

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT
MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON
WEDNESDAY 10 SEPTEMBER 2008.**

Ms WYNNE RUSSELL AND Ms MARION NICKLASON, REPRESENTATIVES OF TASMANIANS FOR A HEALTHY DEMOCRACY, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Wilkinson) - Thank you very much for coming along today. Who wants to start?

Ms NICKLASON - Tasmanians for a Healthy Democracy's submission is to promote honest, transparent, accountable and interactive governance in Tasmania. We have a vision of Tasmania with open, honest, responsive State and local governments, bureaucracies and regulatory bodies. We envision a Tasmania with transparent, interactive, accountable, consistent and rigorously evaluated decision making and policy implementation but, most importantly, we see an educated public participating in a vibrant, civil dialogue on the reform, renewal and transformation of Tasmania's governance system to carry the State forward through the challenges of the twenty-first century.

Wynne Russell will shortly be discussing the points raised in the submission as well as addressing a number of key points that have become relevant since the report was submitted. I will be introducing the relationship of Tasmanians for a Healthy Democracy to the issues at hand and at the end, introducing some recommendations regarding mini summits to improve the public's faith in the governance process.

We are all pretty aware of the numerous governance issues that have faced the Tasmanian Government and public service over the last few years, especially in the last year. The Tasmanian public's concern about governance rose to a peak this April after the then Deputy Premier, Steve Kons, was found to have lied to Parliament. Tasmanian for a Healthy Democracy was formed at this time to ensure that the issues would not be ignored by a seemingly complacent government which openly disregarded public sentiment. Meetings in the north and the south of the State drew more than 1 000 Tasmanians together. They heard from politicians and university academics about the culture of cosiness and made comment about the importance of an investigation into corruption. Media coverage of this event and public sentiment conveyed in mainstream and alternative media ensured that the Government was aware that the status quo was unacceptable. The Tasmanian public had clearly lost faith in the Government's approach to the handling of alleged corruption and misconduct.

Mistrust appears to have been building steadily since at least 2006 when a Roy Morgan poll found that 60 per cent of Tasmanians said that their State Government was not effective in the fight against corruption, of whom 11 per cent said that they thought the Government not only does not fight corruption but also encourages it, the highest level of distrust in the nation.

More recently, in the 2008 EMRS poll, Tasmanians cited governance as the biggest issue of concern.

More problems have arisen for the Government over the last four months, further undermining the public's trust in the people holding the positions of power and the mechanisms in place supposed to ensure transparency and accountability. Tasmanians for a Health Democracy believe that for the public to improve that trust in the governance structures of Tasmania a number of key changes and additions need to be made. Vitally important is the engagement of the Government with the public and greater participation with the public in the process of improving the mechanisms that are currently dysfunctional is essential.

Ms RUSSELL - I come to this process, as you can tell, as a new Australian. But I moved to Australia 20 years ago with the express intention of moving eventually to Tasmania, something that I succeeded in doing seven years ago, and I sincerely hope never to leave.

CHAIR - Charles Darwin wanted to but never came here, Wynne, as you would know.

Ms RUSSELL - Many people have been attracted. I am very fortunate that while living in Tasmania I have been able to continue to participate in evaluation work focusing on humanitarian and development assistance programs. In this context, I have evaluated the impact of corruption on social conflict, on development of civil society and, of course, on the effectiveness and implementation of humanitarian development assistance programs themselves. So, as a consequence, I bring a professional as well as a personal interest to this subject.

Marion has already laid out the compelling reasons of public perception for action on the part of the Government to combat corruption in this State. In our submission we have already talked about some of the existing institutional weaknesses, both legal and organisational, all of which lead Tasmanians for a Healthy Democracy to argue that the State badly needs a new independent integrity body.

You have our submission and I am not going to go into too much detail, but I just lay out once again, we are calling for an independent integrity body with three main areas of responsibility. The first is the prevention of corrupt conduct and this includes input into a review of the wording and enforcement of all codes, regulations and policies dealing with public integrity and corrupt conduct. The second is an integrity education component designed to provide public servants, members of parliament, local government, all public servants, basically, with the ability to engage in ethical reasoning as well as an understanding of the rules and regulations facing them. The third is an investigative component.

