints were not, they thought, fully investigated by ICAC. They feel that they have a right to have their complaints fully investigated, whereas ICAC says, 'No, we're bound by the act to devote our resources to serious and systemic misconduct'. Also, in many cases, they do investigate and find nothing there. So, the complaints I get are not from people who have been investigated but from people who have made a complaint and their complaint has not been investigated to the extent they want. You may think that is a lot of wasted time. Yes, it may be. But at least it is bringing to the attention of another independent body what ICAC is doing and so ICAC thinks twice about what it is doing.

In addition, I am required to conduct audits. At the moment I have just started conducting an audit into the use of search warrants, looking not only at whether they comply with the letter of the law procedurally, but also whether, in the context, what they have done is excessive, unjust, improper and so on. I have only just started that so obviously I cannot comment any further. It is there to stop an abuse of extreme power.

CHAIR - Obviously there must have been some concern about this extreme power to set up the inspectorate. Are you able offer any comment as to whether, from what you knew and what you know now, there was an abuse of power?

Mr COOPER - No, I do not know of anything specifically gave rise to it. But I know that there has always been talk. At that stage, back in 2005, I was still a judge and there is always talk amongst lawyers about organisations that have very wide compulsive powers, and they are worried about it. Similarly, with the current antiterrorist legislation, people are worried about it, whether with justification or not. It is what you can read about in the papers. But I cannot say there was something specific.

CHAIR - Tasmania, I believe, does not have a lot of organised crime. There are a number of matters, though, which are perceived to be wrong and it is because of that, I think, that the whole issue has started to percolate to the top - because of this perception. Whether they are wrong or not we do not know because there has been nobody to properly investigate things. Also, in relation to a couple of matters the DPP has done an investigation and said, 'That does not amount to a crime' and therefore the matter goes nowhere at all. If it does not amount to a crime then there is nowhere else to say it is misconduct; it certainly does not get over the bar to become criminal but it is behaviour which should not be manifested by members of either parliament or the public service.

So, that being the case, we have to look at costs of the body. It cannot, at first at any rate, be too big otherwise the costs will be prohibitive. It cannot be too little so that the body itself does not have the resources to do its job. So if you were setting up something for a population of 500 000, what would be required?

Mr COOPER - I would say a scaled-down version of the current ICAC situation. I think they have something like 120 employees and they are flat out, but then we have four or five million in population.

Mr MARTIN - What do you see as the strengths and the weaknesses of the New South Wales model?

Mr COOPER - The strength is that it is not a law enforcement body; it is an investigation agency that is independent. It has wide powers and therefore can reveal corrupt conduct, and I am using 'corrupt' in the widest possible sense. It can make reports and recommendations that can lead to the clearing up of that particular conduct. The classic example is the recent reports on the Wollongong Council. Now there, if your aim was to clear a council of officers and councillors who were connected with corruption, it achieved that.

Where it falls down is on the law enforcement side. ICAC was never set up to be a law enforcement body, that is for the police, but it makes recommendations that particular people be prosecuted with certain crimes. This is where you get a crack between agencies. ICAC gives the evidence that it has to the DPP. The DPP then, of course, looks at it, not from the viewpoint of an organisation set up to investigate the existence of corruption but from the viewpoint of an organisation that has to satisfy 12 persons good and true beyond reasonable doubt, which is a totally different animal and so they want extra evidence. Now it is getting that extra evidence that creates delays.

Also, evidence that is obtained under compulsive powers is under our law not admissible in proceedings of criminal, civil or even disciplinary actions. So you then have to go further and get evidence that would be admissible in a criminal trial. The reports governing RailCorp have shown that the inability to use that in disciplinary matters has caused or led to further problems.

Mr MARTIN - This is an area of concern of mine. My definition of corrupt behaviour does not necessarily mean something that can have criminal charges. There is a case in Tasmania where a senior member of government was charged by the DPP, had two trials and both had hung juries. I always said I don't care whether he is guilty or not guilty of committing a crime; from my perspective what he did was ethically and morally wrong. Can ICAC deliver a verdict on that sort of thing?

Mr COOPER - No, ICAC cannot deliver a verdict but it can make findings of fact, and having made findings of fact they themselves are reported and become something of a verdict. For example, regarding the general manager of Wollongong Council the facts revealed that he allowed a situation to continue although there was no recommendation that he be prosecuted. Reading the report you certainly get the impression that ethically he was not a very nice person and he probably will find it very difficult to get another job in the local government area. To that extent you could say it has done its job.

You are talking about ethical conduct and I have noticed that your interim reports refer to ethical conduct. Yes, the ICAC can look at matters and if it finds that they are unethical it can only report that fact. It is really a fact-finding body that investigates those matters.

CHAIR - Evidence obtained under compulsive powers is inadmissible in a court of law. Do you think there should be changes in order that they become admissible or alternatively do you believe if they are not there, the people in ICAC will not be able to find out what they are endeavouring to find out?

Mr COOPER - I think the compulsive powers are very important. As a lawyer, I do not like the idea of their being used in criminal trials but that is a personal bias. I am also worried about their being used in civil action, although the argument against that is that if a corrupt employee deprives the State of \$500 000 then why shouldn't the State be able to recover it in an action using the evidence obtained under compulsive powers?

My personal opinion is that I feel that the evidence should be allowed to be used in disciplinary matters. In New South Wales we have an appeals board to which a civil servant can appeal if he or she is dismissed. There was one case recently where a person had admittedly stolen a lot of money; she was going to repay it, of course, once her horse had come in -

Laughter.

Mr COOPER - and the appeal board said it was not a condition of her employment that she not steal. I would have thought the criminal law of the land forms the part of anybody's terms of employment. But still, that is the type of thing that goes on and I think there should be some special provisions so that those people can be dismissed and, more

importantly, the message go out to other employees that if you indulge in this corrupt conduct, do not come back, you are out. I think that is important too.

That is just my personal view. I think Mr Cripps, the present commissioner, has a similar view. Similar views have been expressed by members of our parliamentary Joint Committee but again no decision has been made. We are still discussing it.

Mr HALL - Mr Cooper, obviously you have quite an interaction with the commissioner, as you mentioned before, what about with the parliamentary committee? Do you talk to them, do you liaise with the parliamentary committee at all?

Mr COOPER - I have only been in this job just under two months so my only meeting with them was when they had to decide whether they would veto my appointment. I have another meeting next week, as a matter of fact, but that does not concern me; that concerns a report delivered by my predecessor.

Mr MARTIN - That is a question I was going to ask. How are you appointed?

Mr COOPER - In my case, I was asked. Initially I was approached by our Attorney-General and he recommended me to the Premier. The Premier then makes a recommendation to the parliamentary Joint Committee. The parliamentary Joint Committee then meets me and decides whether it will veto me. When I was due to come up, my wife said to me, 'If they ask you your views about abortion, what are you going to say?' I worked out my answer to that one.

Laughter.

Mr COOPER - It is actually done by the Premier.

Mr HALL - It was obviously felt by the New South Wales Parliament that the oversight committee was not enough to make sure that the ICAC did not abuse their powers?

Mr COOPER - The Joint Committee really has no power to receive complaints or to deal with them.

Mr HALL - So you are like a high-powered ombudsman in some ways?

Mr COOPER - A part-time ombudsman. It is not expected that I will be there five or seven days a week, it is expected that I will work as and when required, with an average of about two days a week.

Mr HALL - Previous to your appointment, how had the existing Ombudsman, or his or her office, been taking complaints and dealing with people who were concerned that their complaints weren't being followed right through?

Mr COOPER - In fact there is a bit of a debate as to whether the Ombudsman does have that power; there are competing views on the matter. In fact, as I understand it, the Ombudsman just didn't exercise any power there.

Mr HALL - I am just thinking of the scale that we have in Tasmania as to the sort of power we are going to allow in setting everything up.

Mr COOPER - I can appreciate that. It's like a jigsaw puzzle.

CHAIR - Judges are excellent wordsmiths, I know, and that being the case, what do you believe we should call a commission?

Mr COOPER - I think within the name there should be the word 'independent'. Whether you call it an independent ethics commission that you seem to like - and fair enough - or an independent corruption commission, my only recommendation would be to put in the word 'independent'.

Mr MARTIN - Yes, that's good advice.

Mr HALL - We're all independent members, too, by the way.

CHAIR - If I've got a complaint, I want to go to the body to make my complaint. I would imagine you go to a secretariat, being the ICAC secretariat, is that correct?

Mr COOPER - Yes. You're talking about an initial complaint?

CHAIR - Yes.

Mr COOPER - Right. First of all, everything in our society is done on the web. If you don't have a computer, you're not connected to the web, forget it; you just don't exist. So people can go there and all the instructions are neatly set out. Otherwise you can look them up in the phone book, ring them up, they'll send you out the various complaint forms necessary, or you can call into their office, which is not far from here - it's in Castlereagh Street. They then take the details of your complaint and they first of all assess it.

CHAIR - Who does the assessing?

Mr COOPER - They have a large number of assessors who work to a pattern that's been set up by them. It's a very cleverly worded pattern to assess whether the complaint meets the criterion of corrupt and serious misconduct, and by whom. Then they have a series of forms, very careful training, under which they classify things as serious, not so serious, and so on, and also whether there is anything in the complaint that would amount to corruption in its wider sense - not just negligent, unless perhaps gross negligence.

I don't know whether you are interviewing anybody from ICAC, but if you could get their pro forma, I think they're excellent.

CHAIR - When the person says, 'Yes, I believe there is some substance in the complaint' -

Mr COOPER - It's then handed over to the investigation section, and those investigating officers are in the main former police officers from interstate. If you go down there,

you'll probably find a few ex-Tasmanians there. They are from interstate because we want to keep things as independent as possible.

CHAIR - Is that one of the prerequisites for the investigators?

Mr COOPER - Not necessarily, but it's certainly the policy of the present commissioner. What I am saying of course is subject to any correction he may make. Then they decide how they will have an investigation. They have meetings in which they decide how they will go about investigating, the various steps they will take, delegate the various tasks, decide whether they will use search warrants, telephone intercepts, and various other forms of surveillance techniques, whether they will get someone in to speak to them, whether they will use their compulsive powers or not. That is then decided.

Once they have investigated, they make a report to I think it is called the executive committee which then decides whether there should be a public hearing. Up to now everything has been in private. If they decide to have a public hearing then they usually have everything beautifully prepared. The person comes along not knowing what the heck has been going on, thinking he can lie his head off and then along comes the video, the recordings, goodness knows what else.

CHAIR - A bit like your NCA, I suppose.

Mr COOPER - Very similar.

CHAIR - Because of the problems that can happen with reputations, up until the stage where there is a finding should it be in camera or should it be open to the public?

Mr COOPER - That is left to the discretion of the person who is handling the public inquiry. In the main, if it is something that is concerning a person's reputation then that would be in private. That is the general way it is done, but ultimately it is for the person and the person holding the inquiry is usually the commissioner or his deputy.

CHAIR - If the commissioner comes down with a finding that there is criminality involved, does that immediately then go to the DPP?

Mr COOPER - He cannot find that there is criminality involved. What he can do is make a recommendation that the DPP consider a prosecution of X pursuant to section so-and-so of the Criminal Code. That is all he can do.

CHAIR - A bit like in Tasmania with the Coroners Act. The coroner can look at a matter; if they believe there is some criminal funny business they can do exactly the same thing. Is that the same type of thing?

