

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT  
MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON  
THURSDAY 11 SEPTEMBER 2008.**

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**Prof. PETER JOHN BOYCE** WAS CALLED, MADE THE STATUTORY  
DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Wilkinson) - Thank you very much for coming along. This is an informal process. Please feel free to say what you wish and then we will ask questions.

**Prof. BOYCE** - Thank you, Chair. The only correction to the transcript is a replacement of the words 'Commission Against Corruption' at the bottom of page 3 with 'Corruption and Crime Commission'. That was a typo but I was remembering the old name of the Western Australian body and not its current one. There would be different emphases on that short statement but perhaps if you allow me to speak to the document in broad terms that might enable me to shift the emphasis where I think perhaps it should be.

I reckon that the three main challenges for the designers of a new commission, assuming that there is agreement that some new body is required, would be: how to keep the agency both small and credible; how to keep it focused on the relative weaknesses and vulnerabilities that characterise Tasmanian society and Tasmanian governance, which are quite different, I think, from problems and issues that surface frequently on the mainland; and then, finally, how to earn in the first instance, but then retain, the trust and confidence of the elected Parliament on the one hand and the community on the other. I do not have the answers to those three but I think they are very pertinent issues that should be addressed at some stage.

With regard to keeping the agency small, obviously in the absence a guaranteed change in community outlook or the behaviour of public servants or parliamentarians, you cannot be sure that you are not going to need some expansion at some time. However, I think it would be unfortunate if the impression was given that this should be a body of unrestricted size or with an inevitable growth. I have looked at the growth rates of the commissions in Queensland and Western Australia; there seems to be an inbuilt kind of momentum that is not really geared by external events necessarily. At last count the Western Australian commission numbered 140. My son-in-law, who is a Deputy Crown Solicitor in Queensland and keeps his eye on the Crime and Misconduct Commission, tells me it is now 150.

I just do not think we need that kind of body, yet it has to be a body that has the trust of the community and which has teeth. I think that the three general functions of a body like this need to be built into the terms of reference. It needs to be an investigative body, an educational body and a monitoring body.

In the case of Tasmania the agency should be focussed on the particular problems that seem to be have been recurrent here, due partly to the small size of the State and partly to the intimacy of government, of parliamentarians with members of key industries in the wider economy and, perhaps, with public servants themselves. Particularly with the status of non-elected, non-accountable ministerial advisors, there is a blurred line at the

moment which I think can be easily corrected in a definition of roles that can built into codes of conduct. The division between a head of agency and a chief of staff or a ministerial minder needs to be strengthened. I believe that in recent years there has been a destructive blurring of that line. I think that department heads needs to behave like department heads and that means they need to be recruited as department heads on the criteria that you would consider appropriate for department heads.

I think that can be done without a lot of thunder and lightening and general mayhem and embarrassment. I think it can be steadily and gently. I think that existing codes of conduct to which various agencies are beholden can be examined, and there will be weaknesses there. I think that the Auditor-General's role could be looked at again. Many complaints that might be received by an agency of the kind that I am envisaging would probably be passed on to the Ombudsman because there will be general confusion among some members of the public as to whether this is really an issue of misconduct.

The distinction between misconduct and crime is a very important one, or whether misconduct necessarily entails crime. There is no doubt that the community and possibly some parliamentarians feel that it is only criminality that matters. In fact for the proper conduct of a Westminster-style government it is actually issues of breached ethics which constitute misconduct, not necessarily any breach of the criminal law. I was rather heartened to note that Tim Ellis himself referred to this in his testimony yesterday. I therefore think that a very important role for the new body, and I am assuming at the moment that there will be one, will be to educate both members of parliament and the general community about this very important distinction. I would hope that the investigative power would certainly encompass misconduct that does not necessarily constitute criminality.

