

**THE JOINT SELECT COMMITTEE ON ETHICAL CONDUCT MET IN
COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON MONDAY
16 MARCH 2009.**

Emeritus Prof. STUART McLEAN, UNIVERSITY OF TASMANIA, WAS CALLED,
MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Thank you very much for coming along, Stuart. We received your submission. We will allow you to speak to your submission and then members will ask you some questions. Brenton Best is on link-up from Devonport. If there is anything you want to give evidence about in camera, please let us know.

Prof. McLEAN - I am happy with that. Thanks for asking me along. I have a brief statement to make. It is some time since I wrote the submission so I thought I would recap it in a slightly different form.

The submission relates to the mechanisms that could be used to support ethical and open government, which forms part of the terms of reference, as I understand. It is based on my own experience in the health research workplace. I am an academic and my research has involved human as well as animal studies. My career started in the 1960s and since then I have seen the ethics oversight of research develop from virtually nothing when I started to quite a well-developed system now. Formerly, in the 1960s or earlier, it was considered that we would just leave it to the researchers to conduct their work to the highest ethical standards. Now it seems obvious that we need mechanisms to ensure there are good ethical standards in human research. I think this change in attitude can be attributed to some well-publicised episodes. They are uncommon to rare, but from time to time there are breaches of ethical behaviour or frank dishonesty and this leads to mechanisms coming in. As lawmakers you would appreciate the laws are there to pick up on people who are transgressing. That is what has happened in human research. There are parallel developments in animal research, which I won't go into now.

There has also been a sense in the community of what comprises ethical conduct. Ethical sensibility has developed over time. It is not a static thing at all. If you reflect on what has happened in previous centuries, what was regarded as normal behaviour or normal treatment of people wouldn't be countenanced now so you can see that ethical sensibility does change over time.

Research projects which involve humans must now be approved in advance by a properly-constituted ethics committee. There are rules for this, with a broadly based membership so it reflects community views as well as specialist views. Researchers need to make application for approval. The onus is on the researcher to identify the ethical issues in what they propose to do and show how they can manage them satisfactorily. They first have to understand what is meant by ethical conduct and so the whole system has an educative role as well, which I think is at least as important as the sanctions that can apply down the track if there are any breaches.

I'm not really suggesting the same mechanism could be applied to government at all. Clearly, different workplaces call for different solutions and mechanisms, but the ethical

values themselves are really universal. The sorts of things that come up in human research include: have the people affected by a proposal been fully informed about the pros and cons and in language that they understand? That is quite a critical thing. Does the proposal have merit? Is it likely to be carried out competently and do the benefits outweigh the risks? Are the benefits and risks being shared equally and fairly amongst those involved? The concept of placing the onus on individuals to show to an independent ethics committee that they have identified the ethical issues associated with the course of action and that these have been managed satisfactorily, I think should or could be applicable to government and other workplaces generally. Where it is impractical to seek approval in advance this could be done retrospectively, which would then enable some remedial action or at least prevention of future unacceptable conduct.

CHAIR - You made an interesting comment on the second page when talking about the definition and if there were a lack of understanding in relation to what constituted ethical conduct there is little wonder that from time to time ethical conduct isn't up to what it should be. Did you find that in the medical side of things as well - that when it was left to the researchers they carried out their work in what they thought was an ethical situation but in fact that fell far short of what the community would expect?

Prof. McLEAN - Yes, people's views of course differ. These are value judgments and, in addition to being a researcher making application to ethics committees, I have also served on the university ethics committee and also a hospital committee which was appraising the scientific value, or the merit, of applications for ethical approval. We had some really interesting debates at times around the table about particular issues. They are not always that straightforward. We have a framework to fall back on. The track for this, as I am sure you are aware, Mr Chairman, is that after World War II, the UN looked for a universal declaration which could prevent abuse of humans in the future. That led to the Declaration of Helsinki in the early 1960s. Australian law in this matter follows that and various treaties that Australia has signed. There is quite a bit of legislative guidance for ethics committees.

The other important thing is that it is not static. These are living documents. They are constantly evolving and that makes the whole field quite interesting, but it is also an attempt to make it relevant to changing community standards.

Mr MARTIN - Would you say, as a nation, we have not always lived up to it?

Prof McLEAN - Undoubtedly. We are all humans with fallibilities. If you are in a position of power and there is nobody to tap you on the shoulder you can drift a bit. I think we all tend to do that; we tend to take short cuts and perhaps not think too much about the other person's point of view if we do not hear it or do not have to.

Mr MARTIN - From the Government's point of view, what do you think is the body that is needed to hold people's consciences?

Prof McLEAN - I like the idea of an ethics committee which is not prescriptive, but where the ethical guidelines are laid out. That could fit all situations. I also like the idea, as in my area, of the person who wants to initiate a course of action having to state what they think the ethical issues are and how they would manage those. Then you have an

independent group which can basically review that and say they have covered everything or raise issues they think have been left out.

I have to say, with applications for ethical clearance for human research projects, probably most often they get knocked back initially, not because they are outrageous but because somebody around the table identifies something, which may seem a niggling minor point or it may be substantial, but they want a response to it. Maybe it has been considered; maybe it has been overlooked, but it goes back to the researcher and there is a bit of a delay, they formulate their response and it comes back to the committee. Clearly this is cumbersome and it would not work in a prospective way in all workplaces and probably government is one where you need to take action quickly at times. I would imagine you could still have that procedure there and look retrospectively at things.

I have to say that it is not an adversarial system. The committees are there to assist the researcher to conduct research, they are not there to stop it; but they are there to make sure it is done ethically. That is the point.

Mr MARTIN - The issue of retrospectivity is one that has been brought up a number of times by other witnesses. What is your view on that, if a body were set up now, should it have the power to look backwards?

Prof. McLEAN - How far back? That is the question; it could have an awful lot of work. I do not know really. I can see pros and cons to that.

Mr MARTIN - In my opinion, you rightly observed that we have our own moral standards which are a subjective thing, varying from individual to individual. How does a group come up with a set of ethical guidelines?

Prof. McLEAN - We have published guidelines already for research involving humans and those ethical values are readily applied to other situations, I think.

Mr MARTIN - They look pretty good to me.

Prof. McLEAN - There are the four core values, including respect for human beings and part of that, in the research area, is that people must be informed about the risk to them in the proposal and informed in language that they can understand, not in technical language. That is one outcome.

Another is a subjective judgment about the proposal, whether it has merit and integrity. Within that, we ascertain whether the people who will be conducting the research are capable of doing it by looking at what they have done in the past; are they going to make a hash of it, which would be a mess. That is clearly important for research projects. It is regarded as unethical, for example, to conduct research that is poorly designed. You ask the question but you cannot possibly get an answer because you have designed it so badly. That is unethical.

Similarly, and this is quite a contentious area, if you do the study and get a result you don't like then you don't publish it, and that is unethical too. I have to say that we don't really have a good grip on that one. There is an international debate at present on how to

make sure that the results are published, whether or not the proponents of the study, which may have a commercial interest, want that result to come out.

Mr McKIM - In the context of research proposals, I guess you are dealing with people who want their project to go ahead so they are willing to participate in the process. In the Government's context though you may end up with people who don't want to participate in any kind of scrutiny about their ethical conduct. How do you think that ought to be resolved? Would you see any body we set up as having coercive powers; powers to compel witnesses to attend and to subpoena documents, for example?

Prof. McLEAN - There are sanctions in the research area, which have evolved as it was developing. Not all researchers would have been keen on them. I have to say that people grumble, especially if their applications get knocked back a couple of times and they want to get on with it. There are sanctions, the first being that it is simply illegal to start work until you have ethical approval. If your organisation doesn't have that process in play then you cannot get government funding. There are other mechanisms, I think, to deal with allegations of dishonesty, a separate mechanism for that.

How would it work in government? I don't know. I have not worked in government. If you asked me to help, my thought would be that you need somebody who is experienced with the type of work being done in government, maybe working with people who have experience with ethics in another workplace, and other stakeholders and people who can contribute. That would be the way forward. I think it would be presumptuous of me to say how it would work in another workplace; I am saying how it has worked in ours.

Mr McKIM - Would you see a body, if we were to recommend one, as having an oversight committee or a board, for example, that sources people from the community, from ethical experts? Is that the sort of government structure you would envisage for any kind of an ethics committee?

Prof. McLEAN - Yes, the one in human research is a broadly based committee so it has representation from the research committee, legal specialists, people who have partial care and such like, and also people from the general community with an interest in the area. I cannot say off-hand exactly who the various people are, but they are listed by the NHMRC in the normal guideline requirements for an ethics committee. The committee is broadly based and I think comprises about a dozen people on the full committee.

CHAIR - Does a researcher have to apply to the ethics committee prior to carrying out a research project, or alternatively, is that researcher able to carry out the project and then, if there are any problems that arise which that researcher believes might be an ethical question, they put it before you? Or do they proceed without having to come before you at all unless you find out what they are doing and believe there are some ethical questions?

Prof. McLEAN - No, the researcher must make application in advance and they cannot commence work until they have full ethical approval. Sometimes you have a multi-stage project and you might get approval for the first stage and still be dealing with the other stages so they can commence on the first stage but would have clearly defined what the end point was and have approval to that point and no further. It is done in advance - it's prospective - and that may not be applicable in government, for example.

CHAIR - We have heard some points of view in relation to oversight bodies that are already in existence, such as the press, the Ombudsman, the Auditor-General, the Parliament, itself and the police. One might argue that there should not be another body, or do you believe that if there is a specific body relating to integrity and ethics, that would have more focus on that issue as opposed to the bodies that I have mentioned which focus on other issues as well.

Prof. McLEAN - I have no particular knowledge of the need for this in public life except what I read and hear from others. My submission deals with a mechanism which might be offered or might be considered. I think the value of the ethics committee-type approach is, first, it can be based on guidelines so that you do not have to think in advance of every possible situation and cover that in advance. Secondly, it has an educative role. Because the proponent is required to identify the ethical issues, they have to understand what the ethical issues are and how they might relate to what they are doing. Thirdly, you have specialists on the committee involved in the sort of work that is being proposed. In research they have done that sort of study so they know exactly what is going on. They would ask the right questions on the ethical issues and usually the ethics committee will pick up on anything which is simply missing through omission or perhaps somebody trying to slide it past so not mentioning some aspect. It will be picked up by somebody around the table quite often.

CHAIR - What about educational aspects of the committee? It would seem to me that if there were an ethics commission within the Parliament it should be at arm's length from the Parliament. Should part of the committee's role be to educate perhaps new members of parliament and members from time to time, like the professional development in most professions?

Prof. McLEAN - You would have to do this because otherwise there would be a lot of hand-wringing and people would be upset because things might come back at them. This certainly would happen in the research community. People at first regarded this as yet another obstruction to carrying out their job. I think that over time more of us have grown to appreciate the role of the ethics committee. Part of that is that there are training sessions, which people see the need for if they keep getting their applications knocked back because they are not picking up on issues or are just blind to them. It definitely has an educational role.

CHAIR - In relation to the make-up of the committee, some argue that in a State such as New South Wales, which is much bigger than Tasmania, an exorbitant amount of money is spent in relation to the ethics committee, and there is the ethics board as well. How should it be made up, taking into account Tasmania's context? You have to have enough people to be able to do it properly. It has to be a recognisable body that has an educative role as well. How do you believe that it should be made up?

Prof. McLEAN - I should perhaps mention also that the research ethics committees send applications out for external review, so they have a much larger number of non-committee members to call upon to read through applications and ask any necessary questions, identify any ethical issues that perhaps have been overlooked or not managed properly. They do rely on external reviewers for a lot of the specialist input.

CHAIR - So there's a core group plus the ability to call for other experts.

Mr MARTIN - Mr Chairman, I have to ask the obvious question. Do we have a quorum?

CHAIR - I just need to check. Are you there, Brenton?

Mr McKIM - We obviously don't have a quorum, and the Government is clearly not taking this committee seriously. The minister only attended the very first meeting, and now there is no reply from Mr Best.

CHAIR - There is an engaged signal, as you can hear. I apologise for this, Stuart.

Mr MARTIN - Mr Chairman, this is really a bit of a joke. It is embarrassing. I think one member of the Government who was at the first meeting hasn't been to another one since.

(Chair tries the telephone connection again)

CHAIR - Brenton, we believed you were on the other end. How long have you been dropping out, or how long did you hear us?

Mr BEST - I heard you at the start of it, then I had trouble with my phone, and I didn't know the number of the conference room to ring back.

CHAIR - Right. We have with us, as you know, Professor McLean. My question to you when it first became suspicious that you might not be on the other end of the line was, did you have any questions for Professor McLean?

Mr BEST - Not at this stage, no.

CHAIR - Okay.

We have spoken about Parliament and other oversight bodies, the make-up of the committee and whether there should be retrospectivity - or at least we touched upon retrospectivity. What do you believe the body should be called? That's another issue that has cropped up from time to time.

Prof. McLEAN - Again, drawing on my own workplace, the issues are ethics but also there are separate mechanisms looking at dishonesty, like falsifying results. That's unethical, but because it's such an important area a separate mechanism has to be involved for that. Perhaps ethics covers it, but so as not to lose the other aspect, both ethics and something to do with conduct, I suppose. Honesty is a basic value.

CHAIR - Is your body at arm's length from other scientific bodies or universities?

Prof. McLEAN - Are you asking who the ethics committee answers to? I am not 100 per cent sure, but it's under the National Health and Medical Research Council guidelines and regulations. That's a national organisation, a sort of umbrella body. I presume ethics committees would report to that body, certainly the NHMRC would have to be satisfied

that the ethical process in Tasmania, for example, was functioning satisfactorily, otherwise they'd turn off the funding for human research in the State.

CHAIR - Are you saying that if there were a question of whether the ethics body was working appropriately, they'd just turn off the funding? Is that what you're saying?

Prof. McLEAN - In the end, that's what happens, but it's never happened to my knowledge.

CHAIR - It would be extremely surprising, to say the least, if it did happen, wouldn't it?

Prof. McLEAN - That's right because it doesn't happen without warning. If there were problems with the running of the ethical process in research in any particular university, then that university would move heaven and earth to make sure they fixed it up before the money was turned off.

CHAIR - Who chooses the people who are on it?

Prof. McLEAN - There is a secretariat. In the last two years or so there has been set up, instead of a university committee and other committees, one single statewide committee system for human research which is run in partnership through the Health department, DHHS, and the University of Tasmania. The secretariat is housed in the university in the research office and the membership is chosen partly by advertisement. There have been advertisements in the paper recently calling for lay members of the committee who are interested in human ethics; otherwise invitation, or I suppose people could volunteer. But like all committees, it is an onerous job and people do not usually put their hand up for it; they need a tap on the shoulder.