Mr COOPER - Similar.

Mr MARTIN - Just changing tack a little, going back a bit, some of the criticism that has been levelled by people who are opposed to an ICAC is the damage done to reputations - like in New South Wales the Nick Greiner situation and in WA the issues there - by stuff being leaked to the media et cetera. How do you prevent that sort of thing?

Mr COOPER - First of all the legislation has very strong confidentiality requirements. I realise that it is all very well for the law to say so; it does not necessarily follow that that does not happen. That is a problem and that is a matter of ensuring you get the right staff, honourable staff, and ensuring that you try as far as possible to have leak-proof systems. The situation when it becomes public of course is reputation damage. You have to realise that the Greiner situation was unusual because it was a political situation and one of the things that ICAC has been very concerned about is that it does not become an agent of one political side or another. It is very easy for one political side to say, 'So-and-so has been working his allowances and I'm going to refer it ICAC'. Along comes the headline, 'X Referred to ICAC.' That is something that unfortunately does happen but then, instead of being referred to ICAC, the headline could be, 'Referred to Police for Investigation.' So that sort of damage is still going to be done.

Mr MARTIN - Do you think that ICAC has handled that situation well?

Mr COOPER - In the main, yes, very well.

Mr MARTIN - We have been set up as a committee because of a series of events and issues that have occurred in Tasmania over a couple of years which have led to a public perception that there's something wrong, and there's no body to independently investigate. There are some people, namely government, who believe that if we do recommend something and it is set up that it should look forward and not be allowed to investigate retrospectively. Have you got a view on that?

Mr COOPER - I'd better not say what I was thinking.

CHAIR - A penny for your thoughts.

Laughter.

Mr COOPER - Well, I was just thinking of the time of the formation of ICAC in 1988, but we'll forget that. The first ICAC commissioner said quite openly that he was not going to look back, he was going to look forward, and he did that. As I understand it, that's been the policy ever since.

CHAIR - Of course, sometimes there is evidence that's necessary to obtain which occurred prior to a certain date, isn't there?

Mr COOPER - Of course.

CHAIR - So it'd have to be at the commissioner's discretion, I'd imagine.

Mr COOPER - Oh, yes.

CHAIR - Do you believe there's a necessity for a parliamentary body in between the Parliament and the commission?

Mr COOPER - Well, the thing is for it to be independent it must answer to an independent body and that is Parliament. I like the idea of a parliamentary subcommittee looking at it

because it frees it of political overtones and that, I think, is terribly important in New South Wales, and I would imagine also in Tasmania.

CHAIR - Thank you very much for coming along and giving us your expertise and your time. It's much appreciated.

Mr COOPER - Thank you and good luck.

DISCUSSION CONCLUDED.

DISCUSSION WITH Mr GREG DONNELLY, Rev. FRED NILE, Ms KAYEE GRIFFIN, Ms JENNY GARDINER AND Mr IAN WEST, NEW SOUTH WALES LEGISLATIVE COUNCIL STANDING COMMITTEE ON PRIVILEGES.

CHAIR - Thank you for coming along and giving us your time and expertise. You probably know that we're investigating whether we should have a committee in Tasmania to look at unethical behaviour, corruption, misconduct, et cetera. There are already a number of areas within the Parliament that some say are the watchdogs. There is the privileges committee, although our privileges committee is not used very often. There are also Estimates committees and GBE committees that we have looking at government business enterprises and State-owned companies. There is also Parliament itself with question time and Parliament itself looking into matters and overseeing governance. There is also the police, the ombudsman and the media. So some might say, 'There are all these bodies in place already so why do you need something else?' The perception is that something's rotten in the State of Denmark, not too rotten but probably going off rather than being fully rotten, and that being the case, there should be this body set up.

We are not, as you would be aware, a big community - half a million people - therefore it would probably have to be on a scale of less than what it is here and in Queensland and Western Australia. They are the issues that we are looking at. What we have been doing is opening it up to you with your expertise to tell us what you think we should know and then asking you questions. Who do I throw to first?

Ms GRIFFIN - I have an opening statement to make on behalf of our committee and I have some information to table at the end of that.

CHAIR - Thank you.

Ms GRIFFIN - I apologise for the fact that a couple of our members are not here. There are other meetings going on as well in the Parliament this morning so it is sometimes difficult, as you would know, for everyone to be in the same place at the same time during a parliamentary sitting.

Mr DONNELLY - Can I say that I will have to do something at 10.25 a.m.

CHAIR - Thanks for your time, we appreciate it.

Mr HALL - How many other members are there?

Ms GRIFFIN - We have seven members altogether. The Hon. Jenny Gardiner is our Deputy Chair, the Hon. Amanda Fazio and the Hon. Don Harwin are the other members of the committee who are not here at the present time. I think the committee would be happy to take questions at the end of this and, as I said, I have a document to table for your information.

CHAIR - Thank you.

Ms GRIFFIN - Thank you for the opportunity to speak to you this morning. The Houses of the New South Wales Parliament adopted the current code of conduct for members on 27 June 2007, and I will table a copy of that at the end of this address.

The code consists of a preamble and seven clauses. The individual clauses deal with conflicts of interest, bribery, gifts, use of public resources, use of confidential information, duties as a member of parliament, and in a new clause, secondary employment or engagements.

The code of conduct for members in New South Wales had its origins in the so-called Greiner-Metherell affair of 1992, and I think the previous speaker probably mentioned some of that. It concerned allegations that the Premier and the Minister for the Environment had arranged a public service appointment for a member of parliament for political motives. The affair subsequently led to a finding by the Independent Commission Against Corruption that the Premier and the Minister for the Environment had engaged in corrupt conduct within the definition of the Independent Commission Against Corruption Act 1988. However, on appeal, the Court of Appeal held this finding void and wrong at law, affecting limitations of the ICAC Act.

In response to this finding, the Government inserted a new section 9(1)(d) into the Independent Commission Against Corruption Act in 1994 which expanded the definition of 'corruption' to include paragraph (d): 'In the case of conduct by a minister of the Crown or a member of the House of Parliament, a substantial breach of a political code of conduct'. The applicable code of conduct is the code of conduct for members in New South Wales and it is understood that this linkage of the definition of 'corrupt conduct' in New South Wales under the ICAC Act to the code of conduct for members is unique in Australia.

The Government also amended the ICAC Act in 1994 to insert a new Part 7A which provided for the establishment of an ethics committee by each House. The ethics committees were given the following functions: (1) preparing draft codes of conduct for members of the House and draft amendments to codes of conduct already adopted; (2) reviewing the code of conduct every two years, which has since amended to four years; (3) undertaking educative work relating to ethical standards applying to members; and (4) giving advice in relation to such ethical standards in response to requests for advice from the House, though not in relation to actual or alleged conduct of any particular person. These functions are repeated in the most recent resolution appointing the Privileges Committee on 10 May 2007.

Following the insertion of Part 7A in 1994, the Privileges Committee published two reports relating to the development of the code of conduct in 1996 and 1998. At the time there was disagreement between the Privileges Committee and its counterpart in the Legislative Assembly, which was only resolved with the adoption of a draft code of conduct for members in mid-1998. Since the adoption of the code of conduct in 1998 the committee has reviewed the code of conduct on two occasions - in 2002 and 2006. The process of reviewing the code of conduct has generally involved the committee seeking submissions from members and the ICAC followed by a review of the wording of the code of conduct and suggestions for reform.

It is also notable that the Privileges Committee has an education function, as I indicated. However, to date, it has primarily been the clerks, for example, who arrange briefings for new members on the requirements of the code of conduct or the ICAC Act and ensure

that members are advised of requirements concerning use of members' public resources or disclosure of pecuniary interests.

As indicated under the ICAC Act, the Privileges Committee has no role in investigating or adjudicating on any perceived breaches of the code of conduct for members. This is specifically the role of ICAC.

In New South Wales, issues have arisen where ICAC has been required to investigate a substantial breach of the code of conduct for members, but has been hampered because the conduct in question has been protected by parliamentary privilege, restricting ICAC's jurisdiction to investigate. For this reason, in 2003 ICAC raised the possibility of an amendment to the ICAC Act to include a new part to allow the Parliament to waive parliamentary privilege for specified matters which are referred to the ICAC by resolution of the House.

An alternative model is the appointment of a parliamentary commissioner, who may investigate breaches of a code of conduct, as used in the British House of Commons and elsewhere. A further option is the appointment of a parliamentary officer on an ad hoc basis to undertake an investigation into the breach of the code of conduct, which would in turn possibly require the provision of certain safeguards in the appointment and duties of the investigating officer.

Whichever option is taken, ICAC highlighted the need for the Parliament to formally set out the action it would take in the circumstances where it is alleged that a member has committed a serious breach of the code that is protected by parliamentary privilege. To date, the New South Wales Parliament has yet to do this.

Following the adoption by both Houses of a code of conduct for members in mid-1998, the council agreed on 24 September 1998 to the appointment of a parliamentary ethics adviser. The position is part-time and is appointed by the President and Speaker on a renewable contract with the joint clerks.

CHAIR - And the type of person that you get is what - for the adviser?

Mr WEST - Someone with a lot of experience.

Ms GRIFFIN - Yes, certainly a lot of experience in terms of understanding of government and how parliamentary procedures work.

Rev NILE - From the Electoral Commission.

Mr WEST - Yes.

Ms GRIFFIN - Someone who will give advice to individuals. His function is to advise any member of parliament, when asked to do so by the member, on ethical issues concerning exercising his or her role as a member of parliament, including the use of entitlements and the potential for conflicts of interest.

In 2007, the function of the ethics adviser were expanded to include provision of advice on request to ministers and former ministers on post-separation problems.

CHAIR - Thank you.

Mr HALL - I notice, Kayee, you have your Privileges Committee - the one we are talking about here - and the Assembly has a Standing Committee on Privileges and Ethics. Have you talked about a joint House committee to run this whole thing or is that just not workable in your Parliament?

Ms GRIFFIN - I think it is probably a difficult question to answer easily. I think the opinion of both Houses is that they prefer to keep the separation, and I have to say that in terms of some of the issues that both committees deal with - and I know that you are meeting with the other committee at 11 o'clock -

Mr HALL - Yes.

Ms GRIFFIN - that there have been some differing opinions. I cannot comment on some of those that were perhaps before my time, but I am sure that Fred Nile may have a bit more knowledge of some of the previous issues in relation to that. Suffice it to say, there are two committees and I think there is an understanding at the present time that the two committees would work separately, although we deal with similar matters in lots of ways.

Rev. NILE - I think the point is that neither House would like an upper House member assessing the behaviour of a lower House member and vice versa. I think it is keeping the two Houses independent for that reason. I think both Houses are probably jealous of their separation.

Mr MARTIN - Is there any reason why one has 'and ethics' in the name of the committee and the other one doesn't? Your committee is just a committee on privileges, whereas the other one is privileges and ethics.

Rev. NILE - The role include ethics. It is just that it has never been put in the name.

Mr MARTIN - So the same roles?

Rev. NILE - Yes, the same roles. We have probably done more with ethics over the years in investigating the behaviour of members where there have been accusations made.

Mr HALL - You mentioned that a lot of your role is educative. How often do you talk to members and undertake that particular role? Is it something that happens on an annual basis?

