

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT  
MET IN THE JUBILEE ROOM, PARLIAMENT HOUSE, SYDNEY, ON TUESDAY,  
25 NOVEMBER 2008.**

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DISCUSSION WITH **HON. JERROLD CRIPPS** QC, COMMISSIONER,  
INDEPENDENT COMMISSION AGAINST CORRUPTION, AND **MR ROY WALDEN**,  
SOLICITOR.

**CHAIR** (Mr Wilkinson) - Jerrold and Roy, thank you very much for giving us your time this morning.

**Mr CRIPPS** - Most of us think we've reached a stage in Australia where there has to be some form of standing commission to deal with the problems associated with corruption. New South Wales started that, you may recall, because they'd had a nasty decade before that when a minister of the Crown had gone to jail and a magistrate had been charged with perverting the course of justice and was sent to jail. So everyone thought they had to do something to clean it up and they brought in the commission. It is often likened to the Hong Kong ICAC, but except the name we have nothing in common with the Hong Kong ICAC. The Hong Kong ICAC is a specialised branch of the Hong Kong police force devoted to corrupt conduct. We are not doing that; we are mainly concerned with exposing corrupt conduct and leaving to other authorities as to how they respond to that.

Since it started, as you know, it's gone to Queensland - they've had a few mutations along the way - and Western Australia. In New South Wales the function of dealing with the police was hived from the ICAC. I've never quite understood why that happened. It's obviously something ICAC didn't do properly, or people thought that they didn't do properly. I've only been here four years and when I tried to find out why it is, people from ICAC really have no idea why it happened. But they have separated it. I think it may have been a bit precipitous - because Queensland have it; they keep it under one roof and so does Western Australia. Anyway, that's the system in New South Wales; they separate the police from all other branches.

Having said that, I think every State has to make up their own mind. I'd be surprised if there was a State, even Tasmania, that was less corrupt than other States. Once you get human beings occupying a space, you get corruption.

**CHAIR** - How do you define corruption?

**Mr CRIPPS** - Well, in our legislation it is defined. It's defined by reference to people behaving dishonestly or partially, or behaving in a way that would amount to official misconduct, or people who misapply information or material that they're given in the course of their duties - that's how it is defined. However, it is then qualified; that's one limb of it. Once you find there has been one of those things then the next limb is that no finding of corruption can be made unless if what is alleged is true could amount to a crime or a disciplinary offence. That raised somewhat of a problem when ICAC was investigating members of parliament. Their conduct amounted to the definition of corruption but was not criminal because there were no disciplinary offences against members of parliament. So the parliament had a code of conduct for members, the

breach of which amounted to disciplinary proceedings. So if a parliamentarian had engaged in corrupt conduct as defined, and that was in breach of the code, then you could make a finding of corrupt conduct. But there are a lot of problems associated with that. For example, the members' code of conduct is so broad that they say things like you should not take bribes. If you've got to say that to members of parliament then you've probably lost the battle. Then they have a ministerial code of conduct, which is much more detailed but they won't include that in the ICAC legislation.

**Mr MARTIN** - Why do you think the legislation was framed like that?

**Mr CRIPPS** - You mean defining it one way and then saying you can't unless it's corrupt?

**Mr MARTIN** - Yes. What was the logic in that?

**Mr CRIPPS** - I'm not sure. Maybe Roy could answer this better. There's no doubt if you just look at what, in the first instance, could be corrupt conduct - dishonesty, partiality, misusing information - all those are capable of catching misconduct that nobody would dream of. For example, if you were late for work and you said you were at your grandmother's funeral, that is dishonest but nobody would really think that was corrupt conduct.

**Mr WALDON** - I think it really is an issue of seriousness, to make sure that findings of corrupt conduct aren't being made on a very narrow technical basis but that the findings are based on serious misconduct.

**Mr CRIPPS** - I did a part inquiry into ICAC before I became the commissioner. I stopped when I became the commissioner and it was carried on by somebody else. Many of the civil liberty groups, the Bar Council and the Law Society all claimed that the definition of corruption was too wide and ought to be redefined to make it accord with what ordinary people would believe corruption to be - like the taking of money to get certain favouritism. I then asked each one of them to give me a definition but every one they gave had more problems than the one we had. I also invited them to give me an illustration of when there had been these findings of corrupt conduct but the conduct was such that ordinary people in the community would not think was corrupt. They couldn't or didn't give me one. So I thought to just leave it and wait and see. To date I cannot think of an occasion where the commission or my predecessors have made a finding of corrupt conduct that ordinarily people would not think was corrupt.

**CHAIR** - Did you believe it important to start with a code of conduct for members of parliament?

**Mr CRIPPS** - There is a third ground for someone who could be dismissed from office. One of the earlier cases or matters that came before the commission involved the Premier. There was a member of his Cabinet with whom I think he had fallen out. To get him out of parliament he was given a position on the environmental protection board or something. It was then that the Parliament chose to investigate that. If the parliament said something to ICAC then it must be investigated, so ICAC investigated. It was found that he had engaged in partiality because he had picked somebody to the exclusion of others without giving everybody else a chance to compete, but it wasn't a crime or disciplinary matter because there were no disciplinary things for members of parliament.

**Mr McKIM** - Bargaining for public office isn't a crime in New South Wales?

**Mr CRIPPS** - He was not doing that. He was not bargaining for public office. The Premier just picked somebody and gave them a job to the exclusion of other people who wanted to compete. Incidentally, the commission did find he was engaged in corrupt conduct because they said his conduct would have permitted the Governor to have withdrawn his commission.

I have to say for those of us who were not associated with the commission in those days it would stand your hair on end because it seemed to me that was taking this legislation back to the Stuarts, who could just get rid of people because they didn't like the colour of their jib. When it got to the Court of Appeal it was set aside. Some surprise was expressed by the Chief Justice that his conduct was partial, because he got advice that he could do it, that it broke no laws, no traditions or anything like this. Anyway they said we will put that aside and leave that for ICAC, so you couldn't assume that the Governor was going to get rid of the most senior politician in the State because he didn't like what he had done. So that is what caused the parliament to bring in a code of conduct so that people could fix that conduct to something in the code of conduct that was deemed to be a misdemeanour.