Mr BEST - I was interested in relation to training. We have had some people who have submitted quite a bit of information about training of politicians and continuously keeping up-to-date with what might be happening internationally with ethics and good governance. What are your views about that, Professor?

Prof. McLEAN - Thanks for the question. In my own workplace there are workshops held, probably on an annual basis, that is especially for new members of the university, so they will have some didactic component, lectures, but then workshops where they can discuss ethical issues. We learn about it through doing, I think. It is one of those areas where, with experience, you gain a better understanding rather than just memorising a few rules or something like that. But you do need the didactic side as well, I think, to alert you to the breadth of issues that are ethical and related to ethics. So the short answer is workshops - day-long or half-day workshops. I think that would be a good way to go with this.

Mr BEST - One of the suggestions that we had regarding a model for ethical conduct was that we would have some sort of integrity or ethics commission but then we would also have another body that sat outside comprised of politicians and perhaps some leading people with some relationship to all this and they could look in advance of things. I am just interested in how you think that might work.

Prof. McLEAN - I think you do need people who are knowledgeable in the area, so people with experience of government and the challenges to be involved in this at the committee

level. In a way, to some extent it runs itself because the onus is on the proponents of a course of action to state what they think are the ethical issues. But then the power comes in because you cannot just fudge it or leave out things that look too awkward because you are going to get a question on that from somebody who knows very well exactly what is involved in what you are proposing.

So you have both things. You have people with knowledge of the area but also there is the requirement for the proponent to identify the ethical issues themselves which means they need education in what comprises ethics, ethical standards and ethical values and what is going to be relevant to their proposal and then they have to say how they are going to tackle that and how it will be managed. There is a such an infinite variety of possible scenarios that you are better off, I think, working with general values and guidelines and trying to adhere to them rather than having some sort of very prescriptive list. Having said that, I add that there is always a checklist of, is it fair, is it just et cetera, which assists you to identify the ethical issues.

Mr BEST - Thank you.

CHAIR - Do you wish to say anything in closing?

Prof. McLEAN - No. Good luck. You have a tough problem here so good luck with it.

CHAIR - Thank you very much for your time and your interest.

THE WITNESS WITHDREW.

Mr PHILLIP JAMES LOWE, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Phillip, thanks for coming along.

Mr LOWE - My submission is a very simple one. It is minimal. I wrote to you in desperation. I first came to Tasmania in 1972 and returned here 10 years ago with my wife and family. I was semi-retired but also came here to enjoy myself. I am a musician and I believe I play good music for people. I play in a lot of residential homes and entertain a lot of people, and I entertain myself especially. I came here to enjoy playing at the market. Having read the rules and understanding them as they were then, I came here to find that the rules only applied to some and not to others. I became frustrated with it and I have been chasing the council to make it a level playing field. I heard the gentlemen say before to make it fair, and they haven't made it fair. I have chased them around for over five years now. They don't reply to correspondence. They pedantically enforce these rules with some in calling the police et cetera, which is very embarrassing, while allowing others to break them and get away with it. I feel very unhappy about it.

The ethical side of it at the moment is that I have been told by a number of people that I have now upset the authorities that be and, 'If I were you, don't put a planning application in for things like that'. I find that an intimidating attitude. I don't know how far it goes into society but regarding the ethics of the way these people are behaving at this very base and lowest level, how far does it go? It doesn't give me any confidence.

CHAIR - Is one of the issues the amplification of the music?

Mr LOWE - Very much so.

CHAIR - Can you give us a bit of a history as to what happened? It is briefly set out in the submission.

Mr LOWE - The council used to ban amplification, it was prohibited, but it was noticeable that some people were allowed to use it and other people were prohibited. It went from the sublime to the ridiculous one time when I was singing through a traffic cone. I enjoy doing things like that, unashamedly; I enjoy having a good laugh. I was singing through a traffic cone and using it as an amplifier and the council took it off me because they said it constituted amplification, while allowing people up the road to use sound systems and basically stage set-ups. I started to get annoyed at that stage. Now, if you get anywhere near anybody who is using an amplifier and you're not amplified, they just turn their amplifier up. I have been threatened with violence by some of the other buskers down there because of my attitude - physical intimidation. I have been to the council and reported it. I didn't go to the police, I am not a go-to-the-police person, but I reported it to the council and to my knowledge, they have done absolutely nothing about it.

Mr McKIM - You've obviously raised some concerns with the Hobart City Council so I take it that if this committee were to recommend the establishment of some kind of an ethics committee or integrity commission you think local government should fall within the ambit of such a body?

Mr LOWE - I would just like you to ask them to get on with their job. They have been threatening to sort this out now for over five years. They have spent large amounts of money on reports on busking; they have gone through the motions. They have sent people to the mainland studying how other markets work; they have gone to Europe and had a look at how it is done in Europe. They don't reply to correspondence. I am saying this because I am not getting any sense out of them. I have written some pretty strong letters to them. I have told them basically they are taking the mickey out of me.

CHAIR - Have you complained to any other body? You have spoken to Brent Armstrong.

Mr LOWE - I did speak to Mr Armstrong. Mr Armstrong promised me faithfully that there would be some kind of satisfaction on this by early 2008. When I asked Mr Armstrong what happened to early 2008 he said to me, 'it passed'. That was it. That was the end of the conversation.

I have had interviews with Mr Zucco. Mr Valentine washes his hands of everything. I wanted to ask Mr Valentine if he could do something about it. He wrung his hands and said, 'Nothing to do with me'. He has family who have stalls on the market so he has what you call a pecuniary interest in it - or whatever you call it - a prior interest. But the hand-washing gesture annoyed me greatly. There was no need for that. I would just like somebody to do their job - that is all. It was promised and that promise has not been kept.

CHAIR - So the summary of what you are asking is for is a body that you could go to that would look into the issue and then report to you, whether it be a tick or alternatively a cross. That is really all you are asking?

Mr LOWE - I thought we had it in the council requirements. I thought it was supposed to be a fair and impartial body. I really thought we had it, but we do not. I had no support from the aldermen. I played in markets in Europe and I had a great time. I wrote back to Aldermen Ruzicka on three occasions with letters of what I saw at markets there and she did not respond to those letters one little bit. They are now proposing legislation to ban all busking and performance at Salamanca outside of the market hours between 8.30 and 3 p.m. So any music - and they include performance, not busking because strictly speaking I do not busk now. I think that busking in Hobart is made to feel like begging. That is the way I feel about it now, and I do not like it. I do not need to do it. That is why I do not do it. I just love to play music. It is my experience that you can measure a society by how it tolerates its characters and eccentrics. There is no tolerance here at all. I am getting a bit upset now. I feel very strongly about it.

Mr MARTIN - Do you think there are other buskers or performers who have been treated in the same way as you have?

Mr LOWE - Yes, there are. People have left here.

Mr MARTIN - You are not being singled out?

Mr LOWE - No. People have left this town because of the way the buskers are treated here. I am in my mid-60s and I know a lot of guys who play really good music - seriously good musicians, guys who have been practising all their lives - and they will not come

down here and play. They just will not come down because some people are allowed to go down to the market with amplifiers every week and play the same stuff in the same position. When you are in your mid-60s you do not want somebody in a uniform coming along and saying, 'You have had your 20 minutes. Right, move on'. It is not nice.

Mr McKIM - What would your solution be in terms of an overall framework for busking around Salamanca?

Mr LOWE - The council have put it that they are going to have an iconic spot and allow certain people to play on this iconic spot on the stage with amplification. I am not entirely in agreement with it but everybody will get a fair go at it and it will be, as they call it, a level playing field. They promised this early last year, and I would like to see them get on with it. If by coming here today, I could influence you to just whisper in somebody's ear, 'You are not doing your job here, mate. Get on with it', then it will be worthwhile. That's what should be done.

CHAIR - This is probably not going to please you but this committee does not have the ability to say to somebody -

Mr LOWE - Fair enough.

CHAIR - 'Go out and do this or do that'. But certainly your views, having been aired, can be taken on board and, as a result of that, hopefully there might be some answer to it.

Mr LOWE - Thank you very much.

CHAIR - Brenton, I can hear you turning pages over the amplifier. Did you wish to ask any questions?

Mr BEST - There has been some evidence to suggest that perhaps the committee should look at some of the issues surrounding transparency in some areas. I do not really have a question, but I have heard the evidence that is being given and I thank the witness very much for the information on his particular situation.

CHAIR - In relation to an ethics body, Phillip, what do you think you should call it?

Mr LOWE - An ethics body?

CHAIR - Yes, if there is an ethics commission set up. I ask that because there are a number of different bodies around that some may argue already look at these types of issues - though not in relation to yours, of course. But we already have the Ombudsman, the Auditor-General, the Parliament itself, the press, and the police et cetera.

Mr LOWE - I would say don't waste your money on it. I have felt good just for coming and saying what I have said today to you and letting you know what is going on. Don't waste our money, please.

At least I have had the satisfaction of venting my spleen, so to speak, if you will allow me to say that. We are not getting treated fairly and squarely by the council, they are just ignoring people. They are not for the people. They seem to be for themselves and ignoring what people are saying.

CHAIR - In relation to Salamanca market, there is a Chilian group that play and there are a couple of people you hear from time to time, sitting on the lawns and playing, but, other than that, you don't see many other people, do you, along the shop area where you used to see some buskers.

Mr LOWE - It has become difficult. The shopkeepers and some of the market stallholders can be very aggressive. The market stall people, generally speaking, and the shopkeepers love me. I go up and ask people if they mind if I play and they say, 'No, we love you', or whatever. If somebody says, 'No, I have a headache today, mate', it is fine by me but the amplification situation means that for 50 metres on each side of those people, you are drowned out by the sound. I just want it to get a bit fairer and squarer down there.

CHAIR - What happens with other markets? You say you have been around and you have seen what happens, what happens with other markets?

Mr LOWE - You have a lot more fun.

CHAIR - Yes, what happens with the busking?

Mr MARTIN - With advertising.

Mr LOWE - It is a lot looser. They don't seem to have any regulations. There are no regulations. It is very much unregulated - the only thing is most markets ban amplification. After that, just go for it and have a great time.

CHAIR - So if you don't have amplification, most councils that you know of with other markets around the world say, 'Open Sesame and go for it?'.

Mr LOWE - Just go for it, have a good time. See, Salamanca market is all we have, really. It is a focal point and one of the things that has caused the problems down there is that people are selling CDs and money has entered the arena - large amounts of money too. People get pretty uptight where large amounts of money are concerned.

CHAIR - When you say that, what do you mean? People paying for the right to play down there?

Mr LOWE - No, they are selling CDs. I know that four-figure sums are involved. I have been told that by the buskers who sell CDs down there. I don't sell CDs and I don't ask for money. In fact, I give money away. If you ever see me doing that, it is great. It is a great feeling. I would just like to have a good time in life before I pop my clogs.

CHAIR - Okay.

Mr LOWE - I am being stopped from doing it down there and I don't like it - I resent it. People are stopping me from having fun and I resent it.

Mr McKIM - Phillip, I have heard your music a number of times and I would like to say thanks for playing because it is good music and it makes people feel good, so thank you.

Mr LOWE - Thank you very much. It is very kind of you to say so, Mr McKim.

CHAIR - Phillip, thanks very much for coming along and thanks for giving us your time.

Mr LOWE - Thanks for letting me speak. I really feel good for that, thank you.

CHAIR - We hope to hear you in the not-too-distant future.

Mr LOWE - And if you don't like what I'm doing, just ask me to stop and I will stop.

Mr MARTIN - Highly unlikely.

THE WITNESS WITHDREW.

Ms SALLY McGUSHIN, QUAKER SOCIETY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Sally, thank you for coming along to speak to your prepared submission.

Ms McGUSHIN - I would like to start by expanding on our submission. Since putting in our submission we have come up with a few more points that we'd like to make. First, we would like to say that we think ethical conduct requires openness, transparency, communication and honesty. Government bodies not only have to conduct themselves in an ethical manner but they also have to be seen to conduct themselves in an ethical manner. We have five points that we think would help that. First, an independent commission of inquiry; second, uniform laws throughout the States; third, a general internal witness advisers committee; fourth, education of the public sector; and fifth, a public consultative committee for an ICAC.

With regard to the first point, an independent commission of inquiry: we feel that the existing Commissions of Inquiry Act is deficient because commissions of inquiry cannot be independent of the Government. The Government can determine the terms of reference and the hours and the current act denies the commission further powers. The point is that the existing legislation doesn't work and we believe there is a need to replace the current act with an independent commission against corruption act - in other words, establishing an ICAC.

On the second point, we think that there should be uniform laws between the States providing for the protection of whistleblowers. As whistleblowers may need to move between States, they need to feel that they have the same protection that our State affords them. When it comes to dealing with perpetrators of unethical conduct, corruption or whatever, there needs to be collaboration between the States and consistency in dealing with those perpetrators.

With regard to our third point, we think we need a general internal witness advisers committee similar to the one the former New South Wales Police Integrity Commission had. It had an internal witness advisers committee but that has since been wound up. We would like to see something much more general than just a police integrity commission, one that could track the protection of whistleblowers and make recommendations with regard to their protection.

As regards the education of the public sector, we think there needs to be a particular focus on integrity in reporting so that we don't have sanitised reports coming out. We want accountability in the public sector, ensuring checks and balances. We think the whole process of the production of policy needs to be looked at. For example, draft reports should be accessible through the Freedom of Information Act so you can compare a draft with the final report.

Our final point is with regard to an ICAC. We think that there should be a regular means of review of the ICAC and all that comes before it. We envisage a community-based, public consultative committee, such as the children's commissioner currently has. We think there should be around 10 members on any such consultative committee, including

the chair of ICAC. We have a number of suggestions for other members - someone from the office of the Ombudsman, perhaps a lecturer in administrative law, someone from the Environmental Defenders Office, a representative of the Australian Journalists Association, someone from the Tasmanian Council of Social Service and from the Tasmanian Council of Churches. We would like to see someone from mental health, perhaps the National Association of Practising Psychiatrists but possibly the AMA - someone in the medical field anyway - and perhaps someone from Amnesty International as a more far-reaching organisation and possibly looking at factoring regional representation into that.

The point is we think this would provide an avenue for community input and consultation and, in the absence of such community consultation, we think we are in danger of being tied up in another layer of bureaucracy. The other thing is, with such a consultative committee, any confidentiality clause should not preclude members from speaking in their private capacity.

Mr ROCKLIFF - Are you envisaging the consultative committee to work alongside an ethics commission or an ICAC, is that what you are saying?

Ms McGUSHIN - Yes, alongside an ICAC. They should be able to see everything that comes before ICAC. I guess they would meet regularly to see what is coming before ICAC and more often, if they feel it is needed.