Ms GRIFFIN - I think a lot of the educative process at present is being undertaken by the Clerks in terms of new members and so on. Most of the work that our committee has done as a committee relates to issues of citizens' rights of reply where, if a member has made a comment in the House, a citizen has the opportunity to write to the President and state their concerns about what has been said. This committee then looks at what the citizen has sent in. It is usually reasonably heavily amended in relation to the comments after the committee has looked at that, because quite a lot of the comments are historical. Obviously the committee doesn't look at the rights of what the member has said or the

issue that the member has made comment on. We don't deal with the rights and wrongs of what either person has commented on. It is an opportunity for an individual to make some comment back to the Parliament in relation to a matter where they feel they have been misquoted or their name has been misused in the House. A lot of our meetings have related to citizens' rights of reply.

Mr HALL - I may have missed it, but how often do you meet? Do you meet on an as-needs basis or do you have a regular meeting?

Ms GRIFFIN - Usually on an as-needs basis. We meet as much as possible, given that some of the people on the committee are not necessarily based in Sydney. It is more convenient to meet, if possible, when the House is sitting. We meet during our meal breaks or whatever on that week when there is a parliamentary sitting. If it is an issue that requires further meetings obviously we meet outside those times, but we don't have set meetings that are scheduled because some of it is dependent upon citizens' rights of reply as to whether or not we have an inquiry that we have to conduct and it is given to us by the President or the House.

Rev. NILE - That's the only way we get our business. It comes from the House. If the behaviour of a member is under question, that is referred to us by the House. The committee doesn't initiate any inquiries into the behaviour of a member.

Mr WEST - That is one of the fundamental reasons we have the two Houses. It is two committees and not a joint committee. As has just been indicated, a lot of the material we deal with relates to our House.

Mr MARTIN - If the only way the complaint can come is through the House -

Ms GRIFFIN - Or to the President of the upper House and he or she can refer something on to the committee.

Mr MARTIN - So it is not on a vote of the House?

Ms GRIFFIN - No, not necessarily.

Rev. NILE - But there have been votes in the House on serious matters.

Mr HALL - In regard to the induction that is done for new members by the Clerks, is that two or three days?

Ms GRIFFIN - That is a question that might be best asked of our Clerks. It would depend on how many members and whether it is at the beginning of a new parliamentary session, whether it is a new member replacing a vacancy and so on, as to the time spent on induction.

Mr FRAPELL - In the past we have run a full program of half-day or day sessions; at other times it is when there is an opportunity to sit down with the Clerks and go through material if there is a request.

Mr HALL - Has that been a useful process from the members' point of view? I know when I came in you just found your own way.

Ms GRIFFIN - I think it is a useful process. Obviously we were all new kids on the block at some stage and to be able to put faces to names and have the Clerks also work with new members is good because it means that there is an avenue then for the information. You also have the opportunity to know who is around and if you need to ask a question then you are quite able to do so. It is very confusing when you come in, particularly if you have come from a very different area.

CHAIR - From a different background.

Ms GRIFFIN - The rules and regulations and everything else and Standing Orders in the House and all these other sorts of things. I think it is very beneficial for the Clerks to also have that contact with new members.

Mr WEST - Do you allow them to sit at the Table?

Ms GRIFFIN - Sometimes.

Rev NILE - Do you have a privileges committee?

CHAIR - We have, Fred.

Rev NILE - So you are not considering whether you should have one?

CHAIR - No.

Rev NILE - You are considering whether you should have an ICAC kind of body?

CHAIR - Whether we should have a body over and above -

Rev NILE - Like an ICAC, or something like WA has and Queensland?

Mr HALL - Yes. I do not think we can remember when our Privileges Committee last met, but I might be being a bit harsh.

CHAIR - That is right. It is one of those committees that are not used much at all. The last time it was used and there was a finding handed down would have been the early 1990s, I would say.

Ms GRIFFIN - We had an issue in the last term of parliament related to Peter Green. There was a huge argument between ICAC and Peter Green when ICAC looked at his office and everything else about what documents related to parliamentary privilege. We did not have an inquiry into that and that might be something that would be worthwhile having a look at. As I said, there was a huge spat about the issue of what Peter claimed was privileged - ICAC's point of view - and we did mention that in our briefings to start off with -

Mr HALL - That is something we could get and it would be worthwhile to look at it.

I think NSW have had an ICAC now for 19 years or thereabouts. Do you think the public perception is that things have improved? Are people happier with the behaviour and the manner in which members of parliament and senior bureaucrats and everybody else carry out their business? Do you think it has put a bit of a comfort zone in there for the general population?

Rev NILE - ICAC is more and more involved with corruption in local government and in government agencies and there has been almost no accusation against members of parliament. We have had a couple but not about corruption.

Ms GRIFFIN - The Honourable Jenny Gardiner has arrived.

Ms GARDINER - I am sorry I am late.

Rev NILE - The only issues involving members did not concern corruption but their entitlements - whether they were claiming too much or whether they could justify their claim. That applied to two members of the upper House and was resolved by ICAC. There was no corruption that I am aware of.

Mr WEST - I would be so bold as to suggest that the same philosophy is out there that we are all crooks, and that the percentage of people who appreciate that there are additional checks and balances is probably the same as there always was.

CHAIR - So it becomes an educative thing, really, so that people understand, although it is always hard to get that message out. How often do you meet with the commission and the Parliamentary Crime and Misconduct Committee? Do you meet at all with them?

Rev NILE - The main involvement with the commission is through the parliamentary oversight committee of ICAC. We have another committee that supervises ICAC. They deal with all the corruption issues that come up through ICAC. And that committee is meeting very regularly and there are hearings.

Ms GRIFFIN - It is a joint committee

Rev NILE - It is a joint committee of both Houses.

CHAIR - Do you meet with that committee to bring up any issues with them or can you direct issues to them, or do you have to do that through Parliament?

Ms GRIFFIN - Fred is on that committee.

Rev NILE - A number of us are on that committee.

Ms GRIFFIN - We had involvement from the point of view that some of our members also sit on that other committee, but we do not directly meet. One of the concerns that has been expressed in relation to ICAC is that with a lot of their findings and when they recommend that charges are laid against people it then goes to the DPP and there is not necessarily enough for it to continue down the track.

CHAIR - Can it come back to you if, let us say, there is a finding of the secretariat that there has been some funny business going on, they do not believe that it should go to ICAC but they believe that there has probably been a breach of privilege, so they will put that to the Privileges Committee and let them deal with it?

Can that occur and has that occurred?

Rev NILE - As I said earlier, there are a number of matters that have been referred to the committee and most of them related to some discussions about whether members claimed the correct parliamentary allowances and so on.

CHAIR - So they went to ICAC first?

Rev NILE - They went to ICAC and the committee

CHAIR - And then the committee sent that back to the Privileges Committee, did they?

Rev NILE - No, they never sent it to us, the House gave it to us.

Ms GRIFFIN - It was really about the question of privilege in principle rather than the actual allegation of corruption because this committee does not look at cases of corruption. That is separate; that is for the Independent Commission Against Corruption. We do not look at operational matters - for example, the relationship between a member and his privileges as, in the end, the House saw them, versus the manner of privilege as perceived by the independent Commission Against Corruption, and it led to an inquiry into the protocols that exist between the council and the ICAC. So, if the police want to, they issue a warrant, say, to come into the place on an allegation that a member has done something illegal.

The Privileges Committee looks at privileges and used to be called the privileges and ethics committee but that has changed; it is only the Privileges Committee now, although ethical questions can be considered. They are considered in principle rather than making a judgment against a member as to whether or not they have done something wrong.

CHAIR - If you find that a member has done something wrong what do you do? Do you go back and report that to the House and then does the House debate it? What happens?

Ms GRIFFIN - Any of our inquiries when they are tabled in the House can be a matter of debate. There was an inquiry to start off with that we had which related to Cardinal Pell. I cannot remember but I do not think that there was any debate when our report was tabled in relation to that. Sometimes there has been a bit of debate in relation to a citizen's right to reply but in this term of parliament that is all that has happened.

The one Jenny was talking about was also related to the Peter Green matter where ICAC came in with a warrant and there was an argument over what was privilege. The committee was involved. The ICAC did not agree with the member about what were privileged documents and the inquiry that we did related to the protocols in relation to search warrants and so on.

Mr MARTIN - The citizens' rights of reply is a little bit of an issue we have at the moment. What is the current situation here and what is the debate?

Ms GRIFFIN - The only debate when I have tabled a report in the House has been from the member from whom the matter originated. That member who said something in the House has then stood up and made some comment at the time that our report has been tabled. There has not been a full-scale debate on it apart from the member having an opportunity if they wish to use it.

Mr MARTIN - They do have the opportunity, but there is no debate?

Ms GRIFFIN - They are able to stand up when the report is tabled, yes.

Rev. NILE - The House then votes and accepts the report. Previous committee reports have never been challenged in the House since I have been here.

Ms GRIFFIN - I think there have been about 26 citizens' rights of reply.

CHAIR - Over the past 12 months, how often have you met approximately?

CLERK - I think we are at 12.

CHAIR - And over the past 12 months how many inquiries have there been?

Ms GRIFFIN - We had the inquiry in relation to carbon coal last year and all the others have been either about the pecuniary interest forms or about citizens' rights of reply. Our pecuniary interest forms were changed and then there were some issues in relation to how people were reading them and some debate over some of the wording. So both Houses looked at those and reported on them.

CHAIR - Obviously the committee is resourced with a secretariat?

Ms GRIFFIN - Absolutely.

Ms GARDINER - This committee has the best. I guess it is the oldest committee, isn't it. The Privileges Committee is probably the first committee of the Houses and so the committee is always resourced by the Clerk of the Houses or someone who is trained up specifically in that history and constitutional law and the law of the Parliament.

Rev NILE - The Clerk of the House is working with this committee and attends the meetings.

Mr HALL - Just on your disclosure of interest forms, your pecuniary interest forms, do you have to lodge them annually.

Ms GRIFFIN - We now lodge them every six months.

Mr HALL - Okay, and they are consistent with the other House, are they, or are there any differences in them at all that you know of?

Ms GRIFFIN - No, they are the same.

Mr HALL - Why did you go to the six months? Members' changing circumstances I suppose was the reason that was done.

Ms GRIFFIN - More transparency that was going on and I think there is an issue when you are lodging any sort of pecuniary interest return if your circumstances change and there are not people who have done that. The six-monthly returns are more in terms of transparency.

Rev. NILE - At the same time the political parties have to do it every six months too, so I think the six months became a pattern for everything.

Mr HALL - Are they available on the web or are they just kept here in a register within the Parliament?

Rev. NILE - They are totally documented.

Mr MARTIN - But the public have to come here to see them, do they?

Rev. NILE - Yes.

CHAIR - Do you find they come?

Rev. NILE - Well, it is a printed report. They are all collated on the printing.

CHAIR - But in order for the public to see whether there is a pecuniary interest they have to come to Parliament, haven't they, to actually check?

Rev. NILE - Well they are distributed in books, aren't they?

Ms GRIFFIN - The books are distributed to the members.

CLERK - So they are only distributed within the Parliament. Private citizens would have to come in.

Ms GRIFFIN - I used to be involved in local government and it is a similar sort of process for local government; if a resident ratepayer wanted to look at my pecuniary interest form or anyone else's, they would have to come in. They are tabled at meetings but they would still have to come into the council and request permission to view them. So it is a similar sort of thing. They have to come in and ask to look at them. One of the concerns that some members have expressed over the years in relation to their pecuniary interest forms has been about their principal place of residence - putting down the full address. There have been some concerns and some debate about what can be put on the form because it is not about you so much, it is about your family and other people around you. They see that as an issue.