**Mr MARTIN** - A hypothetical situation: a deputy premier resigns because it has been discovered that the day before a State election he signed an agreement, against departmental advice, to give a monopoly business deal to a former cabinet minister who is now in business.

**Mr CRIPPS** - Did he have authority to do that?

**Mr MARTIN** - He had the authority as minister to sign the contract but it was against departmental advice, it was the day before a State election and it was a three-year deal. Would that be covered by the ICAC or could he be investigated?

**Mr CRIPPS** - I am just wondering whether it would come within section 8. I doubt whether it would.

**Mr WALDON** - I do not think it would come within section 9 because it wouldn't involve a criminal act.

**Mr MARTIN** - So that sort of thing wouldn't be able to be investigated?

**Mr CRIPPS** - When you say 'wouldn't be able to be investigated', there would be a complaint about it and that would be assessed by the assessment panel. They would say, 'Can we go any further with this'. It is theoretically possible in the example you gave that you might find something more murky than appears on the face of it.

**Mr WALDON** - You really have to look into the reasoning behind why he did that. For example, section 8(1)(b) talks about 'any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions', which is fairly wide. You would look at the motivation behind the action of the deputy premier to determine whether it might have been dishonest or a partial exercise.

**Mr MARTIN** - Just run me through how that assessment is made. How do you get sufficient information to make that judgment?

**Mr McKIM** - And where is the bar set in terms of deciding whether or not to proceed with an investigation? Does a reasonable person have to form a reasonable assumption that there is a reasonable likelihood of a successful prosecution? How do you decide whether to proceed with an investigation or not? Where is the bar actually set?

**Mr WALDON** - We do not determine it on the basis of whether or not there might be a prosecution. Our function is to investigate and expose, not to prosecute. Others may or may not do that. It would depend on a whole lot of issues as to whether there is admissible evidence or not.

**CHAIR** - Can you make a recommendation, though? When you expose something and you can obviously see a criminal matter involved, can you then turn that over to the DPP?

**Mr WALDON** - We are required under our act to make a statement as to whether or not we are of the opinion that consideration should be given to the taking of prosecution action and we specify what that action will be. That then goes to the Director of Public Prosecutions and he assesses the initial evidence and then makes a final determination as to whether or not there should be a prosecution. You can understand of course that the evidence on which we base a corrupt conduct finding may not necessarily be evidence that is going to be admissible in court, so there are a different considerations which apply there.

To go back to your original question, matters can come into us from members of the public. Chief officers of public authorities are required to report matters to us that they reasonably believe may involve corrupt conduct. We can commence an investigation on our own initiative. Matters that come in from members of the public or from principal officers of public authorities are assessed at our assessments unit. They write up the material that has been provided. Sometimes they might make some inquiries in order to clarify issues that are not initially clear. That then comes to an assessment panel, which is composed of the Executive Director of Investigations, the Deputy Commissioner, myself and the Executive Director of Crime Prevention Education. We look at the reports and make a determination. Sometimes it is quite clear that a matter is not within jurisdiction. Sometimes it is quite clear that it may possibly involve corrupt conduct but it does not look as if it is serious or systemic. It may be a matter that we do not want to look at ourselves but we have the power to refer it back to another agency and request that agency to investigate and, if necessary, report back to us. So we are really looking at matters which are serious and or systemic. Sometimes we make a decision and it is hard to tell - the allegations, on the face of it, might be serious and it might look as if it involves systemic corrupt conduct, but there may not be a lot of information behind that to indicate whether that allegation can be corroborated, in which case we might decide to conduct a preliminary investigation.

So we can still use our statutory powers, but the purpose of the query or the investigation is really in order to clarify whether there really is an issue of substance there or not. Sometimes we conduct a criminal investigation and at the end of the day, we determine that there is really not anything there of substance so we close that off. On occasions of

course when you conduct a preliminary investigation you find more evidence, and it can then become a full investigation.

Within the commission we have a group made up of our senior management called the Strategic Investigations Group, and every matter that is the subject of a preliminary investigation gets reported to that group on a regular basis which oversees the conduct of the investigation and determines whether investigations should continue or not.

**Mr CRIPPS** - I am not on this panel; this panel only comes to me to see whether we go forward or do anything is if there is a split in the panel. If there is a disagreement I have to let Parliament solve it, but you have to see this in the context of the powers we have and one of those is to get people to come forward and they must answer all questions that are asked of them. It is a criminal offence not to do so and it also means however that if they object to answering questions, as the law now stands, their answers cannot be used against them in criminal, civil or disciplinary proceedings.

At the present time I am trying to persuade the Parliament that they ought to get rid of the privilege and disciplinary aspects in civil proceedings, but obviously keep it for criminal proceedings because of the privilege against self-incrimination. That is what it is at the present time and that is what I think Roy was referring to when he said that on the face of it we had no problem about finding that corrupt conduct has been engaged in. If all the evidence we get comes from an admission made by somebody in a public inquiry that cannot be used in a criminal trial.

**CHAIR** - What happens when you find that there has been a crime committed but the only evidence is an admission? Do you give a warning prior to taking that evidence?

**Mr CRIPPS** - No, because when you think of it, there is not much point giving somebody a warning when they cannot do anything about it.

**CHAIR** - There would be.

**Mr CRIPPS** - What - that they'll go to jail?

**CHAIR** - No, as I understand, if the person who gives evidence before the commission gives evidence on the basis that that evidence will not be used in a criminal matter against him, would that not be the warning?

**Mr CRIPPS** - No. My understanding of a warning in a criminal case is to give people the opportunity to shut up or to speak up.