Mr ROCKLIFF - More like a watchdog of the watchdog.

Ms McGUSHIN - Yes.

Mr ROCKLIFF - Rather than people coming from the public to address the consultative committee, you are saying that the committee would look at how the ICAC is actually operating.

Ms McGUSHIN - Yes.

CHAIR - You talk about the body itself, should that be a body which is full-time? Should it be a paid body? Should you have a paid commissioner with that commissioner being able to ask for other people to be involved, depending upon the issue? Should there be a panel of people to choose from? How should it be made up?

Ms McGUSHIN - The children's commissioner already has an advisory committee such as that. I wouldn't envisage that it would be a full-time one. When you say how I -

CHAIR - Can you see what I am getting at? In New South Wales we had some evidence that millions and millions of dollars have been spent and some might argue if that were the case in relation to New South Wales - I think there were three reports prepared last year costing, and I could be wrong in relation to the exact particulars, but it certainly was on a significant sum that was involved - in Tasmania that money would be better spent being channelled into health and education or other more pressing issues rather than a commission such as this. Therefore are you able to make up a commission that would be workable without expending the sort of money that is involved in other States that have them - New South Wales and Queensland, for example.

Ms McGUSHIN - I would hope that in a small State such as Tasmania, that would be the case.

CHAIR - That being the case, would you have one paid employee, two paid employees? Have you thought about the actual breakdown of whether you'd have an integrity commission office, or something like that, which would be staffed by a person, a lawyer maybe, to look at the issues and decide whether they are matters which fall within their realm and if they do, then to transfer that to the commissioner and the other parties that you've mentioned or touched upon?

Ms McGUSHIN - I would think that the chair of ICAC would have to be a full-time position, so, yes, I would see there being a permanent office.

CHAIR - Yes. That is consistent with what we've heard. In relation to your educative role that you've spoken about, should it be that body that goes out and educates members of parliament and also other members of the public sector, and if so, how?

Ms McGUSHIN - I would see ICAC as determining how to educate members of the public sector, but I don't know that it would necessarily be members of that particular committee. It would lay down how it would want things to be done and maybe there needs to be some initial work for everything to go into place, but once people understand that you have to be accountable for your actions then I shouldn't have thought that there would need to be quite so much effort involved in ongoing education. Certainly there would need to be ongoing education because there's always a turnover.

CHAIR - Sure. Should there be an education process in place for members of parliament, be they new or old, like the professional development which goes on in other occupations, as you probably know? What happens now is that if you become a member of parliament, you are patted on the backside, given all the best and in you go. There's no real educative process in place, certainly in the upper House, and I don't know about the lower House. People tell you the very basics, but that's about as far as it goes.

Ms McGUSHIN - Yes, I certainly would think that people's representatives should be educated about the responsibility to be accountable.

CHAIR - What do you think about the size of Parliament? We are looking at 25, as you know, in the lower House and 15 in the upper House. Prior to that occurring, there were three reports: the Beaumont Report, the Chapman Report and the Morling Report, which all said to do the job properly you need the present numbers. That was then far greater, as you know, 35 in the lower House and 19 in the upper House.

Problems have arisen in relation to manning committees and other issues where you need a certain number to do the work that's involved. Some might argue that the 25 and 15 hasn't worked. Do you have any views on that?

Ms McGUSHIN - Personally I certainly think 25 and 15 is just a bit light on. It doesn't give much choice and, as you say, it just stretches people a bit too far. But that is something that has come from me; it's not something that we've discussed.

CHAIR - I understand that.

Mr MARTIN - I think one of the difficulties that we have in dealing with this subject is that ethics, morals and values are very subjective things. Every human being has their set of values and morals based on their journey through life, basically. How do you come up with a set of rules that we can govern by when everyone's got different standards?

Ms McGUSHIN - I do not know that you necessarily can. That is why there has to be a transparency and accountability so that other people at the time can judge.

Mr MARTIN - The other issue that we have different points of view being raised on is the issue of retrospectivity if a body is set up. If we recommend that a body be set up, some people would argue that there needs to be a line in the sand, for example, and the committee just deal with issues that come up in the future. Others would argue that they need to have the power to look back at issues in order to deal with issues that are current. Do you have a view on that?

Ms McGUSHIN - That is a tricky one, isn't it? I certainly think if issues are current then an ICAC should be able to examine them. But I guess it is really what is practicable at the time and just how you draw a line in the sand as to what is practicable to look at. I am not really quite sure how you do that.

Mr MARTIN - Okay. On a different topic, do you have a view on the transparency of donations to political parties?

Ms McGUSHIN - That is not one that we have discussed but, yes, they should be transparent and it should be easy for any member of the general public to access that information.

Mr McKIM - Sally, in your organisation's original submission, there was quite a bit about making public the Solicitor-General's advice to the Government. That is something that I have been thinking about for quite some time. At the moment, the Solicitor-General works for the Minister for Justice and he or she, that is, whoever is the Minister for Justice, automatically gets a copy of all the Solicitor-General's advice to anyone, including parliamentary committees. That advice, as your organisation has said, is not made public. But just to be clear, there is a longstanding tradition of legal confidence in our law system. Are you suggesting that the upside of making the Solicitor-General's advice to the Government public is greater than the downside of maintaining legal confidence?

Ms McGUSHIN - We still need to protect issues of privacy but otherwise, yes. I think that it is more important that the Solicitor-General's advice is made public.

Mr McKIM - What do you think about the Solicitor-General's advice to a parliamentary committee being provided to a minister of the Crown who may not be a member of that committee?

Ms McGUSHIN - If it is to be made public then it really does not matter but if it is only made available to one person, that would seem to give an awful lot of power to that one person, which only goes to show that I think that it should be widened and more

available to the general public, insofar as they are interested, with some provision for the protection of privacy where it applies.

Mr BEST - Part of the system that we have with responsible government is that we have executive government and at the end of the day, a particular party or a combination forms government. Part of responsible government is the fact that there is an executive arm that mostly has to make decisions that cannot always be totally open to the public just by the nature of the confidentiality involved. So I just wondered what Sally's thoughts were on how we could have responsible Government if we have the level of transparency that is being proposed?

Ms McGUSHIN - I just think that we hide behind confidentiality clauses far too often. It just seems to be some sort of a protection shield. I really think that the whole concept of confidentiality clauses needs to be overhauled. We certainly do need to protect individuals but I think it really has been taken much too far. I do not think it provides for very responsible government. The Government is responsible to the people ultimately and if the people do not understand how decisions are made and the information that is available then the Government is not really accountable to the people.

CHAIR - Are you saying that confidentiality arguments might arise without the ability of knowing whether they are confidential or not?

Ms McGUSHIN - As we put in our original submission, once we have made the submission, is that confidential? You actually gave me a little run-down beforehand but, yes, it is not made clear. I think that probably a lot of people are frightened by so-called confidentiality clauses into being a lot quieter than they might otherwise need to be.

CHAIR - Any other questions at all for Sally? . Thank you and the society for your submission.

THE WITNESS WITHDREW.

Mr JACK NIGEL LOMAX WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Jack, it is a fairly informal process, as you probably know. We would ask you to speak to your submission first and then if necessary we will ask you some questions. As you know - please tell me to stop if you know it - what you are saying here is privileged and that means that you cannot be sued for defamation or the like for what you are saying here. If you say something here which is defamatory and then go outside and state it then you are not covered by the same privilege you are covered by whilst giving evidence to this committee. You probably know that anyway, but just for safety's sake I thought I had better mention it. So I will leave it to you to open with what you want to say, please.

Mr LOMAX - Thank you. I did, at the time the submissions were asked for, send in a brief submission. I did an addendum to that submission which is just putting it into historic context.

CHAIR - We also have Brenton Best on link-up. Brenton is in Devonport at the moment. He can hear what is going on and he will ask questions if necessary. Please speak up, Brenton, if you want to ask any questions without me referring to you on all occasions.

Mr BEST - No worries, Mr Chairman.

Mr LOMAX - I have just passed around copies of the written addendum. Since Brenton is in Devonport I suppose I had better read it. The heading is: An addendum to my submission of 28 July 2008, The Joint Select Committee on Ethical Conduct' reads:

'In an attempt to put my submission' -

that is, the one I put through on the 28 July -

'into a historical context, I would like to refer to some problems of the past. The spectre of these problems arising from proven and alleged corruption may still haunt the present administration. My knowledge of what I allege as being a history of government corruption arises both from the facts of the public record and is partly anecdotal arising from the fact that for many years I was a deeply-involved member of the Labor Party. That party has been the governing party for most of that time. When I was expelled in the 1980s I was chair of the State's foreign affairs committee and secretary to one of the branches; I was a past president of that branch. I have been a delegate to State conferences on a number of occasions over many years. Thus, I have had an intimate knowledge of what was happening in the Labor Party.

Some of the stuff that's on the public record - I know from 1945 Tasmania experienced regular corruption scandals. In that year, sawmill proprietors seeking preferential treatment allegedly bribed Forestry Commission officers and the former Minister for Forests, John Dalton. The 1946 royal commission found two of the four allegations to be true. In the late 1970s,

or sometime in the 1980s, I'm not sure what dates, I was friendly with a man who then held a position of minister for forests. He once told me that the Forestry Commission was still riddled with corruption. I asked him why as a minister he was allowing this to go on and he told me that my question displayed a profound ignorance of his real powers in the political mix.

In 1947, to gain protection from the threatened nationalisation of road transport services, private road transport operators claimed to have paid money to the Premier, Robert Cosgrove, for his personal use, unknown to the Labor Party. Though existence of this fund was admitted, Cosgrove was acquitted on criminal charges and won the ensuing election by a slim margin.

In 1958 Doctor Turnbull was the subject of corruption allegations when lottery promoter, George Fitzpatrick, accused him of demanding £20 000 for his licence. A private police inquiry, however, dismissed that allegation.

In 1972 Kevin Lyons resigned from the Liberal-Centre Party government in which he had held the balance of power. This precipitated an election, which Labor won. In 1973, 11 members accused Lyons of accepting money from certain interested parties, including Federal Hotels and British Tobacco, to resign in order to bring his own government down. The charges were not proven by a police inquiry. In that same period, after the above election, a delegation of active Labor Party members petitioned the Premier, Eric Reece, for an interview - and I was one of those members. The leader of the delegation told the Premier during the meeting that he and other members of the delegation knew that Reece and Merv Everett had allowed part of a party slush fund to be directed to Lyons to help him make up his mind about ceasing support for the Bethune Government. Reece emphatically denied the allegations but two people who felt they knew that this was true persisted and the meeting ended in an angry scene. Part of this was one older life member of the party who I remember saying that we should now drop the action and support Eric Reece since, in his opinion, what had happened was for the good of Tasmania, and that Reece was a comparative cleanskin compared to the years of corruption that he, the life member of the Labor Party, remembered when Cosgrove had led the party.

Shortly after, around 1973-74, rumours circulated that the Tasmanian Bookmakers Association had clandestinely paid Mervyn Everett, whilst he was Deputy Leader of the Opposition, to stop the introduction of totalisator betting facilities in Tasmania. Despite evidence that money had changed hands, no charges were laid. The totalisator legislation provided many concessions for bookmakers.

In 1989, Tasmanian media owner, Edmond Rouse, attempted to bribe Jim Cox, a newly-elected Labor member with \$110 000 to support the minority Gray Liberal Government. Rouse was jailed for three years, fined \$4 000 and barred from holding a company position for five years after his release.

No charges were proven against Gray, in spite of the large and unexplained sum of money that the investigating police uncovered lying in his freezer.

Close relations between government and big business and other sectional interests will always provide opportunities for corruption in the insular environment of Tasmanian politics. Robin Gray's rise in the business world to a directorship on the Gunns board seems to be yet another possible indication of this.'

CHAIR - That is the addendum, Brenton, that Jack has made to the submission which he supplied to us in July last year.

Mr BEST - Thanks very much, Jack.

CHAIR - You go through a history and that being the case, I take it you are saying there should be a body set up, let us call it an ethics body, to independently investigate these issues.

Mr LOMAX - Yes, that is what I would submit should happen.

CHAIR - How should that body be made up, in your view?

Mr LOMAX - It should be made up as near as possible in the ICAC formula. It has been said that Tasmania is too small a State and the amount of money needed to provide that organisation with that spread would be too expensive. If that is the case, we need a downsized model, but one that is large enough to be effective and independent. If that is not the case, then we should drop it altogether. Why waste money on something that would be ineffective?

Mr BEST - Jack, some submissions suggest having something like a funded integrity commission, or whatever it ends up being called, consisting of a dedicated person with staff and the opportunity to utilise other expert people. For example, if phones need to be tapped, that would not necessarily be the for the integrity commissioner to do, instead it would be for the police to do things like that. If something needed to be audited then you could bring in the expertise of Auditor-General but it would be important that things are funded to make sure that the body would function. I am wondering what your thoughts might be about something like that which might be scaled for Tasmania?

Mr LOMAX - Yes, I think something along those lines would probably be good, along with, possibly, the Ombudsman's office and whoever else could be drawn into the circle. As far as the police are concerned, my feeling is that as little work as possible in this regard should be thrown onto the police and if it is there should be a special unit within the police to investigate allegations of political corruption. That would be my feeling.

Mr BEST - It is interesting because some of the comments we have had about the police have been along the lines that in getting independence, police could be seconded from other States.

Mr LOMAX - Yes, that sounds like a good suggestion to me.

Mr BEST - Also, because ethical conduct is probably an ongoing matter, there has been a suggestion that with that structure you could have another committee of some sort that might be made up of people from the community or with specific expertise but also members of parliament, to keep abreast of issues that might arise in other places outside Tasmania and also to monitor the effectiveness of what this integrity or ethics commissioner might be undertaking and to look at how things move forward. You would not just throw money at something and then off it goes, you would also be monitoring it and keeping some contact with the community on the issue. What are your thoughts on that?

Mr LOMAX - Yes, I would think that would be essential and the interstate linking would also be a good development. If whatever was set up did have interstate links any corruption or alleged corruption that was happening in Tasmania that had interstate links, which is a possibility, could also be investigated by the interlinked committees or commissions. Yes, I think that is good.

Mr BEST - Thank you, Jack.

Mr MARTIN - Jack, one of the issues we have grappling with is that if we set up an ICAC or whatever body, what about retrospectivity? Some people say a line should be drawn in the sand the day it is set up and it should only investigate things that happen from that point forward. Others are saying it should have the power to look retrospectively. Others argue that it should have retrospective powers to look at those issues that the current body cannot at this point in time. Do you have a view on that?

Mr LOMAX - Yes, I think that if it could be shown that issues of alleged past corruption still reverberate currently clearly that should be included in the brief. Exactly the same thing happens in law, if there is an allegation made but not followed up, if it is within a certain time limit, then it will be followed up and prosecuted.