In the case of the Queensland Crime and Misconduct Commission there is no power to investigate parliamentarians unless there is a clear presumption that the behaviour they are investigating is criminal, whereas in Western Australia, as we know from all the news from Perth these days, the Corruption and Crime Commission is empowered to investigate the behaviour of parliamentarians. When we come to parliamentarians, the real problem arises in what kind of sanctions you impose against parliamentarians. This body could not do it. This body could merely identify what it sees as misconduct and hope that a code of conduct, which either the Parliament or the ministry or both will have adopted, will then be enforced. But ultimately, as we all know, it is the electorate that will apply any penalty or punishment on a parliamentarian and that is the way it should be in a democracy. I would hope that a body such as this, if it is empowered to investigate elected officials, will be allowed to identify what it sees as misconduct and include that in its report to Parliament because it is Parliament to which, I believe, a body like this should be reporting.

I don't see the need for a lot of subsidiary officers because of the small size of the enterprise and I don't think that it would be necessary to disperse power and responsibility in this way. The House of Commons has a Parliamentary Standards Commissioner - and we certainly wouldn't need that. Western Australia has a parliamentary inspector which inspects the activities of the Corruption and Crime Commission, which again I don't think would be needed here. The Queensland Government has a very all-encompassing public sector ethics act. It could well be that for Tasmania a fairly all-encompassing statement about ethics and governance would be

useful, for public servants, ministers and perhaps heads of government business enterprises. Again, a lot of homework would have to be done on that.

I am trying to sound optimistic about the possibility of there being a pretty easy breakthrough without the world having to be turned upside down. The community at large is at the moment expecting to see some body established that is going to have teeth, but I would hope that there won't be overkill on that one. I believe that if there is overkill then the community could become disillusioned fairly easily. On that score, I would say that there shouldn't be too much emphasis on stacking a body with lawyers or on farming out work to the Applied Ethics Centre at the University of Tasmania. I think I have said as gently as I could in this document that I have nothing against ethicists and I certainly have nothing against the Philosophy Department, but I have anecdotal evidence of ethics training being a bit of a failure in other places. I also have some suspicion that philosophers won't necessarily be the best people to understand the actual political and administrative context in which ethical problems arise. I would hope that this body will have an important teaching role and maintain close and fairly relaxed relations with the community, not be too distant from the community, just reminding the community of what they are entitled to expect of an efficient, effective, Westminster-style political system which is transparent, accountable and which has integrity. The ethics people can probably only focus only on the integrity issue. It is the accountability mechanisms and the transparency - and this is process - which I think needs to be tackled by this new body. It can be done quite effectively and I believe without being too embarrassing to current members of parliament or to any of the three political leaders.

I think it is very fortunate that at this particular moment in the political history of the island the three leaders seem to be in agreement about the fundamental need for a body such as this, or at least for the possibilities of such a body, and that really should be exploited to the full. If a new body can start with a consensus such as that then I think it is going to be very easy to sustain public goodwill.

**Mr BEST** - We heard from Rick Snell earlier this morning the idea of having a parliamentary oversight committee. On listening to your points about not wanting a cast of thousands, this parliamentary committee will be made up from both Houses but also include the Auditor-General -

**Ms THORP** - No, receive advice from the Auditor-General and Ombudsman.

**Mr BEST** - Anyway, the idea of that, though, was to have this constant review and observation-type role as being at the forefront and keeping you ahead of the pack, so to speak, so that when things might happen somewhere else we could discuss them here in advance of what we might do. It would also continually monitor to see how our processes are going, and the investigative body would sit somewhere alongside it but separately. He thought that might be a fairly efficient way to do it.

**Prof. BOYCE** - I had assumed that there would be a standing joint committee to which this body would report annually. There would be no reason why the ethics commission or anticorruption commission - call it what you will - shouldn't also meet informally with that body, as long as the ethics commission doesn't feel that it is being drawn into a

compromising situation. But, yes, it has to be reporting to Parliament, there is no doubt about that.

With regard to the Auditor-General and others, they could constitute all those heads of agencies that are in cognate areas - Ombudsman, and so forth. They could form an integrity committee, just a case of bringing them together from time to time, which is what happens in Queensland and I think probably Western Australia. That's just an informal coming together of heads of agencies working in like areas.

**Mr BEST** - The Public Accounts Committee here, the Auditor-General meets with that committee. I put that question earlier to Rick Snell and he thought that you could have something like that, perhaps.