**CHAIR** - It is.

**Mr CRIPPS** - They do not have the opportunity from us; once they are called in and are asked a question they have to answer it.

**CHAIR** - But the warning is that the evidence may be used against them.

**Mr CRIPPS** - No, but you then say to them, 'You can object to answering this if you wish to, it is your right to object, but you have to answer'. The function of the objection is that if

later on someone wants to try and use that evidence question and answer in criminal proceedings, it will not be admitted.

**CHAIR** - I get you.

**Mr CRIPPS** - That is how it works.

**Mr MARTIN** - What do you do in a situation where they are forced to answer but have surprisingly bad memories?

**Mr CRIPPS** - I must say that is a problem -

*Laughter.*

**Mr CRIPPS** - with the DPP and others who will not take a sufficiently robust view that we normally take about that. I can remember once doing an inquiry before I became the commissioner where, and you may read about these people, it was a huge Lebanese gang, I think they eventually shot up the Lakemba police station - they were a bad bunch, not nice people at all.

**CHAIR** - I remember that.

**Mr CRIPPS** - One friend giving evidence said he did not remember anything - he did not remember where he lived, he did not remember what he had done yesterday, and I warned him that saying you do not remember in circumstances where any reasonable third person would think you could not help but remember that, is the equivalent of not answering the question. But there was no prosecution. I recommended that there be prosecution.

**Mr WALDON** - In certain circumstances we also had contempt provisions under (*inaudible - sneeze right into the microphone*) and in certain circumstances that could constitute a contempt -

**Mr MARTIN** - A bad memory and an extraordinary ability -

**Mr WALDON** - It is not really a bad memory, they are just using that as an excuse.

**Mr McKIM** - I just wanted to follow up on something in relation to your assessments. I understand the issue of serious and systemic, but I am still a little bit in the dark about what view you have to come to in order to progress an investigation. In other words, do you have to form a view that it is reasonably likely that serious and systemic corruption is possible or is it a more subjective thing? Is it mandated at all anywhere in your act as to exactly what view you have to come to or is it a subjective decision that you make?

**Mr CRIPPS** - There is nothing that nominates it. For self-evident reasons, if you received something which on the face of it, if true, would be seriously gross criminal conduct, you could be more keen to push forward to that to find if there was anything in it than if something was barely within the definition.

**Mr McKIM** - Hypothetically, if there was a possibility only that something really serious had happened, you may proceed, whereas, if there was a likelihood that something far less serious had happened, you would probably proceed?

**Mr CRIPPS** - If there was a likelihood that something far less serious happened, we would send it off to another agency.

**Mr McKIM** - But if it was slightly higher than a possibility?

**Mr CRIPPS** - That is a good question. Also, when you use the word 'subjective', that is true, but I think if it is a person, not allowing their own subjective view to be heard is ridiculous. They have to take the view of what would a reasonable person understand or even think about, so to that extent, there is the objectivity.

**Mr WALDON** - We are also looking at the supporting information that has been provided. An allegation, just on its own, might be a very bold, wide allegation, but if there is no supporting information or no possibility of finding corroborative evidence, then it may be less likely that they were going to take it seriously and look at it.

**Mr CRIPPS** - Probably the most sensational one we have done this year involved the Wollongong Council. You've probably heard of it.

**Mr MARTIN** - Yes, we have noticed that one.

**Mr McKIM** - It even made the media in Tasmania, that one.

**Mr CRIPPS** - The first information we received about that was good enough to investigate but it did not really go any distance to what we ultimately found.

**Mr McKIM** - So it was your subsequent investigations that uncovered that?

**Mr CRIPPS** - There was enough to start. It really was someone making complaint about a planner having trips with a major developer. When that was checked out, a whole lot of stuff came out.

**CHAIR** - Are you bound at all by the rules of evidence?

**Mr CRIPPS** - No. But when I say that, it depends what people mean by the rules of evidence. Certainly it has to be relevant. The material we use has to be relevant to the conclusion we reach but we are not bound by the technical rules of evidence, like hearsay and secondary evidence.

**Mr WALDON** - But you obviously take that into account when you are weighing it up.

**Mr HALL** - You have now had an ICAC in this State for some 19 years or so. In terms of public perception and confidence in the Parliament, senior bureaucrats and the police force, has that changed the demeanour of the New South Wales people in respect of having increased confidence in those particular institutions since an ICAC has been established?

**Mr CRIPPS** - I have different views from other people in my commission about this. Some of them put greater faith in education than I do for people who are going to behave well or badly. But at regular intervals we do surveys and that at least lets us know what people think. The surveys have always been very favourably disposed towards the continuance of ICAC, with people answering that they believe that ICAC has had this beneficial effect in its operations. That is about as close as we get to it really, isn't it? But it is always the same and it is always a high percentage.

**Mr HALL** - In Tasmania we do not have a major organised crime component, whereas obviously that is part of your organisation here. What percentage of resource goes into your ICAC here?

**Mr CRIPPS** - Not a great deal. We have a crime commission here that really does investigate more serious crime, including gang-related drug crimes and the like. So far as ICAC is concerned, the closest we have been able to get to this that I had anything to do with was when we were doing those Lebanese gangs stealing cars and rebirthing them and things like that.

**Mr WALDON** - I suppose the simple answer is that we don't investigate crime; we investigate corrupt conduct. More often than not that does involve crime, but the principal aim of the investigation is to establish whether there has been corrupt conduct rather than criminal activity.

**Mr HALL** - In terms of staffing, we heard evidence in Brisbane yesterday that there was a lot of secondment from the police force. Does that happen here as well?

**Mr CRIPPS** - There is secondment from the police force but I don't know the rate of our investigators.

**Mr WALDON** - I don't think we have any at the moment.

**Mr HALL** - So where would most of that staff have come from?

**Mr CRIPPS** - A lot of them originally came from the police and then they resigned. They come from the police on secondment and then decide they would rather be with us than the police. That is quite common.