There would have to be a time limit set and an agreement about what kind of retrospectivity we are talking about. For instance, going back to see whether Eric Reece and Merv Everett did conspire would be totally ridiculous. That would be a total waste of money because it doesn't have any present reverberation, except to say that these sorts of things have happened before so let's make sure they don't happen again.

Anything that has happened recently, like the allegations around Paul Lennon and his Government, their connections with Gunns and the proposed pulp mill - I certainly think whatever body was set up should have the authority at least to look back and examine that.

Mr MARTIN - The subject we are talking about - ethics, morals and values or whatever - is very subjective. I think we all have our own set of values based on our journey through life. Your view of what is or what isn't ethical might be different to mine, although I doubt it.

Mr LOMAX - That is right, yes.

Mr MARTIN - What we are talking about here is legislating for a set of rules. How do we come up with the set of rules there?

Mr LOMAX - I think, Terry, we would have to make sure that we were talking about a standard of ethics that is agreed to by everyone, not subjective views. If certain people have views about the unethical nature of eating meat, for instance, which I do, then to legislate for that would be totally ridiculous, since it is obviously not an ethic that is common in society. There is an ethical thread that runs through society where you could obviously get a consensus of opinion. I think we should be looking at that level.

Mr MARTIN - That is an interesting question. Some people judge ethics on the basis of whether it is legal or not. I do not have that view. Just because something is not illegal does not necessarily mean it is ethical. Do you have a view on that?

Mr LOMAX - Yes, I do. Look at history, for example. Lots of things that happened in the Third Reich were absolutely legal. The concentration camps weren't illegal organisations, and in many places in the world there are laws permitting stuff that is clearly immoral and totally unethical. Yes, I do have a view that we shouldn't say that because it is lawful, it is necessarily ethical. I think the two things do not necessarily match.

Mr MARTIN - Okay.

On a different matter, the issue of donations to political parties, do you have a view on them and how they should be regulated?

Mr LOMAX - Yes, I think they should be totally open and transparent. I think there should be a limit on the amount that can be donated. I think, in some ways it would be better if we didn't have donations at all, if we had political parties that stood on their own ground without donations. That might disadvantage smaller parties, like the Greens, which possibly need more than the established parties which already have their own slush funds - if that is the word - well, have enough money to run a campaign. There might be a problem with that, but I think on the whole that donations pose such a problem that it would be better if we got rid of them altogether.

Mr McKIM - On that, Jack, what about publicly funding political parties? There are only two States in the country that don't publicly fund political parties at the moment - Tasmania and South Australia. If that were brought in in conjunction with a ban or a very low cap on donations, do you think that might solve the problem?

Mr LOMAX - Yes, I would enthusiastically support that.

Mr ROCKLIFF - In your original submission you listed a number of recent developments of concern. I was wondering what weight you place on the size of Parliament in terms of adding to the problems we've encountered in the last couple of years, given of course the additional submission and the concerns there back in the 1970s. Of course there was a larger Parliament, wasn't there, at the time?

Mr LOMAX - There was, yes.

Mr ROCKLIFF - Do you think increasing the size of Parliament would bring back more of a balance in terms of accountability?

Mr LOMAX - I certainly do. A larger parliament doesn't necessarily mean a non-corrupt parliament or a non-corrupt government. Obviously it doesn't. There have been very large governments that have been also largely corrupt, but one thing you could say is that certainly a larger parliament would be a more efficient and effective parliament. There would be a wider spread of talent and a wider possibility for a front bench that had a large backbench support. So, yes, I do think that the downsizing of Parliament was a total mistake and it is a mistake that we should remedy as soon as possible.

Mr ROCKLIFF - So to improve the current situation you would be an advocate for not only an ethics commissioner or a smaller ICAC but also an increase in the numbers in Parliament?

Mr LOMAX - I would, most certainly, yes.

Mr McKIM - Jack, if this committee were to recommend establishing an ICAC or some kind of a similar body, have you applied your mind to what sort of coercive powers that organisation should have? Should it have the power to compel people to come and give evidence; should it have the power to subpoena documents and conduct phone tapping and electronic surveillance, for example?

Mr LOMAX - I would say an ICAC or a similar body without coercive powers would be window-dressing. What good would that be doing? It would just be saying, 'We suspect that things might be happening and we're really unhappy about it, but we don't have any evidence because we've not been able to interview people at any depth about this'. So obviously it does need coercive powers. Once you start talking about coercive powers and phone tapping, you then have to say, 'Hang on, there are other dangers here. We're establishing a body. There are privacy problems here and there are civil liberties problems'. I think those would all have to be addressed.

I do think if you talk about establishing a body that can't see documents or can't compel people to give evidence, then with due regard to civil rights for the people giving evidence and the due process of law, I think we'd be wasting money.

Mr McKIM - The issue of privacy goes to the next point I was going to raise which is who watches the watcher, in your view? We've had various models presented to us, ranging from a particular committee being established, through to a standing parliamentary committee having oversight over an ICAC-style body. Have you thought about that at all?

Mr LOMAX - Yes. I'm not sure about the mechanics, what would work and what wouldn't work, but something like the Ombudsman or the Ombudsman's office having yet another place; if the Ombudsman's full with their own investigations then someone in that office looking at what this was doing and reporting to Parliament on suspected breaches of overenthusiastic behaviour.

Mr McKIM - Regarding the issue of the ambit of any body that this committee might recommend, in your view should it cover police and should it cover local government? That is, should it be able to conduct investigations and make findings in relation to those

organisations, including, I would presume, you'd support it being able to investigate the State Service?

Mr LOMAX - Yes. I would support its investigative powers being very wide, and obviously it would have to include the police. If there are suspicions of corruption and suspicions that the police may be part of that corruption then it would be very strange if you had an investigative body that couldn't touch that particular thing. Local government sure; local government also is part of government. So yes, a wide scope of investigative powers.

CHAIR - Jack, you are a legally trained person, I understand?

Mr LOMAX - Yes. I did my training with your ex-boss, Julia Mead.

CHAIR - Some argue that there is not a specific crime within the Criminal Code or the Police Offences Act to encompass what we're talking about. Have you had a look at that to see whether there should be any thought given to whether there should be a crime, to envisage the matters that you've given evidence about already? You have said there wasn't enough evidence against this person or that person, there was obviously some smoke there in a couple of those matters and, as a result, maybe, of the crime that they were charged with, that is why it didn't proceed or there was a not-guilty verdict handed down. Should there be some investigation as to whether there should be a crime to take into account the matters that we are trying to stop?

Mr LOMAX - Yes, I would again enthusiastically support that. I think it's something that would need a lot of careful thought. If you plonk something in the Criminal Code that is too extensive and too embracing that it starts hitting out at innocent people or people who are so peripheral that they shouldn't be subject to that sort of thing, there might be a problem. But yes, I do think clearly corruption, and political corruption in particular, should have a section of its own.

CHAIR - Your suggestion might be - and please tell me if I am wrong - that it is a matter that the law reform body should investigate?

Mr LOMAX - Yes. I think that would be a good development if that started happening.

CHAIR - Jack, thank you very much for coming along and giving us your original submission and then your addendum and then the evidence as you have done today.

Mr LOMAX - Thank you. I would like to say one final thing. All of this stuff in the present era is important and quite challenging. In the era that we are entering into, with the twin tsunamis that are bearing down on Tasmania, the tsunami of economic meltdown and the tsunami of ecological meltdown that are going to be in our immediate future, it is absolutely imperative that we have good, clean, corrupt-free government.

CHAIR - Thank you very much, Jack.

THE WITNESS WITHDREW.

Ms BARBARA JEAN DALY WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thanks for coming along, Barbara, and for putting in a submission. Brenton Best is in Devonport but is on the phone and with that microphone he can hear everything you say and can also ask you questions.

Ms DALY - This is my interest - politics.

CHAIR - I understand that. I must point out to you that anything you say in here is privileged. So, in other words, nobody can claim that you have defamed them and take you to court with a charge of defamation. What you say outside this committee though, even if you say the same things as what you say to the committee, is not covered by the privilege that you are under now.

Ms DALY - What I am going to say to you has already been said outside. I have all the encouragement under the sun.

CHAIR - Okay. Thank you. The way we deal with it is to let you talk to your submission and then we will ask you some questions. So I hand over to you.

Ms DALY - I sent in a submission about our constitutional rights and want to know why they are not being carried out. There are still some that are valid from the days of Queen Victoria. One is that the politicians are supposed to be accountable to the public and their decisions are supposed to be made fairly. They are not doing this.

We have all being saying for years that we, the public, are not being treated fairly. The Constitution was put together by the agreement by Australians from all parts of the country. It took 10 years from 1890 to 1901. Being a democratic government they are limited in what they can do and how they can do it. Some of the limits may be laid down in the Constitutions and others may be found in acts of Parliament or the common law.

The purpose is to make sure that the Government does not become too powerful and that the decision-makers are accountable and decision are fair. Well, the Government is too powerful. They just take everything and run with it before it is even put out to the public and this is just not on. So, we want our democratic rights put to the politicians so that they can be fair to us, the public. We vote them in. Another thing, too - they come door-knocking and say, 'If you vote me in, I will do this and do that,' but when they get into Parliament they stick to the party lines. That not good enough. So we need more independent people.

CHAIR - You will not get any argument from Terry or me in relation to that, Barbara.

Ms DALY - Could I leave that, to put my point across. There is a very important concern - and I do get upset over this -

CHAIR - Right, if you wish to give any evidence in camera, which means in private - just for our ears, alone - then that can be done.

Ms DALY - That would be fine.

CHAIR - Do you want to do that in camera?

Ms DALY - Yes, I want this brought out.

CHAIR - All right, if I can halt the meeting for a minute, please, and ask all media and any others not involved to leave the room. This is in camera, and just for the committee.

Mr AZIZ GREGORY MELICK SC WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Greg, thanks for coming along. As part of the couple of phone conversations I've had with you in relation to this matter because of your expertise in these types of commissions, even though not ethics commissions, I thought it would be valuable that you came along and gave us your views. Brenton Best is on the telephone and will ask questions when he thinks it appropriate.

Mr MELICK - I suppose I should indicate my experience. I am obviously a barrister and I practise in Hobart and Sydney. I was a statutory member of the National Crime Authority for four years. I was also a statutory part-time member of the New South Wales Casino Control Authority for three years following that appointment. I am also Cricket Australia's special investigator into cricket corruption and I have over the years carried out several investigations on behalf of governments, the most recent one being the Beaconsfield mine disaster.

As far as a corruption or ethics commission is concerned, I am firmly of the view that every State really needs one. It is a question of the scale and size, how big or small it should be. I am not in a position to comment on the level of corruption, if any, in Tasmania but I think it is important for the sake of perception and transparency that there is an independent body that people can go to to air their grievances. I think the position we had in Tasmanian is entirely inappropriate for the investigation of allegations into the police commissioner. You have somebody who is responsible for prosecution organising an investigation and also utilising officers from that police service to investigate their own commissioner. That is a classic reason for needing an independent body. I am not alleging anything inappropriate was done in relation to the investigation, it was just a situation where there was no appropriate mechanism to allow such an investigation to occur.

I am aware from my time at the National Crime Authority and the NSW Casino Control Authority how effective such bodies are. I should also indicate that I appeared before the New South Wales Crime Commission on behalf of clients and the Independent Commission Against Corruption in New South Wales, so I am aware how they work in other States.

My view about Tasmania is you could get away with a model that includes a part-time commissioner who is remunerated on an as-required basis or a fixed remuneration for a certain period each year. One problem you would have if you establish a full-time body with a full-time commission is that there would be a temptation to make the work fill the void rather than concentrating on the work that is appropriate. I would see one of the roles of the commission to determine what matters were appropriate for the commission to take on, which matters required no further investigation or which matters should be referred to other bodies already in place in Tasmania, such as the Ombudsman, police internal affairs and other such bodies, to carry out investigations. I think it becomes very expensive and a duplication of effort if you have an anticorruption commission trying to do other people's jobs by delving too far down into various competent bodies that are already in place.

I would envisage you would have a part-time commissioner, you would probably have a full-time executive officer with the necessary qualifications and clearances and the ability to co-opt investigators from within or outside Tasmania. For instance, if you had an investigation in relation to a high-ranking Tasmanian police officer, I would have thought it was more appropriate to get investigators from outside the State. That works quite well in other States where they have fairly contentious matters. Bear in mind the Australian Crime Commission, as it is now called, has its own core investigators while the New South Wales Crime Commission, although it has a few investigators, relies upon seconded officers from New South Wales Police. There are several models that can work.

I think the powers of such a commission have to be far-ranging. They have to have the power to compel the production of documents, they have to have the power to compel witnesses to attend and give evidence. They have to have the power to compel witnesses to answer self-incriminating questions. The NCA was hamstrung for years because it didn't have that power, whereas ASIC has it. The New South Wales Egg Marketing Board had it, the Queensland banana board had it, but the NCA didn't have it. It was just bizarre.

CHAIR - The NCA has it now, hasn't it?

Mr MELICK - Yes.

Then you have to be careful about the immunity you give from the answers to self-incriminating questions. That is usually a use immunity rather than a derivative-use immunity and sometimes it may be appropriate to give a derivative-use immunity.

Mr McKIM - Could you explain that, please?

Mr MELICK - A use immunity, is when somebody comes and says, 'I murdered *x* and I have buried the gun under the gum tree outside in my backyard' - you can't use the statement 'I murdered *x*' in evidence against him but you can go and recover the gun from under the tree in the backyard, find his fingerprints on it and match it to the body. That is a derivative use.

Mr McKIM - And that is admissible in evidence?

Mr MELICK - That is admissible in evidence as a general rule.

The commissioner or whoever is conducting the hearing - as a general rule I think you only need one person. You can have a panel, I suppose, but you have to be careful. There seems to be a tendency to think you should put ex-judges or community service leaders on to such commissions. If the principal role or the role performed on that day is ethics and education, that may well be appropriate, but often people who are not qualified or trained in investigative techniques are not the most appropriate people to conduct a hearing. Conducting a hearing has to be well planned and carefully managed. As a general rule, you will start at the outside or the periphery of the people you think are involved and move in towards the centre. For that reason hearings should be held in private and not be open because you do not want to disclose the progress of the investigation and alert other people.

There have to be powers, such as making it an offence for people to disclose they have been ordered to appear before the commission. We have many successes by targeting people, arranging telephone intercepts and then serving them. They immediately get on the phone and say, 'Those bastards have served me, what's this all about? Do they know that *x*, *y* and *z*?' We used to get useful intelligence that way, as well as having evidence about the commission of an offence. It also became quite obvious that people tip each other off and talk about the evidence that they had given.