The other thing I am very interested in is your comment about advisers. We all - Liberal, Labor and Greens - think it is great to have advisers that have been in the department or have a background in certain areas, but I liken it also to being in your race car and you are trying to get around the track to stay ahead, and that's how the political parties operate. So what are your thoughts about minders or advisers? How do we address this issue? What do they need to know? In government I guess it's probably different because you've got your departmental people, so you could have a balance there.

**Prof. BOYCE** - Yes. I imagine that they are not under the purview of the State Service Act. They would be subject to some kind of overarching governance ethics code if one was to be drawn up. It's really a case of how ministers handle them in the first instance. I guess there could be legislation, although this is such a big issue. It's also outside Tasmania; it's Commonwealth and international - the new supremacy of political advisers and their lack of accountability. I do not have a neat answer, except that I feel you could strengthen, even in Tasmania, the distinction between ministerial staff and agency heads.

**Mr BEST** - I suppose it may come down to process, in a sense, in that here is a set process that you work through when you're giving advice, ticking it off as you go.

**Prof. BOYCE** - Yes, I think so. Conflict of interest, incidentally, I see as the pervading problem in Tasmania. It's almost endemic because of the intimacy. People know each other and processes have become a little bit lax, and the ministerial adviser comes through in that kind of mix.

**Mr ROCKLIFF** - Just on the conflict of interest, at the moment parliamentarians have a pecuniary interest register. One of the people who spoke to us yesterday believe that should be on-line for everyone to see, which I agree with, that is fine. What about department heads or advisers? How public should their conflict of interest register be? Should they have one?

**Prof. BOYCE** - I have not really thought about that at any length.

**Mr ROCKLIFF** - I thought of the question then as you were talking about it so I have not thought about it at length either.

**Prof. BOYCE** - I do not know that it would be necessary as long as the Parliament could find out or the ethics body or whatever it is going to be called would know that this has

occurred. Conflict of interest is more than just investments registers, ownership of shares and so forth. It is knowing people and finding jobs for them or overlooking a critical question in an interview for appointment. There is a lot of that in Tasmania, I regret to say, but of course it occurs elsewhere. So I think that the appointment procedures have to be tightened. Tim Ellis made reference to this yesterday but it is not just with senior legal officers, it quite a few right through all the departments. That can be done, I believe, without too much public disruption.

**Mr ROCKLIFF** - You mentioned in your submission that the new agency would be charged with three roles and the second of those roles you mentioned was to investigate complaints and breaches of ethical standards. Do you envisage that this body would be just investigating a situation when they receive a complaint or should it have an ongoing role whereby they do not have to have a complaint to investigate something but if something crops up?

**Prof. BOYCE** - Yes, I am with you. I think that they should have the right to initiate an investigation of their own accord. I do not believe this would be necessary very often but I think that it should be their right because there may be an oversight or an ignorance on the part of the community at large as to whether or not there has been a serious breach. But again I would not envisage that there would be many of these at all.

**Mr McKIM** - Peter, I wanted to explore this investigative function a little more, particularly in terms of what you believe to be appropriate powers for such an agency. Perhaps I could put it to you in the form of a proposition. Would you think it appropriate that the agency would have the capacity to conduct electronic surveillance with the checks and balances that currently exist for the police? These are questions that will inevitably be distilled down to as legislation is drafted, if it is, as to how far those powers should extend, what checks and balances should exist to oversee those powers. Are you able to respond, perhaps even in general terms, to that area of interest?

**Prof. BOYCE** - In a way if you conferred that sort of authority or that power - that freedom - on the agency at the beginning, it overcomes a problem later but by the same token it does dramatise and make it seem more draconian than perhaps it would need to be. In Western Australia there was clearly a need but the public at large in WA, I guess a majority now feel that there were results as a result, some good results came out of that surveillance.

**CHAIR** - You were involved to some degree, weren't you? You were there at the coal face.

**Prof. BOYCE** - Yes. I suppose I would prefer it not to have that power but I do not have any fixed view about that at all.

**Mr McKIM** - In WA is the CCC required to seek the authority of the Supreme Court?

**Prof. BOYCE** - No, not at all.

**Mr McKIM** - Would that not be one potential way through that specific issue of electronic surveillance, to require there to be an oversight role played by someone of the ilk of a Supreme Court judge?