**Mr HALL** - Is there is issue in that they have come off active service, if you like, and come into a retirement mode?

**Mr CRIPPS** - Well, I hope not.

*Laughter.*

**Mr CRIPPS** - No, they are very enthusiastic. I think they function very well. My own personal view is that when you are responsible to an organisation, as I am, you have to be aware of the fact that investigators will go for their lives if they are not watched. They don't like being reined in. I don't mind that, so long as when they are reined in they don't sulk or anything - and they don't do that. I like to keep them energetic.



**Mr HALL** - As you know, Tasmania is a small State with a small public sector. The word 'corruption' has certain connotations. We have to make recommendations to government; we have to give it a name, it might be an accountability or an ethics commission. Would you see something such as that being more applicable than, say, a crime or corruption commission?

**Mr CRIPPS** - I don't know. I personally have a great difficulty when people start telling me we have to behave ethically; I don't know what they are talking about half the time. I know when they say you have to obey the law that you have to be courteous, efficient et cetera. I tend to think that to call something an 'ethics' thing would make it a bit watery. That's why I would prefer there be a reference to corruption, the very thing that you're aiming at.

**Mr McKIM** - Jerrold, you said - and I am paraphrasing you, not quoting you - that whenever you get a body of people together you have to guard against corruption. You are a body of people, the ICAC, so what happens hypothetically if I think a member of ICAC has behaved corruptly? Where would I go to have that concern addressed in New South Wales?

**Mr CRIPPS** - First of all, the ICAC as established comes under the jurisdiction of the parliamentary joint committee. ICAC is established, as you would appreciate, as an independent organisation. It is not answerable to government at all. I periodically have communication with the Premier because he is the notional person I go to if I have trouble with budgets and things like that. I and my predecessor have not had any troubles with that at all. Other than that, we are controlled by a parliamentary joint committee which is made up of the major political parties and a couple of the minor ones. We are accountable to them but they cannot have regard to any investigation. If an allegation against some person in ICAC of, say, impropriety relates to an investigation, the parliament joint committee has no jurisdiction to do that. The reason is, or so I have been told, that the parliamentarians are people over whom we have jurisdiction and therefore it is said that they should not be interfering in any investigations we conduct. I am never quite sure myself why that limitation should not be just restricted to occasions when we are investigating parliamentarians.

**Mr McKIM** - Does the committee then refer matters to the inspector?

**Mr CRIPPS** - In the course of that inquiry that I had started before, I thought - and at the time I could dispute it - that we ought to have an inspector and people could make those sorts of allegations to the inspector for the purpose of being subject to examination. Now you ask what happens then. Can the inspector, for example, refer to the parliamentary joint committee information it cannot get directly? I think, as a matter of construction of the legislation, he or she probably could. But they have been going now for about two or three years.

**Mr McKIM** - The inspector?

**Mr CRIPPS** - Yes. There have been complaints made about us. Curiously enough the complaints that we get are all from people who say we are not investigating hard enough. When you go to the PIC the complaints that the inspector there gets are from the people who are being investigated. They say it is being unfair. Our lot seem to think that when

you complain about us we are not investigating. I do not know how you overcome that problem. There is an assumption by some people in the community that since you get a government agency they have to have a hands-on view, steering everyone through a grievance solution. I do not see that as my role at all. My role is to examine whether people have behaved corruptly and deal with them and if they have not behaved corruptly, not deal with them. As I say, all of them have been largely what people call the frequent flyers. They just keep on coming. And not one of them has been found, incidentally, against us.

**Mr McKIM** - Okay, thank you.

In Queensland they have a parliamentary commissioner who fulfils a similar role, as I understand it, to the role the inspector fulfils in New South Wales . A.J. Brown gave evidence to our committee yesterday in Brisbane that he thought the parliamentary commissioner was a step too far and that in his view the more appropriate way to have the ICAC or the CMC investigated, if there were allegations that required investigation, would be for the parliamentary committee with all the powers that accrue to a parliamentary committee to conduct the investigation, with the possibility of having something like a commission of inquiry ultimately if the matter became serious enough. Do you agree with that?

**Mr CRIPPS** - No, I do not. Did he deal with the case where an allegation of impropriety was made against the commissioner who was in fact investigating a parliamentarian?

**Mr McKIM** - No, he did not specifically refer to that.

**Mr CRIPPS** - That is what I said. Ours maybe goes a bit too far. Ours says that the parliamentary joint committee cannot investigate really anything that we are investigating. I am not sure that that should be modified to say that they can, provided there is no connection with the parliamentarian. At the end of the day, I suppose you could say with the inspector, who guards the guardian? But at the end of the day you have to stop somewhere.

**Mr McKIM** - You end up in a hall of mirrors scenario ultimately if you keep asking yourself that question - in my book.

**Mr MARTIN** - Just changing the subject a little, we have been given the task as a committee to recommend whether we set up a body or not and if so, what kind of body. The reason we have been given this task is that we have had two years of issues that have cropped up in Tasmania - seven or eight different issues - that have given the public the perception that there is something wrong that needs to be investigated. They have been investigated by the DPP and the Auditor-General but we do not have this body that can take an overall view with the powers that you have. The Premier, in setting it up, has said there should be, quote, 'a line in the sand drawn' so that when it is set up it does not have the power to investigate the issues that have led to this situation - in other words, no retrospective looking back. Do you have a view on that?

**Mr CRIPPS** - The original name came from Hong Kong. As I say, it is in fact a specialised branch of the police force. The only way they got that off the ground was by making sure everything was prospective and not retrospective. They drew a line. They said,

'Behind that we are not going to investigate anything'. But I do not think you could pay too much attention to that because the whole of the Hong Kong police went on strike. Corruption was so endemic over there that every one of them was into it up to their ears and they went on strike. So as a matter of practicality, the British Government at the time said that 1972 I think was the cut-off period and beyond that they would not do it. Question: should that happen here? I do not really think so provided there is sufficient contemporaneity with what is going on. We did have one where some people thought that our commission was established to deal with allegations of corruption and planning by certain Labor Party people 15 years before the commission was established but the commission decided it could not do it.