As a general rule, it is up to the commissioner of course, but hearings should be held in private because you do not want to discourage people from giving full and frank evidence. The other thing is that often the rules of evidence do not apply and so you will have hearsay upon hearsay, often which turns out to be false or malicious so you have people's reputations destroyed unnecessarily and it is very hard to recover it. Bearing mind often information in relation to serious crimes comes from other people in opposition, so you get drug dealers giving evidence about other drug dealers because they want to get rid of the competition. You have to be very careful what you let out in the press.

CHAIR - I suppose, Greg, you have found in New South Wales that opponents in forthcoming elections make complaints against one of their competitors and once the election has been concluded they do not wish to proceed any further with the complaint.

Mr MELICK - There was a real issue of potential misuse of the commission processes and people are quite ruthless at times about what use they will make of it. Sometimes it is getting rid of a sexual rival et cetera, especially when we did the bikie gangs and the things that came out.

Mr MARTIN - Greg, some critics or opponents of the concept of an ICAC or a similar body being set up in Tasmania refer to the Nick Greiner case, or in Western Australia the fact that commissions, at times, leaked things to the media, reportedly and therefore, reputations were damaged before they had their day in court. Do you have a view on that?

Mr MELICK - As far as I am concerned, anybody who leaks should go to jail. It is as simple as that. You have to make sure the staff and the people you have involved are of the utmost integrity. At the NCA and the Casino Control Authority we always make very explicit orders about nobody being able to disclose anything outside except for the purpose of obtaining legal advice and the counsel involved were subject to the same restrictions.

Greiner was a different matter. Ian Temby has very black-and-white views on corruption. As far as he is concerned you cannot be a little bit pregnant and, at the end of the day, his view was that offering a parliamentarian a position to get him out of Parliament was tantamount to corruption. There can be guidelines set down by the commissions, where they think the line is drawn or otherwise. My view is that that is a fact of life. It occurs all the time. A minister should be empowered to make whatever appointment he thinks is appropriate and that is part of his ministerial responsibility. I get concerned when a minister says it will be a fair and open process, the post will be

advertised and goes through the appropriate processes but then appoints somebody else. That is a different thing.

I think that the disadvantages, like the occasional leak or inappropriate decision from the commission, are far outweighed by the advantages, bearing in the mind that you always build into a commission process an appellate system of the court. I was taken to court many times as the National Crime Authority. People disputed decisions; they had their day in court. I was lucky that none of my decisions was overturned, but I suppose that was more by good luck than good management. At times, some of the things are very line ball and that is why I think it is important that you have non-publication because there is no damage done to get overruled.

Mr MARTIN - One of the other issues that we have had conflicting evidence or submissions made to us on is the issue of retrospectivity if the body is introduced. How far back do you think the body should be able to go?

Mr MELICK - I think that is a political question. There is a problem, if you go too far back a person accused may no longer have available a lot of evidence that would have otherwise been available to them. If you have retrospectivity, there has to be some discretion on the part of the commissioner to knock an investigation on the head on the basis of fairness to any party involved. As you have with these truth commissions, they are often more looking for a way forward than going backwards.

Politically, it may be far easier to get legislation through or political acceptance if there is no retrospectivity so that people know there is a line in the sand and therefore they had better behave themselves from day one.

Mr McKIM - But we don't use that term in this Parliament any more, Greg - line in the sand - it has no currency!.

Laughter.

Mr McKIM - I just want to ask you about retrospectivity. Isn't it the case that there is almost always an element, even sometimes slight, of retrospectivity in matters that are investigated by an ICAC-style body because, by their very nature, they are accusations about things that have happened that are investigated. So isn't it true to say that there is often an element of retrospectivity, and the question then becomes how far back do you go?

Mr MELICK - If you are investigating an allegation of something that happened today - that is, an inappropriate decision made today - there is no reason why the evidentiary train can't go 10 years back to establish relationships. I do not think retrospectivity should ever apply to evidence, as such, but you may want to consider - and I do not know the answer - having a limit on the retrospectivity on the date of the offence or transgression.

CHAIR - In other words, if there was some talk, Greg, about some wrongdoings back in 1948 you would be saying, 'Look, enough is enough, that was 60-odd years ago, it is not worth doing.' But, to me, it would really have to be up to the discretion of the commissioner as to what he or she believes is appropriate and vice versa. If you don't

give the commissioner that discretion, you are hamstringing that person in the work that they think they should be doing.

Mr MELICK - I agree. I think you have to be careful about who you pick to be a commissioner. I think that really should be a fairly open process so that you encourage as many people as possible who might have the qualifications to apply and then you just trust them.

The other thing is that I think a commissioner's appointment should be fixed - you don't have them there forever. In the NCA we have what we call the 'J. Edgar Hoover clause', which was a strict four years, which probably wasn't enough.

Mr MARTIN - With ability to extend?

Mr MELICK - No, and that was the problem because we lost a lot of corporate knowledge and that did a lot of damage to some of our operations.

CHAIR - So should there be an ability to extend?

Mr MELICK - I don't have a problem with the ability, say, for one extension, a bit like the US presidential system, but once again you have to trust your commission not to try to curry political favour with a view to gaining an extension.

Mr MARTIN - How do you prevent that?

Mr MELICK - I think if it is a part-time commissioner and if you look at the calibre of the person you want, I'd envisage the money you were going to pay would not be such as to make it an attractive job as far as financial remuneration is concerned. I mean, attractive to the sort of calibre, I am talking about. I think you have to remunerate them properly. I think the rate will have to be tied to something like that of a Supreme Court judge's daily rate or something like that. For instance, a reasonably senior-level barrister is going to need a lot more than that anyway.

I am not suggesting there is currying of political favour in New South Wales, but in New South Wales the salary is very high. It is actually substantially more than a Supreme Court judge and that could lead to a perception that, if you had extensions, somebody would try to do the right thing by the current government or whoever it is doing the appointing. But I do not think that problem really looms large in Tasmania.

Mr ROCKLIFF - Greg, you were speaking before about the potential abuse of the system and damaging reputations. Could you expand on what safeguards should be in place to ensure that doesn't happen, and have other States now got that right, given there have been a number of ICACs set up for a number of years now?

Mr MELICK - I will go back one step. Everybody has the power to restrict or to make non-publication orders in relation to hearings before them, and one of the reasons for that is to protect the integrity of the investigation. I always chose to make non-publication orders, and I made it quite clear to people that I'd be making non-publication orders before the hearing commenced, because I found that people were far happier speaking more freely if they knew their evidence wasn't going to be out in the public domain or, in

a lot of cases, in the domain of the criminals they were giving evidence against. By the very nature of organised crime, these weren't particularly nice people, who were prepared to take retribution. So, yes, there is always the right to protect, and you have to have strict penal provisions for people who cross the line.

Part of the trouble is that some commissioners and some investigations feel it may be more appropriate to have it out in the public so they can be seen to be doing their job. I think the only time there is any advantage to doing that is if you try to expose the nature of things you're investigating to get members of the public to come forward. So you often get salacious coverage in the press and that might encourage a few people to come and give evidence that they wouldn't otherwise normally give. I think you can always overcome that by having an advertisement or appropriate announcement saying, 'We are investigating X', giving the outline of where the evidence has gone to date, and asking if anybody knows anything about this to please come forward, and come forward in confidence.

Mr McKIM - What about the ambit of any body that we recommend to be set up - for example, should it cover local government? Should it have the capacity to investigate local government?

Mr MELICK - I think it should have the capacity to investigate anybody who is in public office.

Mr McKIM - Thanks. And who watches the watcher? There are various models around the country. You have some experience in these matters; what do you think is a good model for oversight of such a body?

Mr MELICK - I think a parliamentary joint committee is the ideal way to do it. I may be cynical about politicians at times, but I have actually been impressed with the level of interaction and supervision, both from ministers and the parliamentary joint committee.

Mr MARTIN - From your experience?

Mr MELICK - Yes, from the National Crime Authority. Actually, casino control probably didn't have any oversight, interestingly enough. We were dealing with significant issues -

Mr McKIM - What's your view on that?

Mr MELICK - It didn't cause any problems because there was never any real contention. We started out as a regulator and got very heavily involved in trying to keep people out - so we reduced the number of known people in the private gaming rooms from 40 per cent to 10 per cent by just putting pressure on the casino to get rid of them. We actually forced a couple of the people to come in and justify why they should be entitled to have a casino licence.

Mr McKIM - But in terms of a framework -

Mr MELICK - I don't know what's there now, there may be something there now because we did actually expand the role further than we had initially. So maybe it is therefore

appropriate. I think a body that has those sorts of powers should be answerable to Parliament, I don't have any doubts about that. If they think they're being inappropriately constrained by Parliament, there's always the press.

Mr McKIM - Just to drill down a little bit, if there were to be, for example, a joint House parliamentary committee, a standing committee that had oversight, should that oversight include any powers to directly interfere, and if so should they extend to operational matters?

Mr MELICK - No.

Mr McKIM - No to both of those.

Mr MELICK - No to both of those. There are all sorts of ways you can influence an investigation. If you think an investigation is inappropriate, there can be a discussion about budgetary allocations for that investigation and other such matters. I think they'd be inappropriate. I have to say we are asked a lot of awkward questions - not awkward, but difficult for us to answer without exposing the nature of the investigation.

Mr McKIM - By the committee that had oversight.

Mr MELICK - By the committee. We used to give some off-the-record briefings, which invariably tended to satisfy them. The only potential problems we had were if we needed to investigate parliamentarians - and there would be a potential problem if we were investigating a member of that committee.

Mr MARTIN - What did you do in that situation?

Mr MELICK - We advised our minister and we dealt with it. There was no problem because there was no member of the committee involved. We advised our minister and there was a confidential briefing to, from memory, the Prime Minister and the Leader of the Opposition. They were content with the course we were taking and it was left at that.

Mr MARTIN - You'd have to tell both sides, wouldn't you?

Mr MELICK - My view is yes.

CHAIR - What you're endeavouring to say, Greg, is that in no way should the commission or any of its investigating people have any flavour at all of being tarnished by loyalty to one side or another politically.

Mr MELICK - Oh, yes.

CHAIR - The body has to be completely independent so therefore this standing select committee shouldn't in any way endeavour to impinge upon the independence of the commission.

Mr MELICK - No, but if you're going to have a standing select committee in Tasmania it would have to have a member from each of the three parties, and possibly an independent member. I would recommend that you have a member from each of the

three parties and an independent member from the Legislative Council. I think you then would have good coverage. What tends to happen is the Government tends to make the chair of the committee one of their own, which is not really a problem in itself either.

CHAIR - Then it would be up to the committee, would it not, if you had a body such as that to appoint whom they believed should be the chair?

Mr MELICK - It depends how you want to legislate for it. The NCA committee chair was always at the discretion of the minister, not the committee itself.

CHAIR - When you talk about having neither a full-time nor a part-time commissioner, because it wouldn't be a part-time job even though that person would be able to do other jobs, it would be a job which wouldn't require a full-time capacity -

Mr MELICK - I just don't see there being that sort of work in Tasmania. I may be wrong but I would hope not.

CHAIR - That being the case, and you mentioned there would be a full-time executive officer, what qualifications and background would be required for that executive officer?

Mr MELICK - The executive officer would have to have administration management qualifications. They would have to be able to manage the budget and do all the financial management act responsibilities, sign off on the OH&S and bits and pieces. On top of that, I think it would be useful if they were either a lawyer or someone with investigative experience such as a police officer. I am naturally biased towards lawyers, if you can find someone with the relevant administrative capability, because they have built into them an understanding of fairness, administrative law processes, natural justice and all those sorts of things. They are often better in dealing with people off the street. When you have vexatious litigants such as Dieter Soegemeier, if you set up a body there is no doubt there will be a whole lot of stuff from people who are serial complainers about everything. I think you need someone who can do a bit of preliminary work sorting the wheat from the chaff. They have to be able to write the briefs for the commissioner and sit down and discuss it.

CHAIR - Should it be up to that executive officer, as you say that is going to be the sieve that sorts whether a matter should or shouldn't be -

Mr MELICK - No, I think the commission has to be the sieve. I think at the end of the day the final decision has to be made by the commissioner.

CHAIR - So therefore you're saying that everybody who comes before this executive officer, the executive officer should make their complaint known to the commissioner?

Mr MELICK - Yes.

CHAIR - Even though people might know that they are, as you say, a vexatious litigant?

Mr MELICK - At the end of the day there may be a directive from the commissioner, 'If Joe Bloggs comes again, I don't want to see it unless you think there's something in it'. You can do categories and give some directions such as that. I think for the first six to nine

months the commissioner has to keep control because he's the one who's going to be answerable to parliament for it and he has to know how it's working or not working. That is the way I would see it working.

CHAIR - Some might argue that there is already the Ombudsman, the Auditor-General, the press, the police, Parliament itself, there are bodies already in place and if you want to be devil's advocate, why should there be another body, the ethics commission?

Mr MELICK - I think the Jack Johnston case is a classic reason, simple as that.

Mr McKIM - Couldn't agree more.

Mr MARTIN - Greg, where this becomes a difficult issue is that we are talking about ethics, values, morals and standards which can be subjective. Every human being has their own set of values based on their journey through life. Many issues have led to this becoming current in Tasmania. Some people are judging whether they have broken the law or not. There is a difference between whether something is legal or illegal as compared to whether something is ethical or unethical. Do you agree with that?

Mr MELICK - Yes.

Mr MARTIN - How have the bodies you have served on come up with a set of standards or ethics to make that judgment?

Mr MELICK - The standard for the NCA was whether an action was legal or illegal. There was nothing to do about ethics in relation to that. The Casino Control Authority used a bit of both. In fact, we had to make the determination whether somebody was a fit and proper person to hold a casino licence. That becomes an interesting question and you have to rely upon the experience of your commissioner to determine it.

We had an issue with somebody who may have wanted to take over a casino control licence, who controlled multinational companies, some of which were bribing people in Asia and the Middle East. That became a very difficult issue because everyone knows you do not do some business in Asia and the Middle East unless you bribe people. The Australian Parliament has introduced legislation which says, 'Thou shalt not do it.' Our view was that unless that person was able to satisfy us that he put in place appropriate measures to be sure it did not occur, we were not inclined to give him a casino control licence. That was a decision that the authority made, that it just had to rely upon the collective experience. Maybe it is for times like that, on the ethical issue, you have another couple of part-time commissioners, like a community representative or something like that, who the commissioner can draw upon.

Mr MARTIN - In what we are looking at, who are you saying should make the decision on whether something is ethical or unethical?

Mr MELICK - The commissioner but perhaps you should have three part-time commissioners, two of whom are called upon in relation to the ethical issues, so that you get their collective experience. I would like to think that the commissioner who gets appointed would have enough innate understanding of the issues to know where to draw

the line. Ian Temby is a very capable and experienced lawyer but, as the Greiner matter showed, even the best people can cross the line.