In short, our goal is to see created an environment in which rules and standards are clear, the penalties for failing to meet them are clear and enforced, individuals have the knowledge and skills to be able to ask themselves, 'What should I do and what must I do?'. This represents, in short, a bringing together of institutional and individual initiative and responsibility in combating corrupt action.

Premier Bartlett's 10-point plan is an excellent start, it is not our goal to carp on this, but we still argue strongly that there is a need for a focal body to pull efforts together. In making this argument, I refer back to the literature which I have reviewed about

anticorruption efforts globally. I think you would find that the bulk of literature put forward by bodies focusing on corruption in governance issues - and this includes bodies with specifically economic responsibilities such as the World Bank and the International Monetary Fund, bodies with governance focuses such as the Council of Europe, and bodies with social responsibilities such as on Transparency International and other NGOs - all argue that it is vital to have focal points within governments to deal with anticorruption initiatives. So although Premier Bartlett's plan is an excellent start, I would argue that our call has not been overtaken by events but rather needs to be considered as a way of drawing together many of the aspects that the 10-point plan has raised.

What I will do, if you don't mind, is to lay out just a few issues, given that you have our submission. I won't go into detailed examination of the points laid out there. I will rather talk about a few areas that have arisen in the course of debate surrounding the 10-point plan and what I have heard from other submissions. What I would like to do is talk a little bit first about the issue of how ones lays groundwork for such a body and, secondly, a few areas of potential pitfalls that have emerged in discussion of such a body.

In thinking about laying the groundwork for such a body, I must say that I have come to be extremely impressed by suggestions put forward by Richard Herr and others on the issue of the commission of inquiry. I confess that initially I was concerned about the possibility of a commission of inquiry as being a step too far, in a sense, in a somewhat difficult political environment. However, the more I think about it, the more it seems to me - and I think many members of Tasmanians for a Healthy Democracy would say that it's about time I got around to this point of view - that in fact such a commission is an important step for this committee to consider as a background study for this independent body.

In fact, it is absolutely true that if we were to be setting up a hospital we wouldn't be doing so without first of all, as this committee is in effect doing, reviewing Tasmania's existing health arrangements. Also in fact we would be looking into the key medical problems facing Tasmania. You wouldn't in fact set up a medical system without some idea of the existing state of public health. Similarly it seems to me that in the debate that has surrounded the need for integrity bodies or ethics institutions, we have had a tendency to focus on areas where allegations have emerged. For instance, there has been a great deal of focus at the level of State Government, while in some cases potentially neglecting areas where dogs haven't barked, where there may be equal levels of problems such as local government, for instance, or other regulatory bodies or the police.

In saying all this, I don't mean to suggest that I am prejudiced in the direction of finding a particular outcome. It might also be that a commission of inquiry would find that public perceptions outstrip reality, that a commission does not need an independent body or very substantial because in fact the perception of corruption is broader spread than the actuality. Having a commission of inquiry to lay the groundwork for creating a body would move us out of the sometimes extreme debate that occurs on this subject at the moment, where you have some people alleging that Tasmania is riddled with corruption, and others saying there is no corruption at all. At the moment it seems to me in fact we lack the empirical basis to be able to make those deliberations.

As a consequence, a commission of inquiry could be an excellent way of starting to put the body on a sound empirical footing. It would provide the opportunity to take an analytic overview as well as an empirical overview, suggesting areas needing particular focus. It would also permit both the members of the committee and the commission, and also the Tasmanian public, to engage in a discussion of what constitutes corruption. One of the things that strikes me very strongly in the debate surrounding this issue is that people come to the concept of corruption with very different definitions. For many people, corruption only exists where money has changed hands or where the law has explicitly been broken. I have to say that this does not reflect the best practice thinking currently found in most international integrity organisations, or among specialists in the integrity bodies who focus on corruption, as a concept encompassing a fairly broad scope of the abuse of entrusted power for illicit gain. Illicit gain can be monetary gain, personal reputation, or advancement of a particular political party or agenda. That broader scale definition of corruption extends beyond simple bribery to take into account concepts such as cronyism or regulatory capture where individuals in State bodies come to inappropriately identify with the interests of a particular industry or industry player. This broader definition is one that needs to be discussed in the Tasmanian context because at that moment there is so much disagreement as to what corruption means as to whether or not it actually exists.