Mr HALL - How deep does your information requirement go? It has been put to us by a previous witness, I think it might have been a Tasmanian, that all about our staff, our immediate family and the whole lot - everything - should be there. It just goes to the member in your case?

Ms GRIFFIN - Yes.

Mr HALL - Which I agree with. It gets pretty intrusive otherwise - beyond the pale, I think, you might argue.

CHAIR - But, then again, it would become a privileged matter wouldn't it, I would imagine. If, let us say, Greg owns part of the north-west coast and if there was something going on in relation to the north-west coast and, let us say, the farm is owned by his wife, then that should be made known, if there was a vote in relation to it. It is not going to be made known from your pecuniary interest form, so it would be a matter which would still be a conflict if the member did not get up and say, 'There's a conflict here as a result of my wife owning property just beside the development that is about to take place', or something along those lines. So there are arguments both ways, isn't there, in relation to that?

Ms GRIFFIN - There are arguments for and against but I think if you go down that path of everyone around you having to declare everything, it becomes an issue about a person's right to privacy if they are not the individual.

CHAIR - If you look at overseas, Malaysia, the Philippines and places like that, the children of the Prime Minister have land, buildings and companies.

Mr WEST - But you are required to declare a conflict of interest. You just do not have to put it in your pecuniary interests.

Mr HALL - Yes.

CHAIR - That is right, that is what I am getting at.

Rev. NILE - It is correct, though, that some members could transfer all their assets to their wife, and I think that happens in some cases.

Mr WEST - But you are still required to declare a pecuniary interest.

Rev. NILE - No, where they had no interest.

Ms GRIFFIN - A conflict of interest.

Mr WEST - A conflict, sorry. You are still required to declare a conflict of interest if later on it is found there is some difficulty with that. But having to put it in your pecuniary interests is a different issue.

Ms GARDINER - And declare it in the House at the time.

CHAIR - At the time of the debate?

Ms GRIFFIN - That is right, and an interest is something that has been very much the subject of debate, certainly with ICAC and a range of people, about what is a conflict of interest and a conflict of interest where you either gain something or there is a loss and

things like that. It is a debate that has been going on for many years and particularly in New South Wales and particularly issues that relate to things like local government. Of course, if you look at some of the reports that ICAC has brought out this year, there is very much reports in relation to councils and things like that and what is a pecuniary interest or what is a conflict of interest in some of them.

Mr WEST - Or just an interest. I have had some interesting discussions with the ethics officer on that very issue over a few matters that I have been involved in and that great debate about interest versus conflict of interest.

Rev. NILE - The ethics adviser's activity is completely confidential. So he does not report on who is asking for advice. He might report how many cases, 'I've had four members ask me for advice'. But that is completely confidential.

Mr HALL - Would individual members always go to the ethics adviser or might they come to this committee and the Chair or the Clerk? I suppose they have about three different options really in that respect.

Ms GRIFFIN - I would think in most cases an individual may probably go to the Clerk to start off with or be referred to the ethics adviser. I personally have not had people ask me and I would think it is because we do not deal with individuals. It would be more appropriate to use either of the other two avenues.

CHAIR - There could well be a conflict, couldn't there, if they come to you and you are the Privileges Committee that has to oversee the problem that they have.

Ms GRIFFIN - Yes, and that's why the citizens' right of reply is one of the things the committee holds very dearly. We are not looking at the rights of what a member has said or the rights of what an individual is saying in terms of requesting a right of reply. It's about someone having the opportunity to put something to the Parliament in relation to concerns about what has been said, but the committee doesn't look at the rights or wrongs on either side.

CHAIR - It's a bit like your natural justice argument, isn't it? You've got to give the other party the right to be heard.

Ms GRIFFIN - Exactly, and that's the way people are using it.

CHAIR - Sure.

Mr MARTIN - I have just a general question, and it's probably a dangerous one to ask in a group with three different parties, are there any views on the strengths and weaknesses of the New South Wales' ICAC model that we should learn from?

Ms GRIFFIN - I suppose one of the issues would be one that I mentioned before, and that is in relation to some of the findings of ICAC about the matters being taken further with individuals as to the evidence, whether it would stand up in terms of prosecution. If a person is being investigated and findings come out in relation to that person, sometimes that person's a bit in limbo and no-one else is going to take up the prosecution, but all these other things have been seen. I think sometimes there may be some difficulties with

that, but those are matters that the ICAC would have to deal with and also the DPP in relation to whether those findings are enough to then lead to a prosecution. That seems to be an issue sometimes with some of the findings.

Mr WEST - That's a view that is very strongly held by some, that ICAC can become a star chamber, in a sense, in that you're being hung out there to dry. That's a strong view held by some.

Mr MARTIN - Are there cases where there's a perception that it's been done unfairly by ICAC?

Ms GARDINER - I guess the most famous case is that of Nick Greiner who as Leader of the Opposition decided to have as a policy that there would be an independent, quasi-judicial anticorruption body, and he ended up being accused and basically damned by ICAC. He ended up being hunted out of the premiership and then he went to court and the finding was overturned. By then he was no longer Premier.

CHAIR - Did that go the Criminal Court?

Ms GARDINER - It went to the Supreme Court.

CHAIR - On what?

Ms GARDINER - On the interpretation of the power of Commissioner Temby. There were amendments to the ICAC act after that, and I guess if I were from another parliament I definitely wouldn't adopt the New South Wales model, and I am from the National Party and a lot of people in my party would agree with what I'm saying.

It has probably been explained to you that there is a direct link between Parliament and our code of conduct and the Independent Commission Against Corruption Act. That's the linkage. If we are thought to be or are in serious breach of the code of conduct, then the way that that is dealt with is by the Independent Commission Against Corruption, and I think there's something fundamentally wrong to have an outside body with a direct link to the conduct of elected members of parliament. Yes, you could have an anticorruption body and the police and all those bodies, but to have our code of conduct directly linked to an outside body I think is counter to our system of parliamentary democracy. It is extraordinarily powerful. In some ways it is good, I suppose, it is a really good discipline on members but, by the same token, I think there is something wrong with that connection. It has evolved partly because of the interpretation of the Greiner matter and they are trying to find some solution to that.

Mr WEST - Personally I have difficulty arguing against that.

CHAIR - There is the NCA - the National Crime Authority - and nobody knows about the investigations and the hearings they do; they are in camera and the witnesses are told not to tell anybody. That is done pretty well, I think. I know there have been a number of inquiries and investigations done and nothing has been leaked from them. Some of the alarm bells arise when, for a political purpose, people may want to put somebody before a body and then an election might finish and it all just fizzles.

Ms GRIFFIN - Certainly some of the hearings in recent times in relation to some of the matters that ICAC has dealt with have been the whole way through the hearings very public and media-orientated. I suppose in that way in a sense whether it should be sensationalised or not it is and hence again with the matter that this committee dealt with in the last term of Parliament about setting warrants and protocol that is there because there wasn't one in relation to that. But I don't think that ICAC and the Parliament will ever agree on parliamentary privilege.

Mr MARTIN - How many times has ICAC investigated issues of breaches of conduct? Is that a regular occurrence?

Ms GARDINER - It hasn't occurred in this Parliament. In the previous Parliament there were a couple of issues.

Rev. NILE - Then you go to the code of conduct. There were two members previously - getting back to the improper use of parliamentary allowances. There was the grey area where the member said, 'I used it properly' and they said, 'You didn't use it properly'.

Ms GRIFFIN - In the previous term it was Peter Green and Malcolm Jones.

CHAIR - And both of those matters were about parliamentary allowances?

Ms GRIFFIN - Yes.

Ms GARDINER - The Malcolm Jones case came back to the House because in that case it was a breach of the Parliament's code, therefore the Parliament should judge. As it turned out, in a matter of minutes or an hour or so before the vote was to be taken he had his day in court, so to speak. All the members who wanted to speak could speak, the House was about ready to resolve the matter and he chose to resign before the vote.

CHAIR - Did he do the numbers?

Ms GARDINER - The question was that he be expelled.

Rev. NILE - The problem was that it became tit for tat. Some members had made complaints against other members and other members had made complaints against them.

CHAIR - Thank you all very much for your time. I know you are busy and have a busy program so thank you for taking time out to come and tell us about the Privileges Committee and ICACs today.

DISCUSSION CONCLUDED.

DISCUSSION WITH Mr RICHARD AMERY MP, Mr PAUL PEARCE MP, Mr JOHN TURNER MP, Mr GERARD MARTIN MP, AND Mr FRANK TERENCE MP.

CHAIR (Mr Wilkinson) - Thanks for coming along today and giving us your time.

Mr AMERY - We have had ICAC inquiries into the tendering processes within State rail authorities. We have had various government agencies involved in ICAC reviews. How are those matters dealt with in Tasmania now? Obviously you have judges and retired judges who do inquiries and so on but how are the continual inquiries into those sorts of issues handled in Tasmania?

CHAIR - If it is government money there is the Public Accounts Committee, as you would be aware. A couple of things have been coming before the Public Accounts Committee and that is one of the watchdogs. We have Parliament itself, both Houses. We have select committees that can be formed to look at issues. We have Government Business Enterprise committees where you look into government business enterprises or State-owned companies. We have the Privileges Committee, an Ombudsman, the police and I suppose the media. So they are the watchdogs at the moment. Some would argue that we should resource the Privileges Committee better and let them do the job, or resource the Ombudsman better and give them extra powers to do the job, as opposed to starting up an ethics commission or an ethics committee or whatever you might call it.

Mr AMERY - In the lead-up to 1988 election when the Labor Government was defeated, corruption issues - whether true or created - were very much in the headlines for a number of years. That brought about a policy by the then Coalition Opposition going into the 1988 election that if elected they would set up an independent commission against corruption which would be our next expansion of all these other facilities. All those matters that you have already referred to did exist in the 1980s, but this was to take it to another level. There had been the Fitzgerald Inquiry in Queensland so it was in that environment that the ICAC was formed. It was a political decision by an opposition and they implemented that in their first term office.

Obviously it took over the roles of many of those other instruments like the Ombudsman - we have had an Ombudsman here since the 1970s - and of course the police inquiries and various inquiries that were set up. One of our former premiers stood himself aside whilst there was an inquiry into allegations in the early 1980s. He was exonerated but there was a process. We did have processes and I suppose the ICAC was a policy which brought together all of those powers, and also gave them some strengthened powers, particularly in the definition of corruption - what is corruption and issues like that.

Mr TURNER - You and I were original parliamentary members of ICAC when it was formed. You were the initial chairman, weren't you?

Mr KERR - That is probably the background to it. There was a parliamentary committee set up to oversight it and there is now an inspector-general, which is what should have been put there in the first place.

Mr MARTIN - That is recent but it has been a good thing?

Mr KERR - It is an excellent thing - in the last couple of years.

Mr TURNER - The model was based on Hong Kong ICAC but without the rigour that they have. They plucked them off the street and put them in a cell. They had a look at that earlier in the piece. The architecture of it is modelled on that.

The current chairman is talking about having a review at some stage because it is nigh on 20 years of operation. As you know we cannot interfere with the investigative proceedings of ICAC and that is where the Inspector-General I think has helped us a lot. If members agree with the process we then refer that to the Inspector-General, who can go behind the process. That has been a very important change to ICAC.