Mr BEST - I was interested, Mr Melick, in some of your comments about looking at the issue of retrospective investigations, your terminology in regard to fairness and natural justice. We have had varying submissions on this issue and my view is that it is difficult to move forward whilst looking at the issue of retrospectivity. I am mindful of the remarks that you made about fairness and natural justice and what things you think might be matters that would be integral in whether or not an issue should be investigated on a retrospective basis.

Mr MELICK - The Truth and Reconciliation Commission in South Africa has proved very successful, although they have gone back and looked at things in the past because that is the only way they felt they could go forward. In relation to what thing, it depends on the nature of the investigation. I would think that a commission would be far more inclined to open a retrospective matter if the person whom the allegation was made about was still in a position of power or influence, rather than someone who had long retired. If there were an allegation of financial impropriety, things such as the availability of taxation records, financial records and other such matters would become fairly critical.

Some of the matters we dealt with involving transferring of money and money laundering involve incredibly complex transactions, both electronic and paper, and if there is not the availability to get hold of a lot of that evidence, there may come a stage where you say the investigation, as a matter of fairness, should be terminated, especially if the person says, 'Look, I did all this through a legal tax minimalisation scheme and my accountant is now dead and the records are 15 years old, none of them still exist', et cetera.

It is very hard to give any hard and fast examples. You have to get into an investigation and use your own discretion.

Mr BEST - I appreciate that. How it appears to me - and I am interested in your view on this - is that unless there is something that can specifically be gained for the community, I find it an expensive and pointless task. We have had some witnesses say that there should be a royal commission into what has happened in government over the last x number of years. I am not sure what that would achieve other than damaging reputations and not all of those reputations would be of members of government. What would be discovered would be more about, I guess, political decisions as opposed to any sort of corruption.

Mr MELICK - At the end of the day retrospectivity has to be a question for Parliament, although I think it would be inappropriate if there was valid evidence against somebody still in a position of authority or power and the commissioner was denied the opportunity to investigate those matters.

Mr BEST - Yes.

Mr MELICK - But I tend to agree with you, if somebody is long gone in the 1970s or 1980s, what is the point of wasting a whole lot of public money unless it has been a serious

matter for which jail would be an inevitable outcome. But, once again, I think a body such as this should be more concentrating on the future rather than the past.

Mr BEST - Thank you.

CHAIR - Greg, do you believe the Criminal Code and/or the Police Offences Act have the proper crime to encompass what we are talking about or do you believe that that is a matter that should go before the Law Reform Commission to see whether there is an appropriate crime or offence and to ensure that it does not occur?

Mr MELICK - I have some problems with the Criminal Code. Bear in mind it is an amalgam of both the Stephen and Griffith codes, it was enacted in 1924 after a whole series of parliamentary discussions, and because it is an amalgam of two codes, we have serious criminal offences which have no real mental element. The Bryan Green-John White matter is an example.

Mr MARTIN - Don't tell me the world has changed in 85 years and the law hasn't.

Mr MELICK - And the lawyers sometimes recognise the fact that perhaps the law has not. But it was not that, it was that there are certain offences in the code which, when you look at the drafting of the code, were down as minor offences and not intended to have jailable consequences. The code has, as you know, mental elements in sections (3) and (4), and then later in the parts of the code there are other mental elements and concepts of wilfulness grafted on which makes life very difficult. There are in our code paths to jailable offences not involving any specific mental element and one of the classic examples is, of course, 157(1)(c). It is one of the few places in the world where you can be convicted of murder without having, what is regarded in most jurisdictions as representing intent.

CHAIR - That has been spoken about. Former Judge Neasey spoke about that years ago - more than 20 years ago.

Mr MELICK - It was because Stephen talked about unlawful object and gave an example of terrorists blowing up a train, the object being the blowing up of the train for terrorists purposes. Therefore, it was quite appropriate that he should also be responsible for the deaths of people that flowed therefrom. But, for some unknown reason, the act, instead of putting the word 'object' put the word 'act'. So that is where the problem of 157(1)(c) comes in.

CHAIR - What do you say about corruption, immoral activity?

Mr MELICK - I think the way the code is drafted at the moment is inappropriate because it does allow people to be subjected to lengthy jail sentences without a direct mental element. As a lawyer I find that anathema. But bear in mind that this commission should not just be looking at crime, it should also be looking at inappropriate behaviour.

CHAIR - That is what I am talking about.

Mr MARTIN - One allied question. In view of the whole issue of ethics and what we are talking about, I raise the issue of donations to political parties. Do you think they are a relevant consideration in this and, if so, do you think they are regulated well enough?

Mr MELICK - I have a fundamental problem with the level of donations to political parties in Australia. I just find it difficult for a politician to say 'I am not influenced by a developer just because he has given my party half a million dollars'. I do not have a problem with grassroots people contributing a few hundred dollars towards their local members. I do not know where you draw the line. It is a difficult decision. I think in Australia we are moving dangerously away from the true Westminster system of government to a more presidential style and the more presidential in style you go the more money you require for your campaign. That is not the way I would like to see this country going.

Mr MARTIN - Do you think it is a relevant factor in what we are considering in the ethics in the government?

Mr MELICK - No, I think it is up to governments to decide what they do about political donations, but it would become a relevant matter for the commission to determine if, for instance, I was examining the decision of a minister to allow a development to go ahead. A relevant matter would be the nature of the relationship between the minister and the developer and the donations made. There would be no defence, I would have thought, on the inappropriate behaviour charge to say that Parliament allows donations of this magnitude, therefore there is nothing wrong. There is nothing wrong in the donation in itself, but the nature of the decision-making process and interaction would become relevant matters to be considered.

CHAIR - It is the intention for the donation that is the problem, isn't it?

Mr MELICK - Yes.

Mr McKIM - Just on that, in terms of the framework, what are your views on public funding of political parties perhaps linked with quite a low cap on donations? Tasmania and South Australia would be the only two States that do not publicly fund political parties in this country. Do you think that would improve the ethical framework within which politicians operate?

Mr MELICK - I do. But, then again, you have to be careful because you have - and there's not much you can do about it - the Pauline Hanson and One Nation sort of thing. That shows the problems with a system like that. But I think that it solves more evils than it delivers.

CHAIR - Greg, we are tied to time. We are five minutes over. Thanks very much for coming along and sharing with us your expertise the way you have done.

Mr MELICK - Thank you.

THE WITNESS WITHDREW.

Mr ANDREW HOLLIDAY WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Andrew, thank you very much for coming along. It is an informal gathering with, hopefully, some important decisions to be made at the end of it. Thanks also for your well-researched submission. I will now hand over to you.

Mr HOLLIDAY - First, I would like to thank you for the opportunity, I appreciate that. In relation to my submission, I think I put on the cover page that it was very much a last-minute project, and I would like to acknowledge that although there is a very strong police perspective, due to my background, all the principles in it would refer to any type of government body or any sort of industry, probably. Specific examples are police-related, but the principles apply generally, not simply to policing.

I don't have a 10-point plan, but I do have 10 key points. The reason I made that additional submission was to try to ensure that some balance and focus was placed on what I think of as the main game, namely the development of and support for an ethical culture for government and the public sector. I had absolutely no doubt when I heard about the inquiry that there would be numerous submissions focused on particular allegations of misconduct and corruption, and I think that's entirely appropriate. I think it is important to present some balance on the other side, and I have a very strong feeling that there would be 99 per cent dealing with particular allegations and only 1 per cent to deal with the actual issue, which is always addressed in the background. There is always a reference to culture and values, but it is not taken seriously. That is point one.

Two, an open and honest culture in the public sector should be supported and encouraged explicitly and implicitly. A culture where staff tell superiors what they think they want to hear instead of what they need to hear, is an unhealthy and morally impoverished one. These are not characteristics to be encouraged.

Three, a high profile for ethics and integrity is important. This must be ongoing and well supported. It should also not be imposed simply from above, but generated and owned by everyone involved. This can be done. In the past in my previous job I developed strategies that do it.

Four, corruption and misconduct are organisational problems practised by individuals, they are not individual problems practised within organisations. Individuals and individual examples are symptoms, they are not the problem itself. Simply weeding out rotten apples in the barrel will not solve the problem when it is the state of the barrel that is causing the rot.

Five, an emphasis only on investigating major incidents of corruption will not generate support or build a culture of ethics and integrity because the vast majority of the public sector will not perceive the issue as being related to them, it will be somebody else's problem.

Six, perceptions matter. Surveys I have read since arriving in Tasmania show that 11 per cent of the population believes the Government to be corrupt, with more than 80 per cent not trusting politicians. These are devastating findings in a democracy, and

cannot be ignored or dismissed. Whether there is substance behind the beliefs or not, the belief itself is important.

Seven, being ethical should not be seen as a challenge, as difficult or as courageous. Most organisations and industries that take up ethics training - a phrase I hate - focus on dilemmas and hypothetical situations in which corruption management and peer pressure are almost synonymous. Employees are then asked how they would stand up to it. I think the real message is clear in those sorts of examples, and it is obvious that they run away. It has a built-in failure process that should be avoided.

Eight, addressing values is more efficient than addressing behaviour, and the bulk of my submission is related to that point, so I won't address it again.

Nine, beware of those who talk of being pragmatic or realistic, or worse still pragmatic realists. These are probably people to watch. The definition of pragmatic - and I looked it up in the dictionary last night - is 'convenient and expedient separation of practice from ideals'. The word condemns itself. This is how these problems started in the first place. If a government believes pragmatically that it cannot afford what is needed to support and reinforce ethics and integrity, then the corrupt values are already both evident and triumphant in that government's culture.

Finally, whatever the outcome of all this, something has to change for to quote Einstein, 'Insanity is doing the same thing over and over again and expecting different results'. Tasmania has to stop doing the same things. To this end I note the Premier's comments in August last year when he said, 'I am determined to significantly change the culture of government and of government processes. We must and will get this right'. Let's hope so.

CHAIR - Have you noticed a change? I know you have been here only a relatively short time but you are in a position to notice change.

Mr HOLLIDAY - I came to Tasmania with a fairly naive attitude about what was going on here. I only had the mainland perception. I have now joined the public sector here and although nobody practises or does anything that is particularly morally ambiguous or bad, they all feel that 'there is something rotten in the state of Denmark'.

CHAIR - It's a perception issue, as you say, which becomes an educative role as well, I would imagine. Therefore if a body is set up do you believe it is important that it has this educative role?

Mr HOLLIDAY - Absolutely crucial, crucial that it be both educative and supportive. I think most people are ethical. You don't have to teach people how to suck eggs but you do have to create an environment where those values they already have are supported and reinforced rather than questioned or made to feel, 'I'm at work now. I'll put my professional hat on and do what is pragmatic rather than what I believe to be right'. You need to make it comfortable and easy to do the right thing whenever possible.

CHAIR - I understand that you have a lot of experience in this area, if you were given the job of saying whether Tasmania should have an ethics commission, I believe you're saying 'yes, it should'. If you were then given the job of setting it up, what would you do?

Mr HOLLIDAY - That is a hard question. Despite my focus on the ethics, value and integrity side of it, I think there needs to be some level of investigative ability. That is the expensive part. It is difficult because whether the number of issues that would need to be investigated would warrant it, I don't know. I would set up some sort of organisation that had both the power to investigate and the power to educate and they would not be distinct, they would communicate with each other. For instance, and the example was given by the previous speaker of vexatious complainants, from an investigative perspective that might be something that the body would dismiss after a while and say, 'This person, or this organisation, just likes to complain about these issues'. However, from an educative point of view, you would treat all of those as genuine because they would identify the issues that need to be addressed rather than people who need to be addressed. I don't really have the ability or experience to answer directly how the top end of the commission would be organised.

CHAIR - But you're saying whatever happens there should be this power to investigate.

Mr HOLLIDAY - Yes.

CHAIR - Should that power be left within the discretion of the investigator and the top, being the commissioner, or should Parliament set some parameters around that?

Mr HOLLIDAY - I'm a bit uncomfortable with the idea of no-one watching the watchers. I would have some sort of parliamentary oversight.

CHAIR - You may have heard talk of a select committee made up as a previous witness suggested, of all parties with an independent representative. Do you believe that type of joint select committee from both Houses would be suitable oversight body?

Mr HOLLIDAY - Yes, provided we can be assured that it's independent.

Mr McKIM - You said earlier words to the effect that you think a culture that encourages people to tell their superiors what they want to hear is unhealthy, and I agree. Do you believe that short-term contracts for senior State Executive Service bureaucrats renewed by ministers might encourage that kind of culture?

Mr HOLLIDAY - I think it certainly sends that message, yes. My experience from previous employment is that it does send that message. It potentially compromises or creates a potential conflict of interest.

Mr McKIM - And therefore potentially compromises frank and fearless advice being given to a minister?

Mr HOLLIDAY - Absolutely.

CHAIR - You say you have experienced that. Can you expand on that, please?

Mr HOLLIDAY - I think most people who have been involved in some sort of policy or research work in the public sector have many times gone through the experience of

massaging work until it is expressed in a way that is appropriate or on occasions making appendices and putting in a good executive summary.

Mr MARTIN - Why would that happen? Why would everyone in the public service -

Mr HOLLIDAY - I did not say everyone; I said many people have had that experience. I have had that experience of massaging documents, not actually making things up or hiding the truth but putting it in a way that removes some of the value.

Mr MARTIN - Because you were directed by superiors on a political basis?

Mr HOLLIDAY - Generally on a political basis. But I would like to stress that this is one of the issues to do with perception. You are never formally directed to do this, this is a generic perception that people have that they should be playing this game. And Nick's point about the contract position strengthens that generic perception. It is not ever formally said.

Mr MARTIN - Do you think that pressure to massage reports is rife in the Tasmanian public service?

Mr HOLLIDAY - As I say, I have little experience in the public sector here. I have been in it long enough to know that there are some differences but there are also a lot of similarities so I would suspect so.

CHAIR - As a whole, coming in as an independent voice, have you any concerns with the way the public sector is working as a result of these perceptions that you say are out there?

Mr HOLLIDAY - My direct experience would be to say no in a practical sense but in terms of a general sense of morale, yes.

CHAIR - To increase a better morale what is needed?

Mr HOLLIDAY - I think a sense that you can speak frankly and fearlessly, that things are as open, honest and transparent as we are told they are, but we do not quite believe it and that is the problem.

CHAIR - The only way that you can get around that, is for a person to have spoken to a minister or another frankly and fearlessly and there are no repercussions. That takes time -

Mr HOLLIDAY - That takes time.

CHAIR - because the issue has to be there, the advice has to be there and the no repercussions have to be there.