Exposure, also, of existing problems is an important way of breaking cultural habits. After all, it is up to the commission's terms of reference and powers of referral to deal with whether or not such a commission would actually have the power to recommend prosecution. A commission does not need to be a witch-hunt. It can however serve a very valuable purpose in providing general background for the establishment of a new body.

I would like now to talk about a few things that have come out in relation to the practical aspects of establishing a new body and that seem to me to be potentially problematic. The first of these has to do with staffing. I heard some people say that the police are among the uniquely qualified individuals or bodies that have the ability to engage in the kind of investigations that an anticorruption body might wish to engage in. I think that this is a potentially dangerous line to go down. First of all I have severe concerns about involving police in the investigations of non-criminal activity. I think that has the potential to cause a great deal of social division and damage. But more importantly it seems to me that it is making the assumption that it is not possible to find specialised anticorruption staff capable of the kinds of investigations that would be necessary. Not only do specialised experts in anti-corruption exist, but in fact their employment is considered to be mandatory by many international organisations which are laying out standards for anticorruption activities. The Council of Europe's Criminal Law Convention on Corruption and the United Nations Convention Against Corruption both set the employment of specially trained staff as being benchmarks for satisfactory establishment of anticorruption bodies.

Individuals who are trained in anticorruption activities will possess many of the attributes that skilled policeman already possess. One of the key ones will be maintaining confidentiality, something that has come out on a number of occasions across this debate. Some people have said that if you create a body with investigative powers then you are going to be dragging the names of innocent people through the mud. Well, that is not necessarily the case. By that logic you would not have the police out

questioning people before a suspect had confessed. In fact it is perfectly possible for anticorruption agency staff to conduct investigations in confidence. In fact confidentiality is a vital part of the operation of such an organisation. Hearings in camera and an absolute guarantee of confidentiality - both for those levelling accusations and for those facing accusations - are vital to maintaining the trust of the bodies that will be coming under investigation or falling under the purview of such a body - as well as the public.

I really am not sure that it is right to say that police are only ones who have this power. It may very well be that the police have powers that will need to be delegated to representatives of such an organisation. Indeed investigations can be turned over to the police where criminal offences are found to have been committed and it is necessary to go on to prosecution. But, as I say, I worry that to have police investigating non-criminal behaviour has the potential to be very socially damaging.

CHAIR - In the studies you have done overseas who else does this investigating work? What training do they have? Some might argue that police are trained investigators, so does that mean you second police officers over into this unit, if you had one, to do the work for two or three years, employ them full-time in the area? Who else does that investigative-type work? Loss assessors, maybe.

Ms RUSSELL - Graduates of criminology programs. In many cases you have criminology programs with specialised anti-corruption streams, so you can get someone with a university background in criminology who will be specifically focused on the conceptual aspects of investigating corruption. In terms of then conducting investigations, I will be truthful, I don't know what the process is for training individuals with a conceptual background in a specialised investigative skill. Given that, as I say, it is written in as a requirement to major international conventions on the subject, my guess is that it wouldn't be difficult to talk to European counterpart agencies or even to counterpart agencies on the mainland to find out how they have brought in specialised staff.

Mr BEST - Thank you very much for your contribution and your submission. I want to ask a few questions. It is interesting that you raised the subject of the independent integrity body because we heard from the Department of Public Prosecutions, Mr Ellis, on that this morning. He was talking more about process and some sort of panel. It seems a similar view in that regard. You're not advocating an ICAC as such, you're more or less wanting a fuller approach, aren't you, in the sense of a commissioner for integrity?

Ms RUSSELL - I think this is one of the reasons that a background study of some sort would be so vital. It is a bit difficult to know what is the most appropriate structure when you don't have a very good sense of what the scope of the problem is. I would be very reluctant, speaking personally - and I think the THD would feel the same way - to pose a particular model as the only one. One of the key lessons from all of the anti-corruption literature is that there is no one-size-fits-all model to apply to anti-corruption activities. However, a degree of structural independence, I think, is absolutely vital for anybody. Also, appropriate levels of staffing and funding. A two-person panel might prove to be grotesquely inadequate to the task or might not be. I would feel much more confident in making recommendations if I had seen a bit more empirical evidence on the scope -

Mr BEST - This doesn't change my view at all, but you've put forward some interesting things for us to think about. What is the membership of Tasmanians for Healthy Democracy?

Ms NICKLASON - We haven't gone for a membership drive at this stage. We have a network of e-mail contacts and we can reach about 1 000 people.