**Prof. BOYCE** - Yes, I suppose you would certainly have to soften the effect a bit, to qualify the power a little bit. In Western Australia you had problems that so far we have not had here. I do not want to skirt lightly around the seriousness of the problems here but it is a different sort of society. And the track record in WA was so bad. I would have to take that on notice, Nick.

**Mr McKIM** - Thank you.

**Mr MARTIN** - There is a perception that the WA commission went a bit too far, that people were damned before they had the chance to clear themselves.

**Prof. BOYCE** - There is that perception.

**Mr MARTIN** - Have you a view on that and what went wrong, if you think it was wrong?

**Prof. BOYCE** - I am not living in Perth now so I am really just looking at it from the same distance as you are. I think there was a feeling that they were just acting a bit too independently of Parliament and government at large. Admittedly, they had such interesting stories to tell that there was a kind of guilty excitement, I suppose, within the community at large. This is too small a community for that kind of behaviour, I think, because we do not really want to break down trust and the ability to communicate not just across party lines but between government and the community. There is a very attractive positive aspect to the size issue in Tasmania and also to the fact that there is not a criminal underworld. One would be very, very rash to say there is no corruption in the police force but if there is any, it is not of the order of what has been discovered in the other three States where there are these very powerful investigative bodies nor has there been the propensity for corruption to develop in local government to the same extent because of all the development permits and so forth that are negotiated. It is interesting that it is in the two fastest-growing suburban jurisdictions in Perth that the Burke inquiries were focused - Burke and Grill.

**CHAIR** - That was the name of the inquiry, wasn't it, the grilling inquiry.

**Prof. BOYCE** - Yes. I do not think I have answered your question fully.

**Mr MARTIN** - Basically, if I remember rightly, it was claimed that evidence was leaked to the media by the commission that really labelled people and basically denied natural justice. How would you safeguard against that? Have you any idea?

**Prof. BOYCE** - Terry, I could not answer. Can I utilise my right to take that on notice? I notice in the little brochure that was sent to me that if I could not answer a question on the spot I could reserve the right to send a written answer. Is that all right?

**Mr MARTIN** - Yes. I have to admit it is a kind of meaning of life question, isn't it?

**CHAIR** - The Crime Commission do it fairly well, don't they?

**Prof. BOYCE** - Yes.

**CHAIR** - The Crime Commission travelled around federally looking into major crime. A number of witnesses go before that Crime Commission, they are not allowed to say anything and if they do they can be charged. They have to answer questions. It is a different legal procedure than normal but the Crime Commission seemed to me to do it extremely well and I just wonder whether you are able to reflect whether there was something like that in relation to anonymity leading up to whether a person is charged or not. Once they are charged, it is up to them to look after themselves but leading up to that stage they should be protected.

**Prof. BOYCE** - Yes. I guess on the criminal law side I have not done as much homework as I would like because I am not a lawyer and I guess I focus more on misconduct and that is where I feel that it should not be left exclusively to lawyers incidentally to be investigating this conduct.

**CHAIR** - Sure, but still in relation to misconduct, if I might, I believe that - and please tell me whether you think I am wrong - there still needs to be that anonymity up to a stage where the commissioners found out yes, there was misconduct. This misconduct was whatever, gross, not so gross but it was misconduct, it did amount to criminality so you do not hand it to the DPP but there still should be that anonymity until you make the decision as to whether there is misconduct or not.

**Prof. BOYCE** - The anonymity issue is one I have not examined carefully enough and I would like to ponder on that one. I think it is very relevant.

**CHAIR** - Okay. Thank you. Terry, I think I butted in on your question.

**Mr MARTIN** - One of the debating points we have to deal with is the issue of whether the body, assuming that we have a body, has the power to look at things retrospectively or not. Do you have a view on that?

**Prof. BOYCE** - Yes, everything is retrospective to some extent. You are referring, presumably, to something that was alleged to have occurred several years ago?

**Mr MARTIN** - Yes. Some in this debate believe there should a line drawn in the sand and it should not look at things that happened in the past, whereas a lot of people would suggest that a lot of the scandals that I think have been referred to should be investigated.