Mr HOLLIDAY - That is right. It does take time, it takes some sort of ongoing process and that is why you cannot simply have, say, a royal commission or something like that, a one-off; you have to have something like an ethics commission that goes on.

CHAIR - So words are cheap, aren't they? Actions are what it is all about.

Mr HOLLIDAY - That is right.

Mr MARTIN - I think it is an excellent submission you have made. You have talked a lot about values management and creating the right culture. That is really the critical part of your submission, isn't it, which hasn't been raised by a lot of the witnesses as you might have guessed might be the case. Do you want to expand on that a bit more, how you would go about creating that culture?

Mr HOLLIDAY - What I suggested in South Australia along these lines - and it was based on research from many organisations other than the South Australian Police for whom I worked for at the time - is that you need to genuinely consult, not tell, the people in the organisation. Identify the people who are interested already, and there will be many in these sorts of issues, get them to come forward and work with them. Perception surveys in particular are extremely valuable for questions of value management because even when people give you the answer they think they want you to hear, you are still finding out what you need to know. You then feed all that back.

The process I developed in South Australia was a two-year process. There was a one-year implementation process, a one-year review and monitoring process and then it rolled on into a permanent set of practices and values. It involved consultation and feedback. Within each particular area there would be groups and organisations that could feed back any particular problems they had that were specific to their area. It would go back to a central base. If there were ethical values or problems that they could not resolve, it would then go up the line to what, at the time, was called the ethical and professional standards service.

CHAIR - Was there a service like that in each of the divisions or just in the police division that you knew about?

Mr HOLLIDAY - The ethical and professional standards service answered to the commissioner and it included, basically, the internal investigation branch, the professional conduct branch, which was the legal lawyers' side and something called the service enhancement branch, which was basically in charge of developing and maintaining the ethical culture, which took the findings from internal investigations into professional conduct and said, 'These are the issues that are turning up and these are the complaints that are being sustained. These are the sorts of problems that we need to address' and then came up with training packages and education packages and tools to address that.

CHAIR - You might argue that the commissioner doesn't want any bad press involving his or her police force and, as a result of that, he doesn't want this information to become known. How do you get around that so it is transparent, so the people down the line can see that, yes, the issues are being raised, they are being raised at the top and it is the top that is not wanting to change as opposed to the actual problems not coming through from below? Can you see what I am getting at?

Mr HOLLIDAY - To some extent, yes, and you remind me of a phrase that one of the heads of the anti-corruption branch used many times. 'The fish rots from the head down' was

his expression. These sorts of processes can backfire badly if the information is only fed up one way and then disappears into a black hole, never to be seen again. There has to be a sense that it is coming back from the top. It has to be generated bottom up and dealt at the top down and be a genuinely inclusive process. The way it is done is part of doing something with ethics and integrity. It is not enough to say, 'I am in charge, I am going to impose an ethics value culture on you'. That does exactly the reverse; that says, 'Here's a glossy document. We'll work to the letter of it', so, you know, 'I followed the letter of your document but not the intent'. It has to be generated from below. The problem is people think that this is a difficult process. The people at the bottom think the top doesn't give a damn and the people at the top think the bottom are just a problem causing all sorts of grief for us and nobody understands that everybody is actually trying to do the best job they can.

CHAIR - Did your plan work in South Australia?

Mr HOLLIDAY - I left as it was being implemented.

CHAIR - You'd have some interest in it.

Mr HOLLIDAY - I have had feedback from ex-colleagues. It is still there so that is the best I can tell you.

CHAIR - The feedback you get as well is that people now are feeling better about it than they were prior to you doing it and having it in place?

Mr HOLLIDAY - I received a very high response rate from people when I put out surveys and questionnaires. I think people were very taken with the fact that someone had actually listened, so people welcomed it.

CHAIR - Regarding this listening aspect, the second or third witness this morning said, or words to the effect, 'Look, I don't mind if nothing further happens, I just like to be listened to and to be able to put my point of view and vent my spleen'. It is an interesting aspect, and I say that because if there is an ethics commission set up and there is an executive officer involved with that ethics commission as the sieve, should there be a person to the left or to the right of the executive officer to be able to properly sit down - and I say properly sit down because it is very, very time-consuming - and listen to all of these issues that you mightn't think are real issues to be investigated? I know it is probably going slightly off the point.

Mr HOLLIDAY - It sounds a little like a leading question.

Mr MARTIN - Oh, not a lawyer.

Mr HOLLIDAY - No, I am not a lawyer.

Mr MARTIN - No, Jim is though.

Mr HOLLIDAY - As you say, that sort of thing is intensive. We looked at the idea of having a confidential phone line and a service for people having issues along those sorts of lines but they were not sure whether this was enough for a formal complaint. We did

not actually do it, we said, 'Either the formal complaint or talk to your friends', simply because we didn't have the resources.

It is a good idea, to some extent, but, as you say, it could be very time-consuming. On the other hand, Western Australia did actually set up such a hotline and when I made inquiries with the police there, I found that it had been used twice in a year. So what seemed like something that would be a very useful tool turned out to not be used at all, but whether that was because the culture was such that nobody would trust phoning that number, I don't know. It is a bit like a suggestion box where people think are being watched when they put the suggestion in the box.

Mr MARTIN - Andrew, I especially liked the last paragraph of your background section where you talk of the main game, and I especially like your last sentence, 'Compliance is important but on its own it is the equivalent of pouring water into a bucket full of holes'. Would you like to expand on that a bit more?

Mr HOLLIDAY - I tried expanding on it with a diagram in the submission, which was much easier than speaking to it. It goes back to the values management issue once again. An infinite number of behaviours can arise out of a set value. If you try to deal with a particular behaviour or a group of people's particular behaviour while another group over here is doing the same thing, you have finite resources and it can't be done. It would be like the police trying to stop all crime but there will always be some. If you address the values rather than the behaviour, you don't have to worry about how it might cash out in this department or in that job or how it might cash out for that project. You simply have to make sure that people have the values that will prevent their doing the wrong thing.

Mr MARTIN - But you need to do both - is what you're saying? You need the compliance side of things?

Mr HOLLIDAY - You need the compliance for the obvious and strong extreme examples, you don't just let them go, but you can't have a system where all you're going to do is legislate or come up with policy or codes of conduct for particular sets of behaviour because that is, 'How long's a piece of string?' It just goes on and on, and it always does. You are constantly rewriting general orders or qualifying or reinterpreting legislation because a new situation has come up which fits section so-and-so of the act but not exactly how you needed it to. So it goes back to Parliament, back to the lawyers and then it is year to two years before you get the change made.

Mr MARTIN - There's a difference between whether something is legal or illegal compared to whether something is ethical or unethical. It's not necessarily the same thing, is it?

Mr HOLLIDAY - It's not the same thing, in fact the ethical side has more shades of grey than the law by far, but there is the same sort of issue that if you're dealing with behaviour rather than the values that led to the behaviour, you're on a fast road to nowhere.

CHAIR - Andrew, do you wish to sum up? The report is very good.

Mr HOLLIDAY - No, the submission, such as it is, is enough.

CHAIR - Thank you for your time.

THE WITNESS WITHDREW.

Dr DAVID OBENDORF WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED

CHAIR - David, thank you very much for coming along and thanks for your submission which you have already provided to us, and the work that was put into that.

Dr OBENDORF - Thank you. There are no amendments to my submission, there were a couple of typographical errors in there, and for the benefit of the committee I have done an abridged copy so members of the committee can have that.

I offer this submission as a person who has lived in Tasmania since 1980, when I came here as an employee of the Government, and was an employee of the Government for 17 years - from 1980 to 1997. I also appear before the committee as a person who attempted to improve the level of honesty and openness and transparency in relation to the information that middle professional managers can provide to both decision-makers in government, and to direct-benefit shareholders or stakeholders. This is an area I was directly involved with. I also offer this as a contractor to government - international, at the level of the OIE, Commonwealth, State and local. I have exercised that competency without fear or favour and I feel that I have done a reasonable job in that process.

I believe that ethical conduct is the single most important endeavour that Tasmania will have to undertake in nearly half a century. If we can improve the level of honesty, openness and transparency in the processes of government not just at the elected level but also at the level of the bureaucracy and how that filters down to society then we will have done a great service to community.

The crucial aspects in my submission, I feel, are about the concept of betrayal. If the community feels betrayed, the consequences can be lasting. From my experience of betrayal, both in a family-societal situation, right through to an organisational system within government, the repercussions are that they have consequences for many people right throughout that family or that organisation. People's capacity to trust line management and to trust individuals within the workplace and to offer, without fear or favour, information that may well be crucial to the long-term wellbeing of a complete society, is compromised.

So, on that basis, my submission is attempting to determine who are the independent watchdogs in society that Tasmania has to rely upon to be its checks and balances, good governance probiters. I have said in the opening submission that independent watchdogs of ethical and open government in Tasmania are statutorily incapable of obtaining legitimate referrals from outside executive government and for initiating their own investigations.

On that basis, I think the system is flawed. You can use the word 'corrupted' and people can have all sorts of connotations of corruption means, but a system that is confused in the way it processes good information, risk assessment information and critical information, will be flawed.

The process I have taken is along the lines of, I think, many submissions to the committee and that is to look at strengthening existing mechanisms and to really review

what are the breakages in those existing mechanisms. The way I have approached it is to categorise who are the public officials on whom we really rely to be independent, completely impartial of the government of the day to give, without fear or favour, information that is crucial to the operational sustainability of the culture that we operate as a democracy. I have listed them in the review of the existing mechanisms under the first part of the terms of reference.

In the second part of the terms of reference, I have really gone to the kernel of where I think there is a difficulty for Tasmania, which is whether those mechanisms need to be augmented. The paradox that Tasmania faces is that there would be no need for anticorruption body or an ethic standard applied to the governments and public services if it were credible and trustworthy. I think the evidence over the preceding years is indicating that there are flaws and deficiencies. In my view, it is the entrenched culture of secrecy, cover-up and executive control that negates the efforts to refresh the system and build a truly accountable and transparent governance system. So it is a mechanism whereby people feel courageous enough to come to a committee like this, people who feel they have the capacity not to be belittled, humiliated, ridiculed, but to be able to give information without fear or favour. I have great expectations that this committee will provide a non-partisan report that will consider the long-term benefits of this for Tasmania for the next 100 years. It is the basis of setting a whole new underpinning because, fundamentally - and what I say in my final part are the matters incidental to this - the relationship between the public sector, the Government and the community is absolutely crucial to maintaining trust and confidence.

You might have any interests that are self-serving, having built up over a period of time because of the nature of small governance, relationships, friendships and associations between people that develop not necessarily out of respect for what they say but maybe what their fraternal relationships are with individuals. In that regard I have made the point that to promote behaviours and practices designed to be self-serving and deceptive is not what Tasmania needs. If sound ethical principles do not operate at the leadership levels within boards of management, of government agencies as well as the communication between heads of agencies and their responsible ministers, it is neither fanciful nor exaggerated to consider that a self-serving culture of mutual self-interest, cover-up and crisis management can develop. My belief is that that has occurred.

Over the several years that I have been both involved as a public servant and now as an independent individual working in a range of volunteer activities, I have undertaken a number of FOI requests trying to ascertain what is spin and what is truth, what can be soundly based in a time line of sequential information that should be on the public record and should be very validly part of protecting a society against bad policy. That involves issues such as public safety, food hygiene, animal welfare, disease control, biosecurity and quarantine. My concern is that those systems have been found wanting, and the subsequent responses have indicated that to be the case. This is not about me big-noting myself or anything like that. I am just trying to put a position of saying that when you do the research, when you uncover the relationships between the public sector and government and the community values and expectations, you find that there are problems - significant problems.

On that basis I believe that the issue I want to really focus on is where ordinary members of the community at the public service level can offer information without fear or favour,

particularly where they hold a crucial position within the middle management of professionalism within, say, the area of health, public safety, environmental health and safety - whatever it might be. Those people with the technical proficiency to provide that information astonishingly discover that their findings that they have on the chain of command have become misrepresented, reworded, watered down or completely overlooked after passing through the agency's command structure.

This practice, in my view, is wrong, it is unethical and once entrenched within the hierarchy of command it becomes systemic. I really want to leave it there so that you have a chance to really scrutinise me. I guess the issue for me is that we need to have substance over spin. If a government becomes top-heavy because it is maintaining a reactive approach to the way it deals with ethical conduct - reactive, top-bound, self-serving processes - that is terribly resource depleting. You are always in a situation of trying to catch up, providing what you can, working out which documents certain people will get, which will be excluded, what media spin will come on top of government, to say whether this is appropriate to say to the broader populace. When do you say you're wrong, when do you say you apologise, you made a mistake? To me this is where money is badly spent, and it's bad policy. On that basis, I am open to questions.

Mr ROCKLIFF - Thanks, David. In terms of the adoption of a charter of ethical standards for public service employees and elected community leaders, are you including local government in that?

Dr OBENDORF - I hadn't, only because my expertise in that area is fairly limited, but I think there's scope for that for sure. It's really about the issue of conflict of interest, I guess, and seeing that people declare their capacity to define where they feel they need to declare a matter. The clarity of individual honesty is very important. I happen to be a homosexual. If that is covert knowledge used to compromise me, then that is a bad thing. If I am then in a position that my information will be corrupted in order to give people I think hold sway over me the capacity, that is a bad thing. That happens in society quite a lot, not just about this issue but also about other issues. It is a game of power, which I think could be related to other areas of government.

Mr ROCKLIFF - Okay. You mentioned a small pool of elected ministers. Should this committee, apart from perhaps recommending an ethics commission, ICAC, or whatever we may end up with, also be focusing on the numbers of members of Parliament to try to restore some balance in terms of accountability? How important do you think that is in terms of where we are today?

Dr OBENDORF - For me personally I think it is a big issue. I think it is about getting the balance right, about intellectual rigour at the elected level of government, as well as the proficiencies within the agencies and GBEs, the policy developers, and also obviously the community. All qualities of the community are reflected in the size of that critical mass, and I think we are deficient in the Parliament; there's no doubt about that, in my view.

Mr McKIM - You won't get any argument out of me about that one. Dave, you are a whistleblower, and I don't know if you use that term exactly in your submission, but you've mentioned in your submission that, as a result of attempts to inform relevant persons in authority about public policy failure, you have been dismissed from a

government position. It strikes me that any body that this committee might recommend be established will have to consider how it deals with obtaining information from people in a similar position to the one that you found yourself in. How did you find that personally, and what advice would you give us when we are considering that matter?