Mr BEST - You are putting yourself up here with some of the research. What is your background, apart from the fact that you obviously love Tasmania, which we appreciate?

Ms RUSSELL - I have a PhD in international relations from the Australian National University. In making up this submission not only have I been guided by my professional experience but also by extensive contact with my former thesis panel member, Barry Hendis, who is one of Australia's most senior academics working on corruption issues.

Mr BEST - I have written down the three points which you feel are the three functions of this panel - you mentioned that you formed these after Steve Kons lied in Parliament. What would you say the process would be in relation to that panel? Of your three points, you are saying it would be an education thing for someone who -

Ms NICKLASON - Not specifically for Steve Kons -

Mr BEST - Well, just as an example.

Ms NICKLASON - For someone who lied in Parliament?

Mr BEST - Yes, or misled Parliament.

Ms NICKLASON - If there is an independent integrity body with an ethics educative component then there would be liaisons and training. I think what Wynne is saying is that a commission of inquiry to actually examine why he lied to Parliament, what was the background to it, how it went back to the RPDC and the pulp mill, different things like that. If it could all be examined in a commission of inquiry then we would understand what kind of body would need to be put into place.

Mr BEST - Your thoughts would be the same then in relation to another member who produced a false statutory declaration in Parliament that happened not so long ago. You would say that the say sort of thing should happen there?

Ms RUSSELL - If I could interject, in talking about the need for a body to have input into reviews of wording and enforcement of codes and regulations it seems to me that this is an area where in fact there needs to be examination of these codes, their wording, how they are enforced, et cetera. I cannot say that I know what the parliamentary code of ethics or the civil service code of ethics should be worded like and I cannot say because this is part of a broader process of deliberation. I cannot say what I know the process or the outcome should be however it does seem to me that a specialised body would have the expertise, the broader-ranging experience to be able to make recommendations and so on. What I think THD is talking about is setting up a specialised structure that would have the ability rather than relying on individuals like ourselves.

Mr ROCKLIFF - Thanks, Chairman.

CHAIR - Sorry, I have cut you short.

Ms RUSSELL - No, I will continue on afterward. Feel free.

Mr ROCKLIFF - Thanks, Marion and Wynne for your submission. I have a couple of questions and I also commend you on your written submission. You have mentioned retrospectivity and the investigative body would need to have that in place. You have specified a statute of limitations as well that would also need to be in place. My question is if you believe the body should have retrospective powers why would you limit it with a statute of limitations and do you have a time frame in mind of what that statute might be?

Ms RUSSELL - Marion, would you like to go ahead first?

Ms NICKLASON - Again going back to the initial inquiry that would then go back into the past few years and the issues that have faced the Government. As far as a statute of limitations, I am not an expert on that at all.

CHAIR - Three years in law and then it can go for another three years so you have six years as the maximum. You have to do something within the initial three but if you do not you can request time to go to the extra three years to make it six years. So you are right with what you say, six years.

Ms NICKLASON - It would be great to go back but we might be going back for such an extensively long period of time that the body may not have the staffing and resources to do that. Statute of limitations was just something that we put forward as a suggestion from a legal kind of supporter.

Ms RUSSELL - I have to say that in this instance this has anticipated the final point that I was going to be raising but that is all right, we can talk about it now. It seems to me that the issue of retrospectivity when I wrote the initial submission with the THD's collective input I had not, I have to say, heard Richard Herr's extremely compelling case for a commission of inquiry. As a consequence, I have to say that my thinking has changed somewhat on this. I think that in fact if one had a commission of inquiry, the issue of retrospectivity becomes significantly less important for an existing body. I do think that retrospectivity is a necessary part of a body's activity but, at the same time, I acknowledge that the bulk of the anticorruption literature emphasises that to saddle a new agency with retrospective obligations is pretty much to guarantee it is not going to get off the ground if those are not limited because the weight of the past comes crashing down on it, there is no time to investigate new cases, and it is really a potential recipe for a disaster.