**Prof. BOYCE** - It would certainly make the task easier if it was not retrospective in that sense. However, I can see the arguments on the other side. They were raised and emphasised at this forum that the Law Society hosted a couple of weeks ago where several speakers argued for there to be a separate commission of inquiry or royal commission or whatever on those issues that you are probably referring to.

**Mr MARTIN** - We have heard evidence this morning suggesting that there should be a separate commission of inquiry.

**Prof. BOYCE** - I think there is some political fallout that would not necessarily assist the formation of the new body. It would muddy the waters to the extent where issues were being fought over on a partisan basis, perhaps, when you really want it to get off to a new start. It is not that I would want to sweep everything under the rug, but I have some

doubts as to whether it would get very far or achieve a great deal by going back to that combination of issues which really gave rise to the call for the establishment of a body like this.

**CHAIR** - The two most recent royal commissions have been the Rouse and Gilewicz affairs.

**Ms THORP** - I think we should go back to that one. I was not happy with the outcome.

**CHAIR** - Yes, that is what I am getting at. Both of those did not seem to go any further than what had already been decided upon prior to the royal commissions. That is why, personally, I have a question mark over the efficacy of a royal commission.

**Prof. BOYCE** - Yes; I would not give priority to that. The issues which surfaced and which gave rise to that, at least the perception of criminality and certainly of misconduct - and there is no doubt in my mind that there was serious misconduct - can be addressed. I do not mean particular persons or particular circumstances, but the ethical and conduct issues would be taken care of by strengthening codes of conduct or the drafting of a new governance code of conduct. The new body could make it quite clear that it was going to ensure there was not a repeat of those circumstances. It might be counterproductive to revisit it as the first reference, if you like, of a new body.

**Mr HALL** - Politicians in other others States that have ICACs have been concerned - and these have not been on the receiving end, I might say. One put it to me that their commission was made up of quite a few former military security people, a former policeman and they acted like a CIA and left people out to dry. I think that is a concern, that people have been perhaps denied natural justice. In some cases it has ruined political careers so we want to be careful that we do not end up going down that same track.

**Prof. BOYCE** - I could not agree more. I think maybe the circumstances that gave rise to the establishment of that very powerful body in Western Australia would help explain why it has been behaving in such a militaristic, officious and independent way. I do not think it would be necessary or advisable for a body in Tasmania to behave that way. Without wanting to pretend that there is no problem there, I just don't think it is necessary; in fact it would be counterproductive. I think there has to be a much closer relationship to the community at large and to the Parliament. I know it would sound naive to say it has to be trusting but I really think in this kind of community you can say that. I know the judge in Western Australia quite well; we did our national service training together and went through the University of Western Australia together. He was proud of the fact that he was behaving that way. He was making it quite clear that there would be no compromise because he was assuming the public expected him to trounce on the Government. As you say, there were real risks of miscarriages of natural justice.

**Mr HALL** - Furthermore, I think he mentioned that because those things have occurred, Western Australia and New South Wales now have a watchdog. We have added another layer already.

**Prof. BOYCE** - Yes. Malcolm McCusker has an active role surveilling the Corruption and Crime Commission.



**Ms THORP** - In our conversations we have moved over the area I wanted to talk about and that was preservation of civil liberties throughout this whole process. You have referred to the need for balance; can you expand on that a little more?

**Prof. BOYCE** - I am not a lawyer; I used to be on the Human Rights Commission but I'm not much use on that question

**Ms THORP** - I suppose it's from a philosophical position as much as anything else. I think we can all see the worth in making sure that there are bodies and systems in place to make sure people in whom the community should have confidence are held to account should they slip and fall. But, by the same token, I personally feel that there needs to be some caution about letting people have their own lives, so to speak, and not be at risk of star chamber activity.

**Prof. BOYCE** - I couldn't agree more. I have a feeling that that is another ground for not allowing the body to be controlled exclusively by lawyers, just as I hope it will not be controlled by philosophers.

*Laughter.*

**Prof. BOYCE** - Lin's worry is a legitimate one, I think, if you look at what has happened in a couple of the other States. Again, I may be oversanguine but I don't believe that such a body would need to behave like that in Tasmania.