Mr HALL - We only have a very small Parliament and we were trying to work out when the Privileges Committee actually last met. It was some time ago. I would ask the question whether it should be a joint House committee, whether you need two separate committees or do you prefer to have the separation of powers?

Mr Gerard MARTIN - We have an upper and a lower House privileges committee.

Mr HALL - Yes, you do. So they are slightly different names.

Mr Gerard MARTIN - Yes, that is a quirk of this place. In your terms of reference for this committee you are talking about ethics and standards rather than corruption as such. I take it from what you said you really are looking at an independent corruption watchdog rather than privileges and ethics having an oversight. Or are you just open-minded about that?

CHAIR - Probably open-minded. It would seem there is no real systemic corruption going on. It would seem that there are jobs for the boys; things are not done with proper process and transparency and that has led people to believe they have been wronged. A couple of decisions have been made which, though not criminal you could argue, were certainly very poor decisions. Whether they amount to criminal negligence, I would say 'no', but they are certainly negligent. Because of what has happened with the pulp mill issue and the TCC, people are saying things are a bit crook and therefore we need an independent body to ensure that this does not happen, to ensure that we are going to get a fair hearing if we want to make a complaint to somebody.

Mr PEARCE - I was not in the Parliament at that stage. I am a relatively new member. I was, however, on a council at that point, and was deputy mayor. The council I was on was one of the earliest matters that went before the ICAC. We actually initiated the process against the individual involved, the council officer. However, putting on my hat, if you like, as a civil libertarian I found it a fairly offensive process. You have a body where the normal rules of evidence did not apply. What would be considered fair process frankly was not applied. Subsequently, as a result of the matter relating to Nick Greiner, the powers of that body which they were perceived to have under the first commissioner were significantly constrained, I believe quite correctly so, because it was not a body which was capable of making a finding of guilt or innocence.

My view on the ICAC if you are going down this path is, why do you need it? In the public mind, there is a perception that corrupt conduct under the ICAC legislation equates with corruption under the Crimes Act. It does not. Corrupt conduct, whilst it may encompass some level of corruption, also equates to things such as maladministration, which are the sorts of things that you are suggesting. My recollection is that the Queensland body actually talks in terms of maladministration rather than corrupt conduct. Corrupt conduct is something of a red light for every one. I think that is something you possibly should look at.

You also have to make the decision about where you are heading with this. This is personal; I am not speaking on behalf of the committee because everyone has different views on this. If you are heading down the path of wanting a permanent commission of some description to go after maladministration then you should make it explicit that that is what it is. The problem I find with the ICAC in New South Wales is that it is a permanent commission that seems to go after a whole raft of things, and some of those things are in fact criminal. However, because of the processes that the ICAC go through to reach their various conclusions and reports, subsequently no actual legal action is able to eventuate. Some of the corrupt activities, as in the Crimes Act, really should have been pursued by the policing process and gone through the normal judicial process, rather than have a situation where somebody is held up there, this has happened, and then nothing happens. The public loses faith in that situation.

On the other side of the equation, quite often a person's reputation could be traduced through the ICAC and then nothing eventuates because there's nothing there, but the mere fact that they've gone before the ICAC and been subject to an inquiry in the ICAC - that then comes into that issue of whether you hold hearings in public or in camera. You have to look at how that's going to impact on people's reputations.

I notice in some of the paperwork we have here, I think a barrister, Mr Barns, raised some of these issues. Whilst I think he was being fairly jocular in some of his responses to the inquiry, I think some of the essence of what he raised there is quite valid and in my view should be taken on board. Do you need this, because the ICAC was modelled on the Hong Kong model, which was effectively trying to deal with the Triads, and is in many ways a bloody great sledgehammer to crack a very small nut.

People have different views as to the state of New South Wales in the 1980s. As a Labor member, I have a totally different view, I suspect, from some of my colleagues, but it still is an extraordinarily powerful instrument and as a part of the Executive and its role and its capacity to intervene in the legislative process, or with legislatures, I think is a problem and is something that really has to be looked at.

Mr KERR - I wouldn't disagree with any of that. I would also mention that it has the capacity to poison the political climate there because - and they've never had an answer to this - somebody on the council, somebody in public life can say, 'I've referred you to the ICAC', which is factually true. The fact is that there's nothing in it and never will be anything in it, but the initial announcement of the referral to the ICAC gets lots of publicity.

Mr TARENZINI - The new member of parliament who chairs the committee - and Richard Amery has summed it up fairly well - back when this commission was put together in

1988, there was an extremely widespread perception that there was some corruption and all sorts of activities going on in the Government and public service about bribery and jobs for boys and all those sorts of things. So it was very much in vogue to put this commission into place, and its main priority was to expose corruption. If you look at the act - and it is still there today - it is to investigate and expose corruption, so there was a big emphasis on the public hearings; to bring people before the public to expose them as to what was going on, whether someone was taking a bribe in Railcorp, or whatever it was called back then, for example.

That was the big emphasis, so it is a very powerful commission with powers exceeding those of the police to force people to answer questions in public, although that evidence couldn't be used against them to incriminate themselves for the exposure side of it. That was the big problem. What Paul and Malcolm said of course was very true, because people would be dragged before the commission and be exposed. That was supposed to act as a deterrent for anyone who was of like mind to go ahead and do something, and there was a definition of 'corruption'. The definition of 'corruption' didn't mean that you were a corrupt person naturally, it just meant you fell within the definition of 'corruption' which is still there today.

Over the past 20 years a great deal has changed, and there is no longer a main emphasis on exposure and public hearings. If you look at the way that the commissioner runs ICAC today, there are a couple of fundamental changes that have taken place over the last 20 years. One of them is that the examination in private is used much more, and that is a good tool because -

CHAIR - And that's fair, isn't it?

Mr PEARCE - Yes.

Mr TARENZINI - what happens is that the commission will get a notification from a government department or agency or a member of the public. They'll conduct some investigations, and there are secrecy provisions in the act to do that. Then if they feel it's necessary to go on with - and, mind you, they get more than 2 000 complaints a year and investigate about 2 per cent or 3 per cent of those, so a lot of them are not substantiated. It doesn't get rid of the problem that Malcolm talked about because it referred to ICAC, but that is what happens. They will investigate about 2 per cent or 3 per cent of those. If they have enough information they will conduct a private examination. If that is sufficient to enable them to go forward from that, then they might use the public hearing as a further investigative tool.

A public hearing can be used to have people give evidence to vindicate themselves. A public hearing can be used as evidence to attract witnesses who want to come forward and give further evidence. There are a whole host of reasons, and that is another investigative tool. The way the commission runs at the moment is that if it gets to a public investigation, in all the ones I have seen it results in people being recommended for consideration by the DPP for charges and recommendations are put back to the agency to improve those practices that would have this not happen again.

Alongside that, during the investigation, which is very important, is the education side of ICAC, which means that not only do they have an education crime prevention officer

along with the investigators but they form those recommendations during the investigation - so in the final report there is a whole list of recommendations for the agency to adopt - but they also travel around New South Wales and give seminars to local councils and agencies about what practices to put in place. There is a whole host of publications they put out for agencies to adopt for corruption prevention, so they perform both an investigative role and an educative role that run alongside each other.

Where we have got to now with ICAC is that the public hearing side of it is very much at the end of the line, and only when there is sufficient evidence to go to a public hearing. What happens now at ICAC is that they gather admissible evidence along the way and they are much more likely to be able to quickly give a brief to the DPP. As a matter of fact, one of the main problems of ICAC is waiting for the DPP to get back to them to see whether or not they are going to charge someone with an offence. So it has moved a long way since the beginning and the simple public exposure side of it; it is now more of an investigative body to gather admissible evidence to result in charges and it works very well in that regard.

In Tasmania - and I think Paul is correct - you are going to have to decide what level of corruption you have to see if it is worth setting up this commission for investigative and educational purposes. If you feel that there is a perception in the community and the Government feels it is at a level where it is a significant problem, setting up a permanent commission is one way to go about it. I think what you should do is look at the way ICAC in New South Wales has travelled over the last 20 years, how it has gone from that emphasis to the new emphasis, and look at that. If you are going to have a permanent commission, which is really a permanent royal commission at the end of the day with the powers it has, I think the way the current commissioner runs it is probably the way to go.

They do about six or seven reports a year. We have reports of Railcorp, for example, who feature regularly in ICAC about corruption in the contracting out of services that would never be detected by the police. This has cost us millions and millions of dollars a year but they would never be investigated by the police if it wasn't for people reporting it. They do investigate very important matters within their resources, but they look at many things that would not ordinarily be detected. I think they do perform a role but if you are going to go that way, to form a commission commensurate with the size of your problem, I would look at that history because it could save you a fair bit of trouble.

The way it was operating 20 years ago, it was really a case of getting people out there, dragging them out in public and exposing them and whatever the collateral damage was so be it, but now it has very much changed to a gathering of information first and then proceeding to a public hearing if necessary.

CHAIR - Should it still be a public hearing at that stage, though? My prima facie view would be that it should be a bit like your NCA - there is the inquiry done and it is then up to -

Mr TERENCEZINI - The problem with that is - I know what you are saying - in the act it says 'investigate and expose'. Now the commissioner says that is our objective and there is still an element of exposure. It is a policy question from the Government whether they want to include in the act the exposure part of it or whether they want to simply go

private. If they go to simply private there are going to be people saying, 'We don't know what's going on'.

CHAIR - But the argument could be that the exposure comes only if they find anything. Or alternatively, if they do not find anything, that is the exposure again, to say, 'We have looked into the incident and found nothing whatsoever'.

Mr TERENCEZINI - Exactly - and the commissioner does produce reports that have never gone to a public hearing to vindicate people. So I think that that current commissioner is operating it very well to get that balance between the protection of people's reputations and letting the public know that there are things going on out there and that we are onto it and are fixing it. That is a very difficult balance to attain if you are going to have a commission.

CHAIR - With that direction to 'investigate and expose', is that in the one sentence? In other words, when you investigate do you expose, or do you only expose after you investigate?

Mr TERENCEZINI - That is a matter for the commissioner.

Mr TURNER - What happened 20 years ago is we had a zealous commissioner and a zealous assistant commissioner who were setting their reputations and of course were exposed immediately and took down a premier, who was subsequently vindicated, but it was far too late. I think out of the 20 years that I have been on and off this committee - I have been on it 18 of 20 years - the change that Frank just outlined of how the operations go is a great step forward.

Mr PEARCE - There is also one issue here, of course, in that when the reports are brought down and somebody is identified and there is a potential issue there and it is referred to the DPP, if the DPP decides not to act or, alternatively, if the matter is in fact dismissed in the legal proceedings, there is no mechanism to remove that stain on that person's reputation. Theoretically under the act I think the commissioner can withdraw but I don't think it's ever been done, so the stain that was identified in relation to former Premier Greiner remains - there is a report - notwithstanding that ultimately it was found that the commissioner had acted ultra vires.

Mr MARTIN - But his reputation's still pretty high, isn't it?

Mr PEARCE - He probably wouldn't have still been Premier anyway by this stage, but be that as it may - it was the political consequence of it. I had this discussion with the former commissioner. There is the argument that there is no sanction coming with the consequence of the ICAC in terms of a fine or imprisonment, but if you are talking about someone in public office, the sanction means they are no longer in public office and their reputation has been traduced accordingly, even if they are subsequently either not proceeded with by the DPP or ultimately cleared by the legal system.