That said, however, it is equally important to note that that argument is not a sufficient argument, in my view, to argue for no retrospectivity whatsoever. On the contrary, the Hong Kong ICAC, for instance, serves as a good model of how one can create limited retrospectivity, very tightly formulated in its mandate. I would suggest that one possible such formulation could be in instances where there is a continuing impact on public policy because in fact one of the things that, it seems to me, has emerged from many of

the allegations - and I stress, I am not trying to in any way suggest that I know what the outcome of allegations are - is that the allegations that reach the press, in many instances, focus on issues that have a continuing impact on public policy. As a consequence, the Tasmanian public is unlikely to be completely mollified by any kind of approach which fails to address these issues of past practice spilling over into the present. At the time that I wrote this submission, limited retrospectivity seemed to be the best way of dealing with that. It might very well be that a commission of inquiry would be a more effective way of dealing with that. Certainly if a new body were not burdened at all with retrospectivity, that would give it more time and more opportunity to focus on the future so that could be a very happy compromise.

CHAIR - There would have to be, would there not, some retrospectivity involved because, let us say there is a bill that comes into Parliament, the bill says that the law is to take effect from 1 May 2009, you could not start from there because obviously a lot of the information would be prior to 1 May 2009. So it would seem that the only way that it could properly work presently is to have some retrospectivity involved.

Ms RUSSELL - An extremely fair point.

Mr BEST - On that point, do you see anything there for the ethical conduct of the media - not talking about sciencing, but we have this thing where, are we all exposed to coherent behaviour or is the media immune?

Ms RUSSELL - I think you will be hearing later this week, perhaps tomorrow, from Professor Jeff Malpas, who would argue very strongly that ethics is a social, not merely a governmental or administrative responsibility, and that in fact all of us could benefit from ethics training. I would in no way debate that. In this particular issue because the terms of reference of this parliamentary committee were focused on government activity I have limited my comments and I think THD limits its comments to the issue -

Mr BEST - Do you have a view, though?

Ms RUSSELL - It seems to me that, if I can bring it to the specific issue related to this, this comes back again to this question of confidentiality. It is absolutely vital that an anticorruption body be capable of conducting its affairs in a confidential fashion because no-one wishes to see trial by media.

Ms NICKLASON - At the moment it does not seem like there is that confidentiality because week after week we are hearing new scandals and alleged misconduct and corruption.

Ms RUSSELL - It is, in fact, absolutely true that if there were greater confidence at all levels that ethical behaviour and corruption were being dealt with effectively, individuals might not feel the need to rush out to talk to the media; that in fact effective watchdog bodies make it easier, in a sense, to keep discussions in camera.

Mr BEST - Sorry to interrupt, but I am particularly interested in your comment about the ethical way in which this should operate so that it is done properly but it is not just a body that launders behaviour necessarily, but one that tries to get to a pure society that we would all probably like to live in.

Ms NICKLASON - This relates to the public participation process because I know Jeff Malpas talks about changing the culture and creating an ethical culture from kindergarten through to Parliament House and by having what we are suggesting is mini summits across the State, convened by the joint select committee, allowing the public to nominate leaders who could come to the summit, learn more about what the issues are and come up with their own discussions, develop their knowledge, take their information back to their communities and spread the word, then that would shift the culture that we have in Tasmania of this complacency and this apathy to a certain degree. Those mini summits could have a referendum. We are talking about deliberative democracy and it talks about having a referendum at the end of those mini summits to determine what the people think about changing the mechanisms, but it will also improve the education and potentially the understanding about ethics in the community. Hopefully that would then come through to the -

Mr BEST - I'm not so sure about that idea but I understand the concept of where you are coming from.

Ms NICKLASON - If we want the public's faith to be returned about governance in Tasmania, we have a long way to go because it is at rock bottom and it certainly was in April this year. So by actually providing the public with a voice and an opportunity to air their concerns, discuss, be educated, engage with politicians rather than being called the democracy that it isn't, I think that things really need to change there.

Mr ROCKLIFF - Marion, in your one-page letter right at the end you mention that 'to maximise the independence of the independent integrity body, a separate ethics body could be established and be the watchdog for that independent integrity body' - so the watchdog looking at the watchdog in many ways. How do you envisage that would work, is there another mechanism that you might have thought of to keep a line of accountability on the main ethics or integrity body, if you like, and are there examples of a watchdog watching the watchdog elsewhere?

Ms NICKLASON - It was just something that some individuals in the community have mentioned to me, how would the independence of this independent integrity body work and should an ethics commission or independent ethics body actually assist in keeping an eye on each other. You can go that step further and who looks after who - it goes a fair way - but to have the independence -

Mr ROCKLIFF - It is a good point. There has to be an eye on accountability there.