**Mr McKIM** - We have focussed to a large degree, Peter, on the formation of potentially a new agency, but this committee's task is quite a bit wider than that. It is to review existing mechanisms that are currently available to support ethical and open government and to make a recommendation about an ethics commission or any other means by which open and ethical government could be attained. In relation to the fact that we don't have State-based political donations and disclosure laws in Tasmania, do you think that is a gap in our current legislative structure? Do you think it is appropriate and legal, as it currently is, for people to politically advertise without disclosing who they are or the source of their funds?

**Prof. BOYCE** - I certainly don't think it should be permissible to campaign without disclosing the source or identity. With regard to funds, I think the political funds issue is one of about a dozen issues that affect the quality and ethical standard of government in Tasmania, so they should be looked at together. Just as the size of parliament issue is related to questions of accountability, so I think political donations should also be covered.

**CHAIR** - You had a role in Western Australia Inc. You came in on the second phase, looking at the administrative aspects. If we asked you what you would have in Tasmania, what would you do? I know you have spoken on it briefly. I believe, personally, there should be a body. I don't know at this stage and the jury is still out as to how that body should be made up. Should it just be one person with a couple of interchange people who can be used if an investigation should take place? Should you have people seconded from either the State or Federal police to do the investigative work? What happens if there's criminality, should that go to the DPP straightaway? If it just falls short of criminality into misconduct, where should it go there? Should it go

back to this government oversight body to name and shame? They are the issues that are surrounding this at the moment.

**Prof. BOYCE** - Yes, the different steps and the different avenues. I think there should be three commissioners if such a body is established, one full-time and two part-time. I probably agree with Max Bingham that the Chair should be a senior lawyer. You will notice a certain prejudice or resistance in my testimony about lawyers -

**CHAIR** - I notice that Max just came into the room as well.

**Prof. BOYCE** - It was largely because of the experience I had when I was this consultant. I wasn't a resident consultant but I spent several months with the commission and was surrounded by resident counsel. They had a battalion of lawyers, and they didn't want to discuss process or the conventions of parliamentary government, they were only interested in drafting rules. They had a field day there, and I had great difficulty persuading the commissioners personally to make any reference in their report to ministerial responsibility. It was a slippery concept which they didn't want to look at. However I finally got through to the commissioners and there were two pages in the report about that.

I think, therefore, if you are to have a senior lawyer - it doesn't have to be a judge - there should be two others who are not lawyers but who are familiar with the processes of government, have had some contact with the machinery of government and who would have the respect and trust of the community - and who can communicate with the community, too. As I said earlier, I don't see a Tasmanian body being secreted from the community; I see that interaction with the community as all-important, and that this will also serve the interests of Parliament. The other two people could be drawn from other professions or community responsibilities.

With regard to staff, I would see some secondments from the public service on the condition that there be a safeguard for them that if, having advised the commission on a matter that reflected poorly on a particular minister or public servant, that person was not going to be susceptible to any victimisation on his or her return to the public service. I think that can be done; I think a bit of legislative protection there would be possible.

With regard to your other question, Jim, which is important - at what point you refer something to the DPP - I do believe there should be a capacity to refer matters to the DPP. I think with regard to misconduct, you report to an agency head that you have grounds for thinking that such-and-such a code is being breached in this area. In the case of a minister, then I think again it has to be to the Premier, but obviously you have to be free to let the parliamentary overseeing body know as well.

As to the timing of these different moves, I haven't really thought it through adequately. As I said much earlier, though, with regard to any ministerial misconduct, it must be the electorate that imposes any punishment, and that is why I think education of the community with regard to what they are entitled to expect of a government is important, but it must be the electorate that determines the ultimate fate of a minister.

With parliamentarians who are not ministers, I don't know whether strengthening the Standing Orders would be the way to go, but I do think that so long as there's a

parliamentary committee to which this agency is reporting that retains its credibility, that will be enough. That will be very important, and I think in Queensland that committee has been quite effective in the way it has interacted with the Crime and Misconduct Commission. There were some troubles when Max Bingham was up there, which he likes talking about, but I think those problems have been smoothed over now.

**Ms THORP** - Do you have a position on what consequences there should be for someone who makes false or exaggerated claims to such a body which are then proved later to be false or mischievous or whatever?