Mr KERR - The number who were totally cleared by them - and it is on record that the ICAC made a mistake, but they will never get their reputations back.

Mr TURNER - Don Page, the member for Ballina, said to me some years ago now that he was caught up in this first round of things and there were reports in the local library and his kids go down and read that he is corrupt. Their dad's corrupt.

Mr TERENCEZINI - It is a feature of it. Even though I think the current commissioner is excellent and is doing all that can be done to achieve that balance, it is a feature of it that from time to time it will be used politically and the people who will be called will be stained. But that is a decision for the Government as to whether or not they are going to have this system. I do not think you can have one without the other. If you are going to make a decision to have a commission like an ICAC to solve a certain problem, you are going to have instances where those things are called into question.

I looked at it, this commission has looked at it - what is the answer to solve this problem? It is a problem - before every local council election the number of complaints to ICAC increases, because everyone uses it to -

Mr PEARCE - As part of their campaigning tools.

Mr TERENCEZINI - What is the answer? I don't know, but all I can say is how it operates today, how it has changed and what purpose it serves. It does locate a great deal of corruption.

Mr HALL - Of the 2 000 or so complaints that are made, what percentage of those would be local government complaints?

Mr TERENCEZINI - About 38 per cent or 40 per cent of complaints are about local government but those that are actually gone after are minuscule because they are not substantiated.

Mr Gerard MARTIN - I am not sure whether it was alluded to earlier but one of the problems you do have is that quite often the ICAC investigation prejudiced the police being able to get a case up in court because of the rules of evidence they use and such along the way. So some of them are as guilty as sin in front of ICAC but the investigation was polluted in terms of getting it into the court system.

Mr TERENCEZINI - They do much more covert investigation these days. They have very high tech sophisticated equipment to tap into phone calls and surveillance. All that evidence is okay; it is just that you cannot use the evidence you get under objection. You can force someone to incriminate themselves but you cannot use that evidence because it is under objection, you can use other evidence. It is no longer about having it all out there in public and now we cannot use it. It is much more a case of gathering admissible evidence along the way. That is the emphasis of ICAC these days because of the appropriate call for people to be prosecuted afterwards and that is why they have done that.

CHAIR - That is where the people would feel let down if there is a report from ICAC but there is the evidence that you cannot use because of inadmissibility. People would be saying, 'What's all this for? Where have we got?'.

Mr AMERY - The other challenge for the Tasmanian Government is one that your Treasury would put up about the cost of running a permanent department. As has been pointed out, it is virtually a permanently running a royal commission. This is a State of about 6 million with a \$45 billion budget for things such as that, so absorbing something like an ICAC into another bureaucratic structure may be something that you will look at.

Mr TERENCEZINI - It costs around \$15 million or \$17 million a year.

Mr AMERY - You may be able to get some of those powers and an ability to investigate built into some of your existing structures, which only are ignited every time an issue is raised. That may be more to the satisfaction of your Treasurer.

Mr TERENCEZINI - I do not know how much the inspector costs us a year but we legislated for an inspector. The job of the inspector, and it is in the act, is to look at any type of maladministration or excessive or inappropriate use of powers of ICAC. So we have this situation where ICAC is answerable to the committee, ICAC is answerable to the inspector and the inspector is answerable to the committee. We can ask the inspector how ICAC is travelling and put that in annual reports. They go into ICAC at any time and audit any of its operations, conduct investigations, put out reports on how ICAC is using its powers and whether it is exceeding its powers or whether there is maladministration or whether it is properly assessing matters to investigate or not. I think that is a very good idea and it reports to the committee.

We had a situation where a member of parliament back in 2003 had his parliamentary office raided by ICAC. They seized certain documents, for example, so all matters of parliamentary privilege and application of the warrant were brought into question. He investigated that and put forward a report. I would hope that after some examination of his report we would come up with some recommendations on the processes in ICAC to obtain a warrant to do that.

I think that was a very good idea - someone overseeing the overseer. We are able to get a great deal of information from the inspector as to how ICAC is operating because without the inspector it is virtually impossible to tell. You certainly do not get how it is operating from the yearly report, I can tell you that.

Mr MARTIN - I am finding this a fascinating conversation. There are two or three years of issues in Tasmania that have led to the public perception that there is something wrong. I have been pursuing it as a private member. I got to the stage where obviously the Government was not going to do anything so I had a private member's bill prepared. It is a hybrid but based significantly on the New South Wales ICAC. I have not bought it on because other issues came up and this committee is the result of it.

I am basically by nature a libertarian, but part of civil liberties is good governance. So I have had this conflict. The criticism of the New South Wales model is always the Nick Greiner issue.

Mr AMERY - There were a few others.

Mr MARTIN - Yes, and I am not so familiar with others. Further criticism surrounds what has happened in WA with the leaking of stuff to the media and the ruining of reputations.

It is my perception from reading the history of New South Wales that it has come a long way from the Greiner days. From a civil libertarian's point of view, do you agree?

Mr PEARCE - I think what Frank has identified is quite correct, that it depends to some extent on the personality of the commissioner. The point made earlier in the piece was quite accurate. It was a bit of a show pony event to begin with. So the personality of the commissioner is important. I agree with Frank; there has been significant improvement in procedures and the role of the inspector I think was a very good move. It is possibly something that should have been initiated in the first instance.

Frank alluded to the matter of the raid of the office of a former MLC. This really does call into question that other role of the ICAC as a part of the executive and its relationship to the legislature and its relationship to individual members acting as members of parliament. There is an issue there because when you look at what the public perceives to be corruption, that can vary from the bag of money to somebody doing something unethical and all points in between. It is a question of where you draw the line in terms of this very powerful commission, and in that instance they clearly, in my mind, overstepped their role. Others may dispute that but I think they overstepped that role. I think that sort of issue was one that would be more appropriately dealt with by a privileges or ethics committee of the parliament, respecting the separation of powers between the executive and legislature. Possibly you have to look at what is the role of your ethics committee in your parliament. Do you go down the UK model where you have a parliamentary standards commissioner to look at that area which is not corrupt in any normally understood sense of the term but is perhaps unethical or something which is causing unease with the public. As it currently stands, in a way the ICAC theoretically has the capacity to cover all those points, although I think the ethics committee has some role in the ICAC legislation in relation to parliament.

Ms MILLER - Yes.

Mr PEARCE - In the act. That is where it becomes a very grey area. The situation that Frank alluded to was one where I think the ICAC was well and truly outside of its area.

Mr TEREZINI - The report is out. The words were that there was a rush of blood to the head of ICAC to go off and do this. There was no adverse, substantial evidence finding against ICAC but the processes were all in place. I think it is a case where the ICAC had that sudden rush of blood to the head and went out and raided this thing. It was more to do with the processes involved. For example, there is a protocol in Federal Parliament when an investigatory body wants to search for documents in offices of members of parliament. There is no such adopted protocol in this parliament although a protocol to adopt has been put forward by the committee. I do not know where that is actually up to but there is a protocol and I think it is good protocol. ICAC has had some feedback on that and I think that should be adopted. For example, you cannot stop ICAC from coming into Parliament and raiding or searching an office, but there were protocols to be put in place because there are documents that will attract parliamentary privilege and that should not appear. That is the key to it and that is what came out of the processes involved. Hopefully out of that we will have the right protocols and processes so that they will be followed.

Mr MARTIN - Is this a public document?

Mr TRENZINI - Yes.

CHAIR - This public standards commissioner is an interesting matter. Have you any information in relation to that? You were saying it was the United Kingdom system.

Ms MILLER - The Parliamentary Commissioner for Standards in the United Kingdom, as opposed to our ethics adviser, is quite different.

Mr PEARCE - The UK Parliamentary Commissioner for Standards is a very powerful figure that was set up as a consequence of the cash for honours allegation et cetera that occurred in the 1990s. I think ultimately a couple of lords finished up in the nick. That is a very powerful body. That was initially also subject to criticism, as I recall, insofar as they appeared to be treading beyond or into that area of parliamentary privilege, which is jealously defended. So, again, you have to look at that. That, again, was set up as a consequence of public and actual concerns about what appeared to be very corrupt practice.

CHAIR - Did that commissioner have the same powers as the ICAC?

Mr PEARCE - I think in relation to parliamentarians it could arguably have more. It was a pretty powerful body.

Ms MILLER - I do not know that they used phone taps but Elizabeth Filkin used all the powers she had learned as a tax commissioner to double-check. Elizabeth Filkin's findings concerned the evidence she received from a member of Parliament, who claimed that they did not spend their time at residence A as opposed to residence B. It was all about members' entitlements and that commissioner has the power to investigate complaints. She said that she had this investigatory complaints handling because under Thatcher you could complain about anybody. She said that there had to be a facility to complain about members as well. She went behind the evidence a member had given. She looked up where they registered their car or something and it proved that they were staying at residence A and not B and the members were very affronted by this. So after that they changed the resolution in the House of Commons. They changed the Standing Orders so that the commissioner must do a fact-finding report, which would go to the Privileges Committee to report on. So the member could then appear before their own committee and that, under privilege, the parliamentary committee would be judging their own member.

CHAIR - One of the arguments that could arise if you just use your present system is that it is not independent. It is certainly a body. It is a body of parliament but it is not independent of parliament. People, perception-wise, could say they are just looking after their own, like they do with lawyers. Therefore there is that perception issue about independence.

Mr AMERY - The police have that separation?

Mr MARTIN - That is a bit debatable in Tasmania.

Mr Gerard MARTIN - You said there was a perception, and probably more than a perception, that there are two or three major issues in Tasmania -

Mr MARTIN - Seven or eight.

Mr Gerard MARTIN - We all know about the pulp mill. Would it not be prudent, firstly, to have some judicial inquiry to test one or two of those to see whether there is a level of corruption?

Mr MARTIN - This is my normal question with the committee members.

Mr Gerard MARTIN - Coming out of that you would have an idea whether one is needed. An ICAC is a long, torturous and costly process; if you're going to do it you are going to have to resource it properly.

Mr MARTIN - There has been a case put forward, including from the State Government, that there should be a line in the sand drawn; that if we do recommend an ICAC or a body, that the body should look forward rather than back.

Mr PEARCE - Probably not retrospective.

Mr MARTIN - Yes. Some very well known academics have suggested that to create the line in the sand there should be a commission of inquiry or something to look at the issues over the last two or three years, regardless of whether we set up a body. Have you any views on that?

Mr PEARCE - If you are going to go down this path that's probably a way of approaching it. It depends on the definition of the offences under the legislation. The ICAC definition of 'corrupt conduct' is much broader than corruption, so if it was to be applied to things that had already occurred, you're probably criminalising behaviour that wasn't criminal at the time. It may've been unethical, it may've been maladministration, it may've been of concern to the public but it probably wasn't criminal. So, that's the argument for a line drawn in the sand. Issues don't suddenly start on the first of July, if they've happened on the 29th of June as well, so obviously there will be issues that are going to run on. The question then is: okay, so you've exposed this; what's the consequence of that, if it's happened before this date is it simply an exposure and that's the end of it or if it's after that date does it then go on to the next stage to the DPP or whatever? I think that's where you have to draw the line.

Mr MARTIN - That's right.

Mr PEARCE - It's a hard one -

Mr MARTIN - Yes.

Mr PEARCE - because somebody might be operating on the edge but operating within the law; within the letter of the law but not the spirit.