Ms NICKLASON - It was just a point being put forward and I cannot really elaborate any further on that with the information that I have at hand.

Ms RUSSELL - Just speaking on points of international comparison, I think that in the THD submission I mentioned that in Hong Kong, for instance, an independent oversight committee exists which reports separately to the joint standing committee - it acts as the watchdog function on the ICAC. So public comments or questions come to this oversight committee or to the Ombudsman but then are referred typically by the Ombudsman back over to the oversight committee, so that committee plays that role.

Mr McKIM - Wynne, you have spoken a bit about a commission of inquiry perhaps being established prior to the finalisation of a model of any ethics commission or similar organisation. And I think that you have said, and I am paraphrasing here, it is difficult to come to a definitive judgment about what the scale and form of any ethics or integrity commission should be until we know the scale and the nature of some of the issues that it might have to deal with. Is what you are suggesting that a commission of inquiry with very general terms of reference be established into, for example, allegations of corruption in Tasmania and that it then investigate those, or is what you are suggesting a commission of inquiry that is set up with the intent of making recommendations about the size and form that an ethics or integrity commission might take?

Ms RUSSELL - In this I must stress that I am not an expert in the legal or practical aspects of commissions of inquiry and so as a consequence I am very reluctant in a sense to offer an opinion on something that I feel I do not understand as well as I should. I am not sure that you could not in effect have the two rolled together, that by getting some sense of the scope of the problem a commission could then make recommendations. On the other hand the two actually require rather separate, rather different skills in some ways. So I think that if such a decision for a commission of inquiry were to be reached, that would be the point to sit down and start thinking very hard on what would be the most effective structure for such a commission. I am very confident that Richard Herr, who I think will be addressing you in the next few days, would be able to speak on this far more authoritatively than I'm afraid I can.

CHAIR - He is coming at 10.30 a.m. tomorrow. What you are saying is that from what you know you adopt what he states in relation to this commission of inquiry?

Ms RUSSELL - Everything that he has said to me makes a great deal of sense.

CHAIR - Okay.

Ms RUSSELL - If I can just quickly come back to the issue of cost and then turn things back over to Marion and then we can go on to questions from there. Another theme that I have heard emerge sometimes in this debate is that we have to do this on the cheap, do it locally because we can't really afford to do anything more, do everything that we can to keep costs down. I would suggest that such approach really carries significant risks.

On the one hand I would leave it to people like Jeff Malpas to talk about the broader importance of ethical governance and ethics in society: what price does one put on good governance and on ethical society? This is very far outside my expertise, but I really would emphasise that from an economic point of view this type of approach may be difficult to accept. Although it is difficult to measure the impact of activities which use a broader definition of corruption to include things such as cronyism and regulatory capture, the economic impacts of such activities are very substantial. Bodies focused explicitly on economic performance, such as the World Bank and the IMF, note that even forms of corruption that do not involve money changing hands have a profound economic effect because they put personal connections or political expediency above calculations of the broader good - above other selection criteria, if you like.

The effect is dual. First of all such behaviour distorts public expenditure so that public money either can be wasted or can be spent on projects of lower return than might

otherwise be the case. Secondly, distortion of the regulatory environment leads to distorting and/or discouraging investment and economic activity. It is very difficult to measure both of these areas, but both of these areas, I would suggest, have potential to be particularly injurious in the specific conditions of Tasmania. First of all, we're not an enormously rich State. We don't have money to burn, so as a consequence public money actually needs to be spent as effectively as possible. It can't be wasted or misdirected. Secondly, because Tasmania is isolated, we will always face higher transport costs for our goods. As a consequence, we are operating in some ways at a slight economic disadvantage. As a consequence, the State needs the highest possible degree of innovation and flexibility in order to ensure that its economy is capable of dealing with its strategic disadvantage of distance.

CHAIR - You can spend \$50 million a year but you can have a situation, like in another State in Australia that's got a commission up and running, where there are real problems with it even though there's that amount of money spent on it. So, as you say, it's how you spend it and how you do it that's important.