**Prof. BOYCE** - I think there should be a penalty that you could build into the act but I do not know what penalties are written into the Western Australian legislation. I just cannot remember.

**Mr BEST** - I am not trying to put words into your mouth but some of the comment we have heard from other witnesses has been along the lines of an inclusion of the education process but maybe a loss of privilege if you held a position or something, or that you may stand aside. I know there may be other legal -

**Prof. BOYCE** - You mean if you are found guilty of misconduct?

**Mr BEST** - Oh, you're talking about the allegation - sorry, I lost the question. That was what the comment was.

**Ms THORP** - I am thinking about the temptation for people -

**Mr BEST** - Yes, to make a false claim - sorry.

**Ms THORP** - There is a lot of stuff goes on in our community - gossip and whispering.

**Prof. BOYCE** - Yes, I know, and what is truth - I mean, that is the thing. Truth, in this day of spin, can mean lots of different things to people and I think this committee has to be sophisticated enough to quickly weed out either frivolous or just misguided accusations, but if they are pressed seriously and have unfortunate consequences for an innocent victim then clearly there has to be a pretty stiff -

**Ms THORP** - We already have a situation in Tasmania where if either House does not vote in the way that elements of the community think is the right way then that is a 'corrupt' decision. The depth of ignorance is extraordinary.

**Prof. BOYCE** - I know. The education of the public is very important in this regard and I really do not think it is an impossible task, because what the public or sections of the public consider misconduct or corruption is not necessarily the case at all and yet there are other circumstances in which they think that only a criminal act is something that deserves punishment.

**CHAIR** - There are already some safeguards, aren't there? You do not want to restrict people coming forward and making a complaint, but if a complaint was made by statutory declaration and that statutory declaration is false and you know it is false there is already

a police offence against that, which could be some safeguard to take into account Lin's concern.

**Prof. BOYCE** - I really do believe that right from the outset you could issue warnings and make it quite clear what the risks are, and then there will be some complaints which are perhaps serious but which can be quickly passed on to the Ombudsman or somewhere else that really do not constitute misconduct.

**Mr BEST** - Do you think, though, if you do submit a complaint to this investigative body, whatever it might be, that that is it for the person putting the complaint the sense that they have raised it? It is decided upon as to having merit to be investigated but it really is not up to the person who has lodged the complaint to then tear off to the media and go, 'I've put this in, blah, blah, blah'. Do you think there should be some provision that once you put it in that you just wait, or should you continue to be able to publicly comment about -

**Prof. BOYCE** - That is a very good question. I had not thought that one through either; in fact, I had not thought of it at all. I think the commission would be embarrassed if there was a lot of media discussion about a complaint that had been referred to them which they had not had a chance to comment on but which the complainant was drawing heavy media coverage from.

**Mr BEST** - You can see how it could be then used as a vehicle, even though there might be some substance to it but it has turned out that the information was just interpreted the wrong way but everybody has acted appropriately as best they could, but already now the smear has already occurred, hasn't it, and you cannot -

**Prof.. BOYCE** - Yes.

**Mr BEST** - Maybe you could take that one on notice.

**Prof. BOYCE** - It is opened up, isn't it? If you give them the chance to even announce that they have made a complaint, that is all that is needed, I suppose.

**Mr BEST** - Can I give you that one to have a think about, do you mind?

**Prof. BOYCE** - Yes.

**CHAIR** - Can I ask about continuing professional development. A lot of people get into Parliament and they have had no real apprenticeship to become a member of parliament. One day they wonder whether they are getting in and the next day they have suddenly walked through the doors and they become a member. There is no real education given to them as to how they should act, which areas they should look at to see what they can and what they cannot do. That is number one. Then number two, things change from time to time. A lot of people, it may be because of the smaller numbers in Parliament, are not able to keep up with all the changes and therefore there needs to be some type of continuing professional development, I believe. What do you say to that?

**Prof. BOYCE** - Yes, Jim, but I am assuming that you could combine the kind of induction exercise that Parliament possibly already does. You do not have one?