**Mr MARTIN** - But these issues have been over the last three or four years.

**Mr CRIPPS** - My own personal view is you only draw a line in the sand when what's behind that line is really awful. Secondly, unless you do that, you're never going to get anywhere. I don't think with all the ill will in the world Taswegians are that evil.

**CHAIR** - Don't you just leave it to the discretion of the commission?

**Mr CRIPPS** - I think so. Something that happened six months earlier surely has to be looked at. You might go back 15 years, and you think, 'Oh, what?'

**CHAIR** - Surely part of the evidence would have occurred prior to the commencement and therefore you'd have to be able to look at part of that evidence to make your investigations thorough.

**Mr CRIPPS** - My own personal view is I wouldn't endorse the retrospective idea unless there was some really good reason for that. In Hong Kong, the really good reason was it was the only way you stopped the police going on strike, so I think it was a pretty pragmatic decision.

**CHAIR** - With the bodies that are already there, the watchdogs, there is Parliament itself, there is an upper House, there is the media, there's the Auditor-General, there is the Privileges Committee and in Tasmania we have what is called a GBE committee, a government business enterprise committee, to look at government business enterprises and State-owned companies. We have the Estimates process, the Ombudsman - a number of processes already -

**Mr MARTIN** - The police.

**CHAIR** - Yes, and the police - a number of processes already to ensure that this type of behaviour doesn't continue and doesn't manifest itself in the first place. Some might say, 'Why don't you just resource those bodies better as opposed to starting up this new commission?' I am not personally of that view, but what would you say to those people?

**Mr CRIPPS** - My view would be ICAC functions properly because it's given those coercive powers that it has and people are liable to severe punishment. If you keep spraying that out to the police force, to everywhere else, one of the problems with any standing royal commission, sooner or later, is that people think they're going to abuse it. That's why they are frightened of it. So I think you really have to confine it as much as possible to

one body so that at least their activities can be the subject of public scrutiny and accountability rather than just adding all these powers to any organisation.

**CHAIR** - Can I say, then, an issue comes before you, you then obviously have the power to say, 'I understand there might be a problem. That should go back to the Ombudsman, that should go to the Privileges Committee', or whatever. You can do that?

**Mr CRIPPS** - Yes. Sometimes you've got to be careful, I think. Once ICAC people sent something back to one of the major organisations and they started investigating, and the investigation was headed by the person who was running the scam. So we had a bit of egg on our faces.

*Laughter.*

**Mr HALL** - We noted in Brisbane yesterday that the Queensland organisation actually spent some resources in education of senior bureaucrats and members of parliament, in terms of ethics. I know you don't like that word, Mr Cripps -

**Mr CRIPPS** - A bit broad.

**Mr HALL** - A bit broad, yes. Do you do that in here in New South Wales?

**Mr CRIPPS** - Yes, we do. There is a division of the organisation which is devoted to corruption prevention and education, and it gets its information in large part from the inquiries that in fact reveal where the corruption is, what the problems are and make recommendations on how it should be stopped. There are education programs where we speak to people, train them and get them to understand concepts like conflicts of interest. We also - and this probably would not be a problem for you - make sure we go into the country twice a year really to show the flag, as well as to involve the people in the country, but perhaps in a State like Tasmania you wouldn't have to do that.

**CHAIR** - Don't say that to Greg.

*Laughter.*

**Mr CRIPPS** - New South Wales really is divided. People think there's Sydney and the rest of New South Wales.

**Mr HALL** - Yes. Do you go and talk to local government people as well?

**Mr CRIPPS** - Yes, we do, and when we do these outreach programs, as we call them, a large amount of the work is in fact talking to local councils because, for example, we get about 2 500 complaints a year of corruption. We really only started to go into a full investigation on four or five of them, but 41 per cent come from local government. There's a tendency in local government for people to think that if their planning expectation is disappointed, the only explanation can be corruption.

**Mr HALL** - That would tend to bog down the system.

**Mr CRIPPS** - Well, it hasn't really in our case. We have people who are specialising in local government. When you have those areas you have to get people up to speed to understand what it is that could lead to corruption in planning. We have, and I suppose you do in Victoria and Tasmania, a very complex, complicated planning system and we have people giving huge discretions to bypass or create around things.

I keep forgetting, I'm not speaking to people who are - Gunns, for example, you have had it, haven't you, in spades - but also, at the other side, you have this huge amount of money that's involved in a successful or unsuccessful planning.

These are areas that we recognise are conducive to corrupt conduct so we specialise in planning in that area to try to have enough information to recognise -

**Mr HALL** - Did you draw people out of the Local Government Association or planners? Where did you get the personnel for that?

**Mr CRIPPS** - The person who heads the division came from the university, I think. Some of the people who are there have been in planning.

**Mr HALL** - That is good, because planning is an important matter anywhere in Australia. Those matters are so close to the bone of people in normal walks of life and they are the things that upset people most so, as you quite rightly say, if something doesn't go their way then, 'Somebody must be corrupt' - and it doesn't help matters.

It was in the time of Mr Greiner, I think, when this was set up and he then became the first casualty, virtually, didn't he?

**Mr CRIPPS** - Yes.

**Mr HALL** - So has it been a concern that there can almost be a trial by media even before a person has had a chance to prove their case and the media get hold of it and run with it? Is that a concern that people's reputations have been besmirched or sullied over time?

**Mr CRIPPS** - It was a concern of the Parliament because originally when this legislation was brought in it was said that when the commission decided to investigate, and the question was whether they had a public investigation or a private one, prima facie it should all go public.

That did lead to a number of complaints by people who said that, even though they'd been cleared in the public investigation, they remained smeared by the allegation. So they then changed the legislation and said when the decision was made to have a public inquiry or not, one thing to take into account was the effect this could have on people's reputations that shouldn't be there.