Ms RUSSELL - I would be the last to say that there would be a dollar-for-dollar equation. All I'm saying is this is one that is worth doing right, that it is in fact, as people have argued, an investment in economic terms. It extends beyond the question of broader social ethics and good governance. There are, from the point of view of development or in organisations such as the World Bank, very specific economic costs. So an economic rationale for not funding such a body is not actually adequate in the face of the economic facts of the impacts even of non-monetary corruption.

Ms NICKLASON - Money that can be lost through poor judgment.

Mr ROCKLIFF - You mentioned ethics training, and I noticed you've got an ethics education component in your submission. You refer to all levels of government - I'm assuming local, State and Federal in terms of Tasmanian Federal representatives?

Ms RUSSELL - Yes. If you are emanating from Tasmania -

Mr ROCKLIFF - So you have jurisdiction over a Tasmanian senator, for example, or a House of Representatives person.

Ms RUSSELL - If someone is representing us at the national level there seems to me to be no reason they should not have had the advantage of getting the same level of education and training as someone at the local level.

Ms NICKLASON - It also depends on whether the Federal Government would actually bring such an ethics commission into the Federal arena and whether it is looked after financially in the Federal arena.

Mr ROCKLIFF - If we set up our own commission here we would have to look at that issue of the Federal Parliament and public servants. In terms of the training, who do you envisage would train various representatives of local and State government and how would that be allocated?

Ms RUSSELL - There is an enormous potential pitfall in saying, 'We already know who we'd like to do this. We know so and so and we know they're pretty good, let's put this together'. I would strongly argue that in order to meet its own ethical commitments and to ensure the best possible practice that a body would want to put out an open and fully competitive tender to see who actually offers the best value for money but also the best service. It seems to me to be very, very important when one is setting up a regulatory institution you do not want to constrain your conception of that institution to fit the capacities of local players. You should not let their skills determine what you want or need. Figure out what you want and need and then open up a tender to see who actually does the best job of providing the skills and services that the body needs.

Ms NICKLASON - I have already briefly discussed the deliberative democracy process and trying to get an ethical cultural change in Tasmania, having mini summits which would then lead to education of the populous and potentially mini referendums or something like that to enable people to have their say in what is best for Tasmania. There are a lot of Tasmanians who are extremely knowledgeable about all sorts of things and to believe that the ministers in Parliament have all the knowledge -

CHAIR - Somebody once said that once you become a minister you wake up and you know everything in the next morning.

Ms NICKLASON - Yes, that can be a misfortune and may happen but I think it is really important for the public to have their say and have the opportunity to participate in the process. A paper by James Fishkin from the *Boston Review* of March to June 2006 talks about deliberative democracy and a process that is used, so I would be very happy to provide it to the committee for review. It outlines what has happened in a number of different countries, including Australia, related to the deliberative democracy process.

Mr MARTIN - With the question of retrospectivity, it has been argued by some people that a politician or a public servant guilty of some wrongdoing in the execution of his duty, whether it be five, 10 or 20 years ago, deserves to be held accountable. I wonder about the statute of limitations in relation to this sort of thing.

Ms NICKLASON - I guess that is the Pandora's box that may be opened up and may slow down the process of identifying what is happening here and now that can have a big influence on the economy if the correct decision is to be made.

Ms RUSSELL - On the issue of retrospectivity, there are two issues. The first is that the Tasmanian decision-making system, extending from Parliament to the public service et cetera, gets some sense of what activities may have gone on in the past that have distorted decision making in order to ensure that decision making proceeds in a better fashion in the future. That is an analytic exercise. It is not designed to apportion blame. It is, rather, to understand patterns.

Then there is a broader question of public perceptions of impunity for wrongdoing. This seems to me to be an issue that is, in effect, one that needs to be negotiated. I cannot come to you and say I know exactly what retrospectivity should look like. I certainly have a sense that there is a need for investigation of past distortions. But as to what form of legal action that would be taken as a consequence for that, seems to me to be something that the Tasmanian public as a whole needs to come together behind because

otherwise you will simply end up with social division regardless of whatever outcome is seized upon.

One of the effects of the truth and reconciliation commissions that have been set up in places like South Africa - and there are many problems with many of these commissions; I am not trying to set them up as some sort of shining model in themselves - one of their effects has been to give people an opportunity to, first of all, discuss the past but, secondly, to engage in a debate about what should happen with the future. That very process has been significantly cathartic. It seems to me that there is room for discussion here as to how such a process could be undertaken that would, in fact, have the analytic benefit of, as I say, revealing distortions that need to be compensated for or corrected, while at the same time addressing issues of how perceptions of impunity can be overcome.