**CHAIR** - No.

**Prof. BOYCE** - The issues or the circumstances which you would be expecting to cover in an induction exercise would go beyond ethics. It could encompass the ethics issues. You could say, 'Tell a new member that these are the constraints on you that you would have to observe', but you would be going beyond that if you were introducing them to the procedures of Parliament and the, if you like, the culture of Parliament. If there is not a process right now, it would be very useful to do and I believe that could be done through cooperation between you people and perhaps someone in the School of Government. Obviously it should not be left to academics exclusively because they do not have quite enough direct experience of the day-to-day life of a parliamentarian. But something between the two, a joint, short exercise, I think would be very useful.

**Mr BEST** - We have had witnesses talk about the fact that this investigative body should have an education function, just as has been said. Is there, though, do you think, some capacity like we have with, say, the antidiscrimination, for example, where maybe someone comes in with a complaint where they were let down by someone following the proper process in a department, for example, but it was not someone deliberately acting illegally, just someone not thinking appropriately or not thinking properly, and you would mediate that and say, 'Look here, this is the process you need to know' and then some warning? Or do you think, no, it just has to be punitive and that is it?

**Prof. BOYCE** - No, I do not think it should be automatically punitive.

**Mr BEST** - Do you think this body might have that capacity to decide what is appropriate?

**Prof. BOYCE** - Yes, as long as it is not dominated by lawyers.

**Mr BEST** - Or philosophers, wasn't it?

**Prof. BOYCE** - Yes. Actually some lawyers and philosophers are my best friends. You might not have known.

*Laughter.*

**Mr McKIM** - Peter, you have raised the issue of nomenclature in the final paragraph of your submission. By the way, I note and concur with the final point that you make about the necessity for the leaders of the three political parties to embrace any model which is proposed. But in relation to nomenclature, you have said that your preference would probably be for an ethics in government commission. Could I run another one past you which has been put this morning, which is the Tasmanian Integrity Commission?

**Prof. BOYCE** - Yes, that would be fine. I think that integrity is a key word and that with a little bit of public education we can convince the electorate that that really means anticorruption.

**Mr McKIM** - Perhaps it is halfway between the philosophers and the lawyers?

**Prof. BOYCE** - Yes, halfway, that is right. The middle way. That would be fine. I think the word 'integrity' is pretty central.

**Mr BEST** - Do you think this investigative body would investigate matters to deal with the police and could look at ethical conduct of the media?

**Prof. BOYCE** - If it is ethics in government, there are cognate issues or cognate responsibilities for the media but it is not public. If you want to broaden the definition no, I do not think it could be the media but the police certainly.

**Mr BEST** - Where it is a report not in the public interest.

**Prof. BOYCE** - Yes, the police.

**Mr McKIM** - In that event, just to finish exploring this, if the police were to be investigated, I assume that given there is at least a possibility that some members of Tasmania Police may actually have been seconded into any agency that the committee recommends, would it be appropriate for those people to investigate allegations against Tasmania Police or would you prefer to see someone from perhaps the Federal Police or a group from the Federal Police or another Australian jurisdiction seconded in to conduct that investigation?

**Prof. BOYCE** - If it could be done I would prefer interstate and actually, Nick, and Mr Chairman, that gives me an opportunity to just say something that I had forgotten to say earlier. I think in the rare occurrence of a minister of the Crown being charged, it really would be better for an interstate judge to hear the case or for a judge to hear the case without a jury because I think it is too awkward for juries in a confined, politicised environment for their judgments not to be affected by party loyalty. That would apply to many of us. It is not just what we observed recently or what we might have perceived to have occurred but it would be a very rare occasion but I think to bring in an interstate judge or to simply not rely on the jury might simply increase -

**Ms THORP** - And a predilection to hate politicians.

**Prof. BOYCE** - A predilection to hate politicians or to distrust them - absolutely.

**CHAIR** - Good point. Thank you very much, Peter, for first providing your submission which was terrific.

**Prof. BOYCE** - I have about four key questions here on notice so I had better go away and do some homework.

*Laughter.*

**CHAIR** - I was going to say, hopefully you do not mind if we contact you at some later stage and bring you back on.

**Prof. BOYCE** - Not at all. It is keeping the old mind exercised anyway.

**THE WITNESS WITHDREW.**