Generally speaking, that is what I think we do. The legislation sets out the things - they say, for example, 'You may take the view that this has to be aired in public even though there are some problems with reputations'. Other times, you may think, 'The reputation is so important here and what has to be aired in public is not that important', so you don't do it. I have a wide discretion as to whether I will order an inquiry to be done in public.

Generally speaking, that works this way. We have the site to investigate, we then have a compulsory examination to investigate them in private, when people have to come and answer questions - exactly like a public inquiry except the public are excluded. At the end of that time - this is the general way - we look at it and say, 'Well, what has emerged here?', and the answer is a fairly clear case of corruption. So this will probably have to move to a public inquiry for two reasons. One, to explain to the public why it is we have come to this conclusion, and we are doing it not behind closed doors but in public. The second one is, in effect, to give the people against whom these allegations were made a good, public opportunity to rebut.

So, generally, we have taken the view, not that we haven't got a closed mind about it, but we think, 'There is a pretty powerful case here so that's the best way to do it'. I have never had to do it yet but there could be a case where public confidence in the system would demand you could not really resolve this otherwise than in public without everybody being very suspicious about your motives for what you'd done in private, even though you know that you're going to blacken someone's character and probably, unjustifiably, you would not know who. You might have to go public. It would probably happen if you started to investigate a given case. It is when politicians start making use of it that you can get into trouble.

**CHAIR** - That should be in the discretion, should it not?

**Mr CRIPPS** - Yes, it is. There always was a discretion but the discretion was 'don't do it in private unless you really have to', whereas they have now said to us, 'Do more in private than you do in public. Go public when you think you have to'.

**Mr MARTIN** - Do you agree with that?

**Mr CRIPPS** - Yes, I do.

**CHAIR** - The commissioner is appointed there because of their expertise and he should therefore be able to properly make that discretion.

**Mr CRIPPS** - I am in favour of it. I had spoken to past commissioners about this. They took the view that they would have preferred a wider discretion.

**CHAIR** - Whenever members of parliament try to become prescriptive I think it causes problems.

**Mr CRIPPS** - Other people can do it, I know, but parliamentarians are in the news all the time and if it is an investigation in public into a parliamentarian the Opposition is not going to sit around doing nothing.

**CHAIR** - You said 2 500 matters come before you and you would investigate probably four or five a year. How many would go back to the other divisions - the Auditor-General, Ombudsman, privileges or whatever?

**Mr CRIPPS** - I don't know the figures. It is probably in our annual report but I don't know what it is. Of those 2 500, about 70 get to, as Roy explained, preliminary investigation.

Of those 70-odd, you get back to the ones in a full investigation. I don't know how many go back.

**CHAIR** - I suppose the majority of what is left, between the four or five and the other 65 would go back to the departments?

**Mr WALDON** - Not necessarily. There are a couple of ways of referring things back to a department. If we think there is a possibility there might be corruption and we don't think it is serious or systemic we may refer it back to the department and ask them to do their own investigation and report back to us. I don't know what the figures are but I think it would be fewer than 50 a year. Other matters we might just refer back to the department for their information and it is a matter for them what they do about it. There are a whole lot of matters, particularly matters which might come in from members of the public and, as the commissioner mentioned, particularly the local government area where people are disappointed with the outcome of planning schemes, where that is really the only basis that they are alleging corrupt conduct. There is nothing else that will indicate there is corrupt conduct and we will write to them and say, 'Thank you for your complaint. We've assessed and we don't regard it as involving corrupt conduct'. We do not do anything further with it. The fact that someone makes a complaint to us doesn't necessarily mean that it is going to be referred.

**Mr HALL** - As a follow-up, is it fair to say that you are probably seen as a first port of call rather than the Ombudsman and the Auditor-General?

**Mr CRIPPS** - You may know that the Auditor-General is concerned with financial mismanagement, the Ombudsman is concerned with matters of administration, and we are concerned with the corruption. There can be a lot of overlapping with all that.

**Mr HALL** - A lot of people in the public may not be able to distinguish quite what the roles are.

**Mr CRIPPS** - What we tend to do is just refer it off or tell them, 'It's not us. If there is anything in this complaint, go to the Auditor-General or the Ombudsman'.

**Mr HALL** - Do you think perhaps in a smaller State the office of the Ombudsman and his staff could be part of -

**Mr CRIPPS** - I have a bit of a problem with that. The role of the Ombudsman is essentially quite different from that of, say, the commission. The Ombudsman has a very pronounced grievance solution approach to things, solving the problem. It is not our function; our function is to decide whether people have or have not behaved corruptly. I tend to think that there is a whole different approach. It could make it awkward if you had the one person as the Ombudsman and also the corruption commissioner. They are separate jobs, I think.

**Mr McKIM** - On another matter, and I guess I ask you this question on the basis that you have dealt with corruption issues over a period of time, do you believe that timely disclosure of significant donations to political parties and members of parliament would lessen the possibility of corrupt behaviour occurring?

**Mr CRIPPS** - I do not think anyone doubts that political donations have the propensity to cause corruption, but how you deal with it, I don't know.

**Mr McKIM** - If I could just contextualise it, Roy, by saying that Tasmania has no State-based political donation disclosure laws.

**Mr WALDON** - It may well have an effect on corruption. I think it certainly has an effect on public perceptions and public confidence in the way in which governments, political parties and politicians operate. It is as much an issue of public perception and public confidence in those institutions as it is an issue about corruption. Disclosing of donations is one thing but if someone really wants to be corrupt there are other ways of being corrupt as opposed to just manipulating the donations system. It is more a case of public perception and public confidence of the political system to disclose those matters.

**Mr McKIM** - No doubt that is the case. Would either of you care to comment on the fact that Tasmania does not have State-based donations disclosure laws and whether you think if we did have them it might at least deal with some perception if not deal with some reality about corruption?