But as long as the Tasmanian public perceives impunity as being the rule of the day, they will always believe that protecting your mates is more important than good governance. That cannot be good for Tasmanian society as a whole.

Mr MARTIN - If this committee's recommendation was accepted that there be an independent integrity body with no commission of inquiry, would that change your view about the retrospective powers?

Ms RUSSELL - I would say that would make the retrospective powers more necessary, yes.

Ms NICKLASON - Definitely.

CHAIR - Can I ask you about CPD, continuing professional development? It is in a number of fields out there in the community, as you know, a number of professions. In order that you obtain insurance you have to obtain a number of points of continuing professional development. I have a bit of a concern, which I would like to voice to see what your views are, that people who come into Parliament do so without a great deal of training. They might be involved in a number of different fields, but suddenly they are a member of parliament and they are supposed to be over the top of the parliamentary process and what happens. People who say that occurs straightaway are in fantasy land. It does not happen. My tentative view is, there should be a type of CPD going on with members of parliament and bureaucrats that might not be liked but I think it is probably a good thing to do, to keep reinforcing maybe things that you raise and to keep learning new matters that come before members from time to time. What are your views on CPD?

Ms NICKLASON - I think it is vitally important.

CHAIR - Who would carry that out?

Ms RUSSELL - I would agree completely that something like this is vitally important. This is, again, one of the great advantages that Tasmania has at the moment. We are talking about this process at a time when the importance of anti-corruption efforts has been recognised for a solid 20 years in international governance bodies. More and more expertise is building up in Australia. A lot of the publications in Australia and internationally as well are superb on how best to address issues of continuing professional development, ethics education, regular review of statutes and regulations to

ensure that they reflect best practice et cetera. There is an enormous amount of expertise out there available to us. I do not pretend to have that expertise myself but it is wonderful that we are operating at a time when that expertise is available. So as a consequence, I am very confident that the Tasmanian Government chooses to try to put into place such a body, and that there is excellent advice that they can receive domestically and internationally on how this would best be effected.

CHAIR - You seem to say from your experience and your knowledge in the field that the Hong Kong system in relation to ethical bodies, or an overarching ethical body is concerned, is a system that we should be making ourselves aware of. Do you have any immediate information that you can hand to the committee or can you point us in the direction of web sites or whatever? We can do it ourselves with investigation but if you know of it and know it well then could you please supply it then.

Ms RUSSELL - I would be delighted to do so. The Hong Kong ICAC has been an extremely effective body. It did take a while to get rolling, as I understand; there were some hiccups at the beginning. Another model is Singapore. In a sense Tasmania has the opportunity to benefit from the teething pains of other institutions and on the mainland as well. But it does seem to me that international comparison will be an important thing, not just a comparison with existing structures but also looking at potential best practice recommendations as to how to set up a better structure than the Hong Kong ICAC, for instance.

CHAIR - Are there any other questions?

Ms NICKLASON - I have a question for the committee. I am just wondering about the next stage for public participation because we have a lot of people who are interested to hear about what the joint select committee is going to do to hear a little bit more from the public.

CHAIR - We have 128 to 129 submissions with the one this morning. We have to go through a lot of those. We have already just read them but we take that evidence, we will be writing to those people if we have not done so already to say that if they wish to come before the committee to prosecute their submission they can do that. We will be some time taking evidence as we are today, getting all the evidence that we can before us. We will also be inviting some people that we have not heard from yet who we believe are appropriate to speak with and once we get all that we will then be able to properly sit down and write the report and make our recommendations.

Ms NICKLASON - It is not quite the summits I had in mind. Mini summits I had in mind.

CHAIR - I hear what you are saying. I thought the one that the Law Society was involved with went down well. I do not know whether Martin is thinking of doing another one of those in the north of the State. I have not spoken to him since but I know that it has been flagged with him. I am not too sure what is happening in relation to that. But rest assured, we are receiving plenty of advice as to what we should do through submissions.

Thank you very much for coming and for providing your considered submissions. I would say that it will not be this year that the committee will be able to come down with our findings. In my view it will be sometime next year.

Ms RUSSELL - Thank you very much.

Ms NICKLASON - Thank you.

THE WITNESSES WITHDREW.