CHAIR - One of the matters that arose ended up going to court; the person involved ended up pleading guilty; the judge really said, look, this is such a minor matter; what are you here for anyway and gave him a good behaviour bond and no conviction.

Mr MARTIN - There was a member of the public, a former minister and the other person who was charged was the deputy premier, who resigned. There were two hung juries and yet there are still all these unanswered questions.

Mr HALL - You've had an ICAC for 19 years and seen how it has evolved. Generally, as members, are you happy that now where it sits the balance is pretty right?

Mr PEARCE - In 2005 we had an independent review of the act done by Senior Counsel, Bruce McClintock, who looked at its objectives and came back with a series of recommendations. He looked at the definition of 'corrupt conduct' and didn't recommend any real changes to that; he looked at a few other issues that he did make recommendations on, but no substantial amendments to the act and how it was operating. I think the thrust of his report, which is publicly available and it would be good for you to read it, is that if you are to have a commission like this operating then there are certain irreconcilable issues that you're going to have to live with. You will have to have public hearings and he looked at that issue of public hearings. He well understood that people would be called before public hearings. He looked at the way that the commission was operating with its private examinations and how it was moving to public hearings only when it was in the public interest to do so. He did recommend changes to a section of the act that gives a list of things to look at with the move to a public hearing. It's not an exhaustive list but it's a list of things that he has to weigh up when he goes to a public hearing and they're contained in his reports. He looked at all that and he still came down on the side of having a public hearing but there were no substantial amendments. So, he has recently looked at it. As a committee, we are going to look at it as a 20-year review of ICAC and probably take up a few of those options. My view is that he didn't look at it as much as he should have, but generally I think the thrust of that is that there's no substantial change to be made. He was happy with the general objectives of the act. He made a few recommendations but for my part, as the Chair putting out a couple of reports, apart from a few little minor changes to the act, as a general concept I think it is operating the best it has ever operated and striking that balance.

You can always make a few changes but I think it's all right and it does depend on the commissioner. The commissioner drives it; he puts the strategy forward. The commissioner we have is a very good one who is very conscious of limitations of the powers that the ICAC has. I think there will always be people who don't like the idea of having a separate commission like this but I think it performs its role. You don't have one, I think -

Mr HALL - No. Thanks for that answer. It was quite rightly pointed out by a couple of other people that because we have a smaller jurisdiction, we have to look at the cost implications and all those sorts of things. Could I then say that another major jurisdiction in Australia, which of course is Victoria, doesn't have anything set up. They have had a lot of issues with organised crime, they have the Pirhana Task Force which seems to do that. They seem to be travelling okay, whether or not they have any ideas of setting something up. Here we are, a smaller jurisdiction like Tasmania, so do we really need it? I don't know whether you've had any feedback or any thoughts on that at all.

Mr TERENCEZINI - Do you want an ongoing independent commissioner with very strong powers to continually investigate complaints and put things on show in public and attract the media, so that the public might think, 'Beauty, that's another bloke caught', or whatever on the legal side of it? Do you want that kind of -

Mr AMERY - If you have a permanent op, once you have your report tabled and any action is taken on the pulp mill, if that's an issue - you mentioned the Deputy Premier or something like that - once you've put those major headline-grabbing stories or issues into a report and tabled them in Parliament and certain action is going on, if there is not, as you say, systemic corruption in the State then they will start looking at where the car is registered. They will be chasing some of the issues that it was driving up.

Mr TERENCEZINI - If they haven't got the big-ticket items in place, people are going to be ringing up and saying, 'Look, I think this has happened'.

Mr AMERY - You mean set up a rules committee, like what sort of assets, sporting clubs - what do they do?

Mr KERR - Because they are under pressure to justify their existence to get a major scalp. If you get a commissioner who gets a rush of blood to the head, it is an enormous amount, so it is very expensive to do.

Mr AMERY - There are half a dozen cases I could raise about the bad old days. There was the Nick Greiner case. Whilst he was exonerated by a court - whilst the processes were overturned - that man's career was trashed. He was a recently elected Premier who was driven from office.

He won his day in court but it was like having a posthumous pardon, really, and there were a couple of other cases following it. The now Commissioner of Corrective Services -

Mr MARTIN - Could the Nick Greiner thing happen today?

Mr TURNER - It would probably be not as grand as what it was in the sense that it was an open public hearing whereas a lot of it would now be done behind the scenes.

Mr TERENCEZINI - No matter what commissioner we got, I couldn't see it going back. The whole thinking and culture of ICAC when it first started was to root out this corruption, go big time. It was politically right to do that. It was a big sensation. We have come a long way since then.

I really don't think it would be anything like that. With the processes that the commission has put in place I don't think any commissioner would go back to those days. I think they would follow all those procedures, just like they do in any other corruption case. The media attention will obviously still be there.

Mr AMERY - The other ingredient in any crime case was a hung parliament. Between 1991 and 1995 we had a coalition government with a minority, we didn't have a majority. Therefore the independent members of the House, using the ICAC recommendations as a

weapon and not waiting for any court process, said, 'We are in opposition so we are going to have a big scalp of the Premier. There will be a no-confidence motion in the House and unless he resigns'. So whatever the structures are in place it is how those structures are used and the political climate at the time. There have also been a couple of other cases involving MPs, ministers, and things such as that which are things that you should study very closely before you go down the path of ICAC. Picking up the chairman's comments, don't crash your normal processes, rules of evidence, definitions and structures that are already in place because you would start washing away some of the protections that are built into our legal and political systems.

Mr HALL - The other concern I have is about investigations done in private. In a small place like Tasmania obviously investigations start, there are documents perhaps, and questions from the public sector and next minute the media have a grab and away it all goes -

Mr TERENCEZINI - We have secrecy provisions for that. It is an offence to divulge any information about that. That is in the act. No head of department or no person under investigation is allowed to tell anyone about it. It is an offence. As you were saying, some people make it public for that political thing. It is not unknown in the Parliament for people to send something to ICAC, knowing that nothing is going on, to get it back and then say they have been vindicated. ICAC does not make orders of acquittal or vindication or anything like that, they just say that this person is either not under investigation or this person has not been adversely mentioned. They do not make orders such as acquittals or vindications or anything, but that is used for that purpose.

Mr AMERY - It is a wonderful political organisation; there have been great improvements and we would like to think that some of the bad old things are of the past. ICAC is a wonderful thing for both oppositions and governments. If you are in government and allegations are made it is good to be able to say we are referring this -

Mr TURNER - That mirrors us in the House, then we can't argue the point.

Laughter.

Mr AMERY - Of course if you are in opposition and you want to give the Government a bit of a hit you say the Opposition wants to refer this matter. Unfortunately ICAC is used in the political battles as well and we cannot regulate or review that out of existence. It is a reality of the political landscape.

CHAIR - I know time is of the essence to some degree so thank you very much for your time, but it seems as if you are saying that when ICAC started there were good reasons for it to start. There are matters that always happen as institutions and bodies evolve and it gets better with the passage of time, I suppose, but in the end the question for us is whether we have one or whether we don't.

Mr PEARCE - Jim, that is the point I was going to make. You have to make a political decision first up as to whether you have one. Is the problem or the perceived problem big enough to warrant what is a very powerful permanent royal commission? The cost is going to be a consideration for Treasury -

CHAIR - That is right.

Mr PEARCE - but the real issue comes down to whether or not you think you have so much of a systemic problem that you need a permanent royal commission to deal with it. If the decision is yes, well then you have to look at the sort of suggestions that Frank has brought up and the way the ICAC has developed over the 20-year life.

The other thing I would flag is that, given that the law is pretty complex for those of us who know it, for the general public and the media it is presented in a very simplistic form so I would be very wary about the terminology you incorporate into any legislation. You put the word 'corruption' in there and that has all sorts of connotations for people. If you look at how corrupt conduct is defined under the act there is a whole raft of things there that are not what Joe Public out there thinks of as corrupt. They might think it is dodgy, they might think it is maladministration, they might think a whole lot of things but they don't think it is a bag of money. Corruption in most people's minds is a bag of money.

Mr TARENZINI - Mind you, having said that, section 12A of the act does say for ICAC to investigate 'serious and systemic' and we plan to change that to 'serious and/or systemic' so they don't look at someone who is using too much paper at the photocopier or something like that. It is supposed to be serious stuff they look at and they do that anyway but that is taken care of that way.

Mr PEARCE - If you go down this path make sure that the terminology you use is actually what you are aiming to get after and not something that will grab the headline. That was one of the concerns I had with the name of the committee, the Independent Commission Against Corruption, because when you look at it and you look at what corruption is, things do not line up. I think that Queensland has different terminology arising from a not dissimilar set of circumstances.

Mr MARTIN - Have you got a suggestion about names?

Mr PEARCE - I like the Queensland one - Crime and Misconduct, CMC, because you are covering two bases. We have the Independent Commission Against Corruption, and that is pretty bold. So it is terminology, because that then colours the public and media perception of what is going on.

CHAIR - We have another one - the Tasmanian Public Accountability Commission.

Mr PEARCE - Yes.

CHAIR - You know, what is in a name, but something is in a name, I think.

Mr PEARCE - Because the media run with it and you have to accept that the fourth estate has a significant role in the way people perceive what is going on, and in fact, the way that certain things are occurring. There can be bad political decisions which are not corrupt, they are just simply bad political decisions. That is why we have elections, to get rid of governments - and I don't want any comments from you.

Laughter.

CHAIR - Thank you, gentlemen, for coming along. I know that you are busy but thanks for your time today; it has been great. It has been very helpful.

Mr TURNER - On a more light-hearted note, do not go down the way of Scotland where the chief minister of Scotland, or whatever he is called, was under investigation when we were over there a couple of years ago because he cannot receive gifts, and his wife gave him a painting for Christmas so he was under official investigation.

Ms MILLER - And he put it on his Christmas card.

Mr TURNER - He put it on his Christmas card and he is under official investigation for receiving a gift without -

CHAIR - That opens up a whole new ball game!

DISCUSSION CONCLUDED.

DISCUSSION WITH Mr IAN DICKSON, PARLIAMENTARY ETHICS ADVISER,
PARLIAMENT OF NEW SOUTH WALES.

CHAIR - Ian, thanks for coming along. As you know, we are looking at whether we need a body and if we do, how it should be made up and what it should be doing to solve what are issues which I think are to some degree a bit like what Paul was saying - bad decisions, maybe jobs for the boys, a bit of cronyism, a bit of negligence, albeit probably not criminal negligence. How do we go about stopping the public perception that things are crook?

Mr DICKSON - Public expectations are broadening in these days, of course. They might be orientated by the media or something but the public is always looking at issues where they think something is wrong.

I was a career public servant for 45 years, and for the last 15 years I was Electoral Commissioner, so I had some form of independence. This position of parliamentary ethics adviser I think was created in 1998 as a result of some ICAC intervention that they should have someone there to provide advice, not legal advice, but advice in relation to aspects of the guidelines, the parliamentary handbooks, the codes of conduct - and there is a separate ministerial code of conduct - and ICAC reports, whatever they might be. So if a member comes to me seeking some form of advice, I provide that advice in writing, if necessary, and it goes nowhere from there; it stays in my records. I prepare a report for the Parliament which goes through the Speakers of both Houses annually, but, again, it is statistical report. I handled 24 cases of questions asked by members and I gave advice in 22 of them, or whatever it might be. So it is a series of statistical documentation without releasing the information.