**Mr WALDON** - I think it is difficult, not being aware of the context in which that occurred. It surprises me that you don't have a law, quite frankly.

**Mr CRIPPS** - I don't think anybody could deny the proposition that political donations have the propensity to be conducive to corruption. It depends on how you deal with it. Sometimes the dealing with it causes more problems than the not dealing with it. Sometimes people deal with it to make it look good only to find that people do it through a back door and nobody knows what goes on anyway.

**Mr McKIM** - Absolutely.

**Mr CRIPPS** - New South Wales is a good example where certainly parliamentarians have to disclose what donations were made to them for their election. What happens if they decide to give it to the head office and with a wink wink, nudge nudge leave it to them to decide who they are going to give that money to? You have to be careful that under the guise of solving a problem you are not really just kicking it under a different part of the carpet.

**Mr WALDON** - Issues of donations are also important in the local government area. There has been some recent legislative change so that if you are submitting a development application now you have to disclose whether you have paid donations to anyone who is a member of the council.

**CHAIR** - Or given favours, because it is not just the payment of money, is it?

**Mr CRIPPS** - Even that has become a problem. What they have largely done in New South Wales is to say that if a person who is in local government has had a political donation given then that person has to treat it as though, when an issue comes up, he or she has a pecuniary conflict of interest. Even though it is not pecuniary they have to disclose it. But it doesn't really solve the problem because it is applied to people who are directly



getting this money. In New South Wales, for example, the Labor Party runs candidates at local elections, whereas they don't very much in Queensland.

**Mr HALL** - Or Tasmania.

**Mr CRIPPS** - So you would not have the problem, but in New South Wales there is the problem because these people who are being voted in do not directly get money from the developers. As I say it is a difficult question.

**Mr HALL** - The three of us are independents, so we are squeaky clean.

**Mr MARTIN** - We are looking at different models obviously. Before this committee was set up I had been pushing for an ICAC-type body to be set up. It got to the stage where it wasn't going to happen from the Government's perspective so I had a bill drafted as a private member's bill. It was a hybrid kind of model but based largely on the New South Wales model. Could you do a five-minute SWOT analysis of the strengths and weaknesses, if any, of the New South Wales model that we should know about in assessing it?

**CHAIR** - In other words, if you were doing it again, what would you do to probably strengthen up what you already have?

**Mr CRIPPS** - One thing I would do is that I would not give people immunity for disciplinary and civil proceedings. I would give them that immunity for criminal proceedings but I would not give it for disciplinary proceedings and that is why I am trying to get the Parliament to change the law now.

**Mr WALDON** - We have additional powers apart from this legislation. We have powers to intercept telecommunications, surveillance device warrants, control operations, the whole gambit of powers which are outside this act as well, so taking those into account I think we are pretty well equipped.

**Mr CRIPPS** - An institution like ICAC to function properly really does have to have public confidence. That is what it is really all about. It is public confidence that they are behaving with integrity and courtesy and honesty and, above all, impartiality. One of our biggest problems that we get on that front is from members of parliament who cannot resist the temptation to try to score political points by claiming they have referred somebody's conduct to ICAC when often then have not even done that.

**CHAIR** - So then you see them the next day.

**Mr CRIPPS** - Then they will say they have referred it to ICAC and ICAC is investigating, when ICAC may have got the complaint but has not really even assessed it. That tends to get a bit of a head of steam up. Mind you, when you think about it, it comes almost always from the party in Opposition because they are not the party that are running government departments that will be held responsible if corruption turns up.

I think that has been a problem but I do not see how you can stop that. I do not think you would stop it by saying, 'I'm not going to investigate politicians' so I do not know how you would do it. You have just got to wear it, I suppose, as best you can.

**JOINT SELECT COMMITTEE ON ETHICAL CONDUCT, SYDNEY 25/11/08  
(CRIPPS)**

It did get to a point about six months ago where the commission got a couple of serves from the Leader of the Opposition and the Leader of the Nationals saying that we were not tough enough in following up allegations against their political opponents. I gave a bit of a burst to the parliamentary joint committee about that. I said that if they had in the future why did they not refer it to the Parliamentary Joint Committee. Why did they not raise it with me? Were they interested in maintaining the confidence people have because as soon as you start doing that you politicise the institution. I did not think it would have any effect at all but since then there has not been any public complaint. There may be private ones, which I will meet next time I go before the parliament, which I am happy to do.

**CHAIR** - Have you got the power to call those people before you to give them a dressing down, which is obviously what they need?

**Mr CRIPPS** - No, I do not think we would, unless we decided we were going to investigate something. There is an assumption by some parliamentarians that we can just haul anyone off the street and do it. You must have read about what they called 'Iguanagate'. It was said that these people would not speak to the police or something like that. The remark was made by some politician, 'Why doesn't ICAC exercise its power and haul them off the street and make them talk'. We do not have that power and I am very pleased we do not have that power. We can only investigate something that is capable of investigation. We cannot just haul someone off the street to meet the convenience of a politician.

**Mr MARTIN** - When I proposed my private member's bill based on the New South Wales model the obvious thing thrown at me was the size of it, way beyond what Tasmania could afford et cetera. Given that our population is half a million, what is the minimum number you think we would need to have to run an ICAC in Tasmania based on the New South Wales model?

**Mr WALDON** - I think you would need to look at what functions you want. I think you could get rid of the education function. You could get rid of the corruption prevention function if you needed to. Certainly if our commission got rid of those it would be a lot slimmer. I am not saying we would in New South Wales; if you look at New South Wales, you will see that we do need those functions. If you think the problem of corruption is such that you need to have a body that is going to look at that then you really need, at least in the first instance, to concentrate on the investigative function because you need to be able to investigate and establish what has occurred. You need a strong investigative function to do that.

I do not know what the legislation is in Tasmania, but you need not necessarily have what is in here. But you need to be able to do those other things - telephone intercepts, use listening devices and surveillance devices, and conduct whole operations if necessary, which enable a law enforcement officer subject to various restrictions to engage in what would otherwise be illegal in order to gather the necessary relevant evidence. Once you have done that, to a large extent the investigation leading to exposure is in its own way education and corruption prevention as well.

If you are looking at setting up a small organisation you need to focus on the investigative function.

**Mr CRIPPS** - I think I would agree with that. You have to have a sufficient number of people there to conduct the investigating process properly and it takes resources to tap telephones, to type up transcripts.

**Mr MARTIN** - Do those people need to be full-time employees of the organisation or could they be seconded as issues came up?

**Mr CRIPPS** - I think it would be hard to run such an organisation. Do you mean just meet when there was an allegation of corruption?

**Mr MARTIN** - Yes, and have the investigators seconded from another State or from Tasmania Police.

**Mr WALDEN** - One of the difficulties ICAC had in the early days when it did have the police jurisdiction was that we had a number of seconded New South Wales police and every time we investigated a matter involving New South Wales police we had to hive them off somewhere else so that they could not be involved in the investigation even though they were no longer necessarily police officers.

I am not sure that the system of seconding people in from other organisations is going to necessarily help. Once you have a body that is established and you have a group of people who are permanent investigators, there is a degree of expertise which they develop over time which is not necessarily the same expertise that a police officer or someone from the Ombudsman's office would have. There is a degree of corporate knowledge that they develop over time, a degree of camaraderie that is important to the way in which investigations are conducted. I think there are difficulties in seconding people in from different agencies. I think one of the other difficulties of doing that is that it is going to take them some time to become an effective team because if you already have the personnel there then you have already have, hopefully, an effective team which can hit the ground running so to speak, rather than having to build a team from scratch each time you want to investigate.

**CHAIR** - To do that investigative role, how many do you need to properly play the game?

**Mr CRIPPS** - If we were concerned with nothing other than New South Wales and investigation and exposure, not corruption prevention, not education, I think we would have about 80 people. That is about all. That would include lawyers, investigators and the people doing the surveillance and stuff like that. That is 80 for a population of seven million people. I do not think you would divide 70 by 14 because if it was not bigger and the critical size, it could not function properly. But I do not know what critical size would be.

**CHAIR** - I suppose we should not bog ourselves down with that, should we.

**Mr CRIPPS** - No, but I think what Roy said is sensible. Namely, that maybe you might decide when you are setting it up to just leave corruption prevention and education to one side and concentrate on what you need to. It is very interesting that when the New South

Wales ICAC first came into existence it was said in the Parliament that although it would have a strong investigative role, eventually that would disappear and it would serve really just an educative and corruption prevention role. Well, it hasn't. I have the feeling that that was said just to sell it to the Parliament. People have remained corrupt and they've been investigated. In any event, as Roy points out, it's all really to do with prevention, at the end of the day. Whether you do it by investigation or whether you do it by education; it's a question of which is the most efficient.

**Mr MARTIN** - One other issue I'd like to see expanded on a bit more is not having the police in it; you obviously don't agree. You believe that the police shouldn't have been hived off?

**Mr CRIPPS** - Well, I came here four years ago. I wasn't here when the police were taken off, I think, about 10 years ago. It followed a royal commission and I think it was believed that the problems with the police were so special that they inhibited the commission from investigating the police properly and also investigating the public sector. It probably would have been better to have sat down and worked out how it could have been done better in the one organisation. They do it in Western Australia, they do it in Queensland and they don't have this problem. I'm really not hung up on it but I don't know what I would have done. I think, as Roy points out, once you do have the police involved and you have a police presence of investigators you have to be careful how you deal with allegations against the police.

**Mr MARTIN** - Yes. One other issue: the parliamentary oversight committee; I can't think what it's called here -

**Mr CRIPPS** - The Joint Committee.

**Mr MARTIN** - Can you just expand on what the relationship is between you and them?

**Mr CRIPPS** - It's in the act; they can supervise just about everything, really, but they cannot get involved in investigations. They could ask any number of questions about what resources we applied to corruption prevention per se or education.

**Mr MARTIN** - How often do you meet with them? Are there regular meetings?

**Mr CRIPPS** - I think it's meant to be twice a year but it hardly ever happens. We're lucky to meet once a year.

**Mr MARTIN** - I was a little bit surprised in another jurisdiction at the relationship between the two structures where they meet bi-monthly and the parliamentary committee receives a bi-monthly report on the progress of investigations. You don't do anything like that?

**Mr CRIPPS** - I'll tell you what they do do. I meet with the inspector monthly and I raise matters that have come to the commission that I think he ought to know about if he wants to know about them. He has taken the view that his role is not to second-guess us in terms of who we investigate and who we don't but he is concerned, too, where there is maladministration or misconduct with the commission. Sometimes there have been such allegations and I bring them to his attention before the complainant brings them to his attention. Then he deals with it the way he deals with it.

**Mr MARTIN** - Yes.

**Mr MARTIN** - In your legislation there's no way that the parliamentary committee can heavy you for details on investigations or anything?

**Mr CRIPPS** - No, not really. It's one of the advantages, I have to say, and I think it is an important advantage of us regarding ourselves as independent of everything other than the Parliament and the Joint Committee. I have never taken the view that we are above Parliament but we are certainly separate from Government. So I never feel there's any issue of being heavied. I'm here to be heavied, I suppose.

**Mr WALDON** - It's statutory provisions that prevent CJC from inquiring into investigations; they can't do it.

**Mr CRIPPS** - But the inspector can and he can probably make reports if he wants to and I make it my business that whenever something comes in or when someone has said something and I think, 'Oh, this may go to the inspector, I might as well tell him about it at the next meeting and see what he wants me to do about it.'

**CHAIR** - Gentlemen, thank you very much for your time. Sorry we are a bit over time. We are trying to keep as best we can to time. Thank you very much for your expertise and the time given.

**DISCUSSIONS CONCLUDED.**