CHAIR - Do you say what the query was, as an educative role to others who might have the same query?

Mr DICKSON - No, I do not put that in my parliamentary report. I do discuss it with the clerks because I have an agreement with the clerks of both Houses which puts my position in a status and I discuss matters which have been raised in general terms, throughout the year, with the clerks. It might be that they recirculate the guidelines. If I think there is something that is cropping up every few months, such as a matter dealing with parliamentary resources, I might suggest to them that they recirculate those guidelines. If necessary, I can go to the Parliament through the Speakers and say, 'I think the Parliamentary Privileges Committee should have a look at such and such an issue.' It might be a pecuniary interests register or whatever it might be.

I am not a watchdog for ICAC. In other words, if a member comes to me with a serious problem, I do not run off to ICAC, otherwise the members would not come to me, and ICAC understands that. I do have meetings occasionally with members of the ICAC to outline where I am and they ask me where things are going, but I am not a watchdog for them. I talk to the member and we try to straighten out the problem as best we can and generally it does not become an official matter. For example, a member might come to me and say, 'I have mixed up my work frequent flier points with my personal frequent flier points and I don't know where I am. I'm not supposed to use them for public means, where do I go?' It might be a case of my saying, 'If you have a holiday coming up or

whatever it might be, a private one, straighten out your parliamentary frequent flier points and we'll leave it at that.

Issues relating to gifts and benefits might arise. The issue of tickets to football games, or when the Olympic Games were on here. Most of those I found were okay. It is when they got into packages and things like that -

CHAIR - Such as?

Mr DICKSON - Such as a weekend stay somewhere or something like that, that might have come through a particular industry that might have been attempting to woo them, but otherwise it could have compromised the member. But generally I have no problems with gifts. You might get potentially serious cases whereby a member might be compromised by a local person - they might be given something in a shop or something like that and they go up to the counter, the shop might be crowded and the owner of the shop might say, 'That's okay, you don't have to pay me.' Not wishing to make a scene, the member might pick up his parcels or whatever it might be and walk out, but once he gets out there he thinks, 'What have I done?'. So we have a process by which we have suggested to them that they make a donation of whatever the amount was, or speak to the owner of the shop privately and let them know that is not the way things should be done. It might be an ethics issue, where it traditionally might be done in some countries that they do get these gifts, but it has the potential to compromise the member.

Mr MARTIN - The difficulty with ethics is that everyone has their own set of morals, values and ethics based on their journey through life and their backgrounds and so on. How do you make your determinations? Is that based on your own ethical code?

Mr DICKSON - Yes, I see there are two sides of ethics. There is a professional side of ethics; in other words, where people think, 'If I go down that path I'll get into trouble'. The other side is the moral ethics which might be formed by their background, their education and even religious reasons that says, 'I automatically will do the right thing; I am thinking of doing the right thing'. So there are two different sides but I don't attempt to apply my views onto them; I think that would be sort of improper, but it's basically what the public might expect how a parliamentary member might operate.

Mr MARTIN - So the reasonable person is your test?

Mr DICKSON - Yes.

Mr HALL - I don't want to get into your employment arrangements but I presume there's some sort of contractual arrangement -

Mr DICKSON - Yes.

Mr HALL - And you're on a retainer?

Mr DICKSON - Yes, an annual retainer.

Mr HALL - What percentage of your time would you devote to giving advice?

Mr DICKSON - Well, it varies, of course, from year to year. As I say, I might do 25 questions throughout the year; that might take 100 or 120 hours. In other years I might answer less questions but I might be more involved with the committees in discussing possible changes or matters which might have been introduced by the parliamentary remuneration tribunal or something like that - what path he is going to take in regard to benefits. As I say, I've retired and I have a few other things which I handle. I work generally from home or else I see the members at the House.

Mr HALL - Yes. In some cases, I suppose, if it's more of a minor matter, the member would go to one of the clerks. Does that often happen?

Mr DICKSON - If it's a question of how to complete a voucher or something like that for claims, you might go to the Clerk of the House.

Mr HALL - But generally do you find that the members do come to you?

Mr DICKSON - Yes, they do.

CHAIR - Do you keep a record of the information you supply?

Mr DICKSON - Yes, I do. I keep a record, whether it's verbal information over the telephone or whatever it might be. I prepare that and I keep it in my work situation. Every few years I'll deliver it to the clerks and I see that it is locked away; not open for general examination.

CHAIR - In other words, if you wanted to get some precedent - say if you recall 'A lot has happened in the Wilkinson matter since that advice two years ago; now, what was that all about?', you could look that up?

Mr DICKSON - Yes, I could refer to it. These days I have my own computer so I do have a folder with various things in it and other folders for something else. You can generally -

Mr HALL - So your role is restricted to members; it doesn't extend to any senior bureaucrats or anyone else like that?

Mr DICKSON - No. .

Mr HALL - You've had a career in the public service, as you said. Do they have an option like MPs?

Mr DICKSON - No, they don't. They're either directly - well, they are responsible directly with ICAC or the Ombudsman or whoever it might be. They are whistleblowers in themselves. The legislation provides for that. They may seek advice from the Crown Solicitor in regard to certain matters.

Mr HALL - I think one of the committees had an educative role. Do you talk to members every now and again?

Mr DICKSON - The clerks operate the education role. Occasionally I would speak to both of these privileges committees but not directly to new members. I'd advise the clerks.

Mr HALL - In my experience, when I came in there was no induction, nothing, and I came out of a career in local government - and Terry has too - where we have two or three days of induction, which is very handy, but just to come in cold is not the best way.

Mr DICKSON - Have you got a members' handbook?

Mr HALL - Yes.

Mr DICKSON - That generally sets out everything from your parliamentary office, your staff, travel arrangements, pecuniary interest registers. Do you have a code of conduct?

CHAIR - No, we haven't got a code of conduct. That's one of the things we're looking at. The lower House does, doesn't it?

Mr HALL - Yes.

Mr DICKSON - I do not think it should be too extensive a code of conduct. I think ours is relatively simple but it covers the issues and then you can go from there, whichever direction you want to go.

CHAIR - As Shane just said, we have Standing Orders but I suppose you could argue that that would be a code of conduct. No doubt you would have Standing Orders here but you have your code of conduct which is independent of the Standing Orders, which I have noticed.

Mr DICKSON - Do you have a parliamentary remuneration tribunal setting your salaries and your benefits?

CHAIR - No.

Mr DICKSON - Your Auditor-General does that, does he?

CHAIR - Parliamentary salaries were handed to a body at first. That body then came back with a decision and now it is prescribed in an act. We are on a percentage of what the feds get.

Mr DICKSON - That body is from Treasury or from Parliament?

CHAIR - No.

Mr DICKSON - Within the Parliament?

CHAIR - No. It is prescribed in the act.

Mr MARTIN - Their wages are a percentage of the national average.

Mr DICKSON - So you have a fixed procedure?

CHAIR - Yes, that is right.

Mr HALL - That was put before three industrial commissioners. It was not allowed at the time because there had been no review done for 10 years so things were starting to lag quite a bit. The Government of the day then referred it to three industrial commissioners who then made a determination and reset members' electoral allowances and, as I say, we are 85 per cent, or whatever it is, of the Federal amount and then it changed some of the other rules and put some CPI in there as well. So that is the way it is at the moment. There is nothing permanent.

Mr DICKSON - Are there any rules on secondary employment outside the Parliament?

CHAIR - No. I still do a bit of law. I get criticised for it sometimes but I still do.

Mr HALL - So it is strong here in what respect?

Mr DICKSON - There is a pecuniary interest register where they have to list all benefits.

CHAIR - That is the same in Tasmania as well. You have to list it. If you are doing anything else that has to be listed.

Mr DICKSON - They had a difficulty here with one member working with a particular legal company but he was getting work then with outside clients. The issue was, should those clients be listed in the pecuniary interests? He was actually dealing directly with the client and not through his legal body. So that became an issue.

The ministerial code of conduct is an interesting one. That is an addition to the code. That generally is run by the Premier or the Premier's department itself and not within the Clerk's. But I am referred to in it so I have some involvement with the ministerial code. These might be issues where a minister has to indicate the benefits that his family gets. In other words, if his spouse works, if his spouse has shares, his children have shares, they all have to be registered. More recently they have introduced for ministers what is called post-separation employment. That is my biggest workload at the moment. In other words, if a minister is retiring, leaving Parliament, they have to come to me with regards to taking up employment outside, let us say, retirement.

Mr MARTIN - They have to come to you?

Mr DICKSON - As to whether I am satisfied that they can do that without causing difficulties with regards to what knowledge they might have, your background information and issues with regards to that. They can leave it for 12 months and not work and then take it up without coming to me but within that 12 months they are supposed to come to me for advice. I might say, 'Do not take it up for three months, do not take it up at all because it is too close to the work you were doing as a minister. The perception might be there that there was a deal arranged'. It has not arisen yet but they are some of the provisions. It is based on the UK model.

Mr MARTIN - Do they have to follow your advice?

Mr DICKSON - No. The only penalty is really name and shame - in other words, if the media picks it up. There is no other penalty. The other issue is that it might embarrass their potential employer.

Mr MARTIN - Do you want to express an opinion about the strengths and weaknesses of the New South Wales ICAC?

Mr DICKSON - Initially the first commissioner indicated that it wouldn't necessarily continue after five or seven years. But obviously it is still running.

CHAIR - Should there be a sunset clause put on it if it came into legislation?

Mr DICKSON - I wouldn't think so. I think it is a question for the Parliament in regards to that.

It serves a purpose, obviously, for our public service. I think that's its major role and I think that's where it would get support - continually - and it has these powers of investigation.

CHAIR - Did you wish to say anything to us in summary?

Mr DICKSON - That's a brief indication of what I do. I think it is necessary for members and certainly new members, and perhaps more so independents. The parties generally have somebody that advises them. But, again, you might get a party member that might not want to go to the particular public person to seek that advice. So I think it is advantageous to have an independent person who can run them through the issues that might relate to the guidelines, the handbook, the pecuniary interest register, the remuneration tribunal's decisions. I think it is handy to have someone to talk to, initially, to see where they go. Are they travelling down the right path? Could it be dangerous if they went down such and such? Some of them would not probably even think about the dangers that might enter into it because it is just part of the process.

When I first came in, a lot of the answers were, 'It was tradition that we did it this way. We have always done it that way', but things were changed with the development through ICAC and ICAC's reports. Issues were changed and they did become more public perception as to what it might be.

CHAIR - Do you find that with the changing of the times also your advice on a same matter three or four years would be different now?

Mr DICKSON - Yes, it does change. It does change the thinking, and ICAC has done that. ICAC has changed their minds with regard to the uses of parliamentary resources to some of the members. They might say, 'Issues have changed, independents have now a role to play within the Parliament', whatever it might be. It might be in writing material in relation to their beliefs.

Previously that wasn't permissible; you weren't allowed to use parliamentary resources to spread that information. They had to do it under their own criteria or their own arrangements. That has changed. ICAC has seen that some of those issues are quite satisfactorily done by using parliamentary resources. So there have been some

progressive changes with the change in modern times - perceptions of roles of parties and roles, particularly, of independent members.

Mr MARTIN - Who do you report to?

Mr DICKSON - To the Speaker of the lower House and the President of the upper House.

CHAIR - Ian, thank you very much for your time.

Mr DICKSON - Not at all.

DISCUSSION CONCLUDED.