Dr OBENDORF - It's integrally associated with the matter of ethical conduct. As a sort of prelude to Mr McKim's question, I was instrumental in assisting the law agency in Tasmania to develop the public interest disclosure legislation, modelling it on Victorian and Canadian legislation. Nowhere in the world of public interest disclosure legislation really works effectively at protecting the whistleblower, or investigating the basic kernel of their sense of misconduct or criminality. In a sense, whistleblower protection has to be seen as a scoping exercise to obtain good watchdogs in an area that is important.

For me it was very harrowing. As David Llewellyn would know, it took a long time. He was in Opposition at the time. It began in 1993 and didn't finish until 1997; it involved my taking personal civil action in three different jurisdictions. I didn't get my job; I had an out-of-court settlement from the government but the issue was really what happened as a result of that. As a result of what I blew the whistle on, government changed policy. That policy was reflective of the concerns I had originally raised. To the credit of the present Government they have increased awareness that the core business of the department should be biosecurity and it needed to increase its reliance on disease control and quarantine. When someone is pilloried for being a prophet in their own backyard, to me that is a tragedy because it is happening in health, education, disability services and so many areas of Tasmania. We are human beings; we all live a mortal life. We are going to die. I might be dead in six months' time, we don't know when we are going to die. We have to do what we can today with courage. We must do the best we can with the people we have.

CHAIR - In relation to the issue of an ethics commission, David, some might argue that we already have Parliament, the GBE process, the Estimates process, Press, police, Auditor-General, Ombudsman, Privileges Committee et cetera. Why should you need an ethics commission over and above that?

Dr OBENDORF - I'm not necessarily arguing that we need one per se. I would say that the whole thing needs to be structured, as I have said in my submission, around a culture of change. Fundamentally you need to build in the educational criteria that say that ethics are a fundamental underpinning for society. If you have a bully as a father, if you have a person who has operated in a power situation and you have a number of children, then the chances are that some of those children may develop similar attributes and behaviours. Similarly, in organisational culture, you get the same behaviour. Once you see condoned behaviour that is unethical, it has a trickle-down effect. My belief is, as my recommendation says, that civics and ethics education, at both primary and secondary school level, is a foundation for building the values that people respect one another. On that basis, I follow a non-theistic philosophy, which is Daoism. His Holiness the Dalai Lama wrote a book in 1999, before the new millennium, called *Ancient Wisdom, Modern World: Ethics for a New Millennium* in which he defines quite clearly the personal ethics we bring to our lives and how those ethics inform universal ethics for a society. I understand that another person who has made a submission to the committee is donating this book to the Parliamentary Library. It is not a large volume but it is a profoundly important text because it tells you how to get that balance right, and

about how the consequences are generational; they take quite a while to process through. You need to develop it early and once that it is developed the relationships I have with Jeremy Rockliff, David Llewellyn, Jim Wilkinson or Nick McKim are fair and equitable; they're not about picking one person against another and playing favourites. It is about equity and fairness and saying that truthfulness is the basis of these relationships and the information is given without fear or favour.

Mr LLEWELLYN - That statement you used on page 7 about numerous day-to-day incidents about government officers at lower tiers et cetera - I accept that in the way you have expressed it because there is a fair amount of personal experience and you have explained that. You know that I was also concerned about those issues and tried to square the ledger to some extent by having you do an audit over biosecurity as an individual consultant. Most people within the system who are perhaps of a technical nature would have superiors within government agencies and many of them would have the same technical knowledge, though in some cases perhaps not, and in the normal course of business some of these issues are very subjective so they may well take different views from another person at a lower level and modify those views accordingly. To some extent I see that as the normal course of government business. If it is abused I can understand how you have written it there. Perhaps you would like to explain a little bit more.

Dr OBENDORF - The issue I became aware of in the government agency I was in was that around the 1990s there was a change from having professional line managers that had expertise related to the core business of the area to those who were more likely to be general managers with generic skills. That meant that there was a different philosophy around the advocacy that they provided to a core set of skills and technical proficiencies because they worked through generic managers who may have had a degree in business or in corporatisation or in efficiencies of business. I saw a change in cultural emphasis away from science-based risk assessment towards one that was more about political science. I can understand that political science is a critical part of the decision-making about resources but I cite the instance of the nine salmonella outbreaks related to one particular producer. The manager writes in an e-mail to another member of staff - and I paraphrase - what we are attempting to do is really give the impression that we are slow learners. That comes from a person who is in a generic management position. Everything pointed to, after about the third incident, a critical control point issue here that identified a particular source of the contamination and that the risk management was ineffective and inefficient.

So, yes, it is a subjective assessment but it is also one that I think is tried and true. If you had other courageous public servants in my position from other jurisdictions they would be able to cite similar instances. It is no reflection on whether it is a Labor, Liberal, bicameral or whatever government; it does not matter. This is the nature of the relationship of power talking to ordinary people. It is an important one to get right for the future.

Mr LLEWELLYN - So people up the chain are more interested in protecting their own backsides than the truth of the matter? Is that simply put?

Dr OBENDORF - I don't find it a laughing matter, David.

Mr LLEWELLYN - No, I am not laughing. I am just saying, is that a simple way of expressing it?

Dr OBENDORF - The simple way I would put it is, 'kiss up, kick down'. If I wanted a significant job in a bureaucracy and I had certain skills and I knew that there was an appointment, I would try to kiss up to that position. In another situation a person might say, 'I am very happy where I am. I do a very good job at this particular core proficiency and I might need an extra duty allowance or a higher grading for my knowledge and skills and competency'. But that should not affect my speaking to a minister, without fear or favour, about an issue of serious significance. That is the difference between a person, I think, who sees themselves acting ethically or a person who sees themselves as self-serving with a vested interest.

Mr MARTIN - Do you think fixed term appointments are a factor here?

Dr OBENDORF - For public servants?

Mr MARTIN - Yes. Does being on fixed-term contracts make the situation worse? Is there more of an incentive for the public servant to be nice and not give fearless advice.

Dr OBENDORF - I don't know, Terry, it is very hard to know. When I came into the public service in Tasmania there were some particularly good long tenured-people in fixed positions within the department, who were strong individuals. David Llewellyn would know some of them. These were people who would speak truth to power without too much trouble at all because they felt confident that it would be an open repartee between a political scientist and maybe a scientist, but at least they would put their point of view. Fixed term under contract positions might be a situation where people feel that they have to get some brownie points up in order to continue in that position. So it is a difficulty.

I think we need to get some charter to support the ethical standards that you apply to the State Service not only at the highest echelons but also at the level of all the lower tiers, the ordinary individuals who see mismanagement, corruption and deceitful behaviour, and are able to use the public interest disclosure legislation. They can report directly to a member of Parliament with prima facie evidence demonstrating this and it should not be used as a witch hunt against the Government of the day but it is used as a basis for saying, 'This is how you improve good governance and good efficiencies within your public sector'.

CHAIR - David, unfortunately time is starting to slip away. I wonder if there are any final questions.

Mr MARTIN - We have a time problem, do we?

CHAIR - We have.

Mr MARTIN - I have about four or five questions, but I will just ask one. One of the issues that are constantly coming up here is that when you look at some issues that have led to this committee being set up, there is confusion about whether if something is legal it is necessarily ethical. Do you have a view on that?

Dr OBENDORF - I would always default to a person who has a profound knowledge of ethics and the sense of dualism of rightness and wrongness. In my personal behaviour, what I personally do was considered to be a heinous, horrendous thing a hundred years ago; today it is sanctioned and accepted as part and parcel of the rich diversity of sexuality within our community.

That says to us that we, as a society, evolve when we know a lot more about things and we do not stigmatise. The same applies to women, blacks and people of different ethnicity. So I would recommend this book to you, Terry.

Mr MARTIN - A pretty good person to take notice of, I reckon.

Dr OBENDORF - The Dalai Lama has the chance to really analyse the core of that basis of why we protect ourselves rather than think of another. That is the basis of ethics, I think.

CHAIR - Thank you very much. Thanks for coming along and thanks for presenting your submission and answering the questions. I am sorry we are restricted to time.

Dr OBENDORF - Thank you, Jim, for your time. Thanks, everybody.

THE WITNESS WITHDREW.

Ms ELIZABETH PEREY WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Elizabeth, thanks for coming along. I know you have been in the back hearing what is going on.

Ms PEREY - It was great. There have been some terrific submissions, haven't there?

CHAIR - Thank you for yours. And also you have probably heard the warning that I have been giving people about the privilege that attaches itself to giving evidence here which does not attach itself to anything said outside this room.

Ms PEREY - Yes.

CHAIR - I will leave it to you to speak to your submission and then we will ask you some questions.

Ms PEREY - I have thought quite a lot more about the whole thing since I have written that submission and I have written some more. I would like to read it out, if that is okay?

CHAIR - Sure.

Ms PEREY - Why do we need an anti-corruption body in Tasmania? I want to live in a Tasmania that is honest, decent, democratic, transparent and free of corruption. That is what I want and that is why I put in a submission and why I am here. Because I believe an independent anti-corruption investigative body with wide terms of reference will play a big part in the achieving such a society. Recent developments in Tasmania have convinced me that existing mechanisms designed to ensure good governance are not working. I am a member of the public and I believe my views are representative of what the majority of Tasmanians think.

Corruption examples: allegations of corruption and serious ethical misconduct at the State government level have not been fully investigated. The fast-tracking of the pulp mill is a classic example of corruption in the State. At first the Premier pressured the RPDC for a decision favourable to the Government - this was verified by Justice Wright, yet there was no investigation. The legal planning process was unilaterally overturned because it looked like the Government would not get the answer from the RPDC they wanted. We have a Deputy Premier found to have lied to Parliament about the cancellation of an appointment of a magistrate yet he is still in his seat. Without whistleblowers these allegations would not have emerged. There may be many other cases where ministers have lied to Parliament, yet there is no process to ensure that allegations come to light or no independent body for whistleblowers to report to.

Freedom of speech is being curtailed in this State, yet no-one is doing anything to protect this fundamental part of Australia's system of democracy. With the Gunns 20 and Gunns 13 cases, we have a major company suing private individuals and a not-for-profit organisation for exercising freedom of speech. Furthermore, Tasmania Police provided names of protesters at the Triabunna woodchip mill to Gunns to enable them to launch civil action against those arrested. This is major corruption because a State government department is being used to protect private interests at the expense of citizens' rights.

CHAIR - Some might argue with you in relation to that last bit because it is a civil matter. If I have a car accident that is not my fault I can always ask the police for a copy of the statements in relation to that accident. As has been the case all the time, that evidence comes before us because you have to know what people are saying against you in order to proceed either one way or another with a civil action. That has been the way that the law is in Tasmania for as long as I have been involved - a bit over 30 years.

Ms PEREY - Maybe this is what I am saying.

CHAIR - No, what I am saying is that if there is a complaint to be made, like a car accident where you wonder whether to proceed to charge the person for negligence, what you want to know is what people who may have seen the accident saw in order to continue or otherwise with that case. It is just the way the law is. So if you are saying the law should be changed, then that is fine, but at the moment it is within the law to do that.

Ms PEREY - Perhaps it is but I feel that it is corrupt to use private interests at the expense of citizens' rights.

CHAIR - If you had a car accident and you knew five or six people were watching, but because of your accident you did not get their names, would you hope that those names were given to you?

Ms PEREY - Yes, of course.

CHAIR - Therefore, how else could you get it?

Ms PEREY - We will move on.

Mr LLEWELLYN - It is not only Tasmanian law; it is British law. That principle goes back centuries.

Ms PEREY - Okay. The incestuous nature of Tasmanian politics: the mechanisms that are currently in place are not working and never have worked. Everyone is in each other's pockets. It is an old boys' club. Both major political parties receive donations from the same companies. We need a body to watch over the Tasmanian political system. It must be independent and not involved. One would have expected there would have been a full investigation into the Edmund Rouse affair. The intended beneficiary of the bribery scandal, Robin Gray, is now sitting on the board of the main power wielder in the State and that same company is responsible for bribing politicians.

CHAIR - There was a royal commission into that.

Ms PEREY - Okay, that was before my time. Another ex-premier is having massive house renovations done on a non-commercial basis; if that is not an example of bribery and corruption that goes on in this State, what is?

People and organisations are not held to account. We have Forestry Tasmania running at a loss of \$55 million last year and still being supported and propped up by the Government, and a Premier taking orders from the head of Forestry Tasmania. We have

Federal Hotels being awarded a 20-year exclusive licence run poker machines in Tasmania. Not only was it a bad deal for the State, it was kept quiet, secret.

Good governance means that decisions are made based on evidence and in accordance with the law, that those decisions are reviewable by an independent body, even if only a small percentage of the decisions are reviewed. The fact that the decisions can be reviewed will improve the quality of decision-making. Justice must be done and also seen to be done. Even if justice is being done, in many cases it does not appear to be done in Tasmania. As a member of the public, this disturbs me greatly. For example, all appointments to the Senior Executive Service in Tasmania go to Cabinet. This makes it very difficult for senior servants to be apolitical. Also, these appointments are usually made for a fixed term, making it difficult for incumbents to give frank and fearless advice in case their contract is not renewed.

Jocelynn Scutt, a highly respected lawyer and former antidiscrimination commissioner, is a case in point who did not have her contract renewed because she spoke out against the Tasmanian establishment.

Mr LLEWELLYN - Do you know that to be a fact?

Ms PEREY - I know she spoke out and felt hounded by the establishment. It was fairly reported at the time and it wasn't a secret.

Mr LLEWELLYN - But it is your opinion.

Ms PEREY - Of course it is my opinion.

Mr McKIM - You are well entitled to give it too.

Ms PEREY - Thank you. Another problem is that vacancies are not advertised when contracts are renewed. Senior executives who are incompetent but who toe the Government line have their contracts renewed without a process. An independent Senior Executive Service, as is the case with the Australian Public Service where senior staff are appointed by the Australian Public Service Commissioner, would stop the innuendo of 'jobs for mates' as occurred with the recent appointment of the Director of Building Control. Even though the appointment was apparently on merit, the impression the public had was that the process was dodgy.

Ms THORP - Why would you think that people would think that appointment was dodgy?

Ms PEREY - Everybody thought it was dodgy.

Ms THORP - Why?

Ms PEREY - Because of the way it was presented. I am a little old lady living in the suburbs; I thought it was very dodgy, and the whole process was very bad.

Ms THORP - But the person in question applied for a job that was advertised publicly.

Ms PEREY - It does appear to be on merit but the impression the public was given - maybe it is just bad salesmanship on the part of the Government, I don't know.

Ms THORP - The information of that appointment, you received that how?

Ms PEREY - I would have received it on the radio, on the television, in the newspaper.

Ms THORP - Thanks.

Ms PEREY - Conflict of interest: we have too few parliamentarians in the House of Assembly, with ministers having multiple portfolios and consequently conflicts of interest. At present there is no process to investigate potential conflicts of interests.

We need separation of powers. The people who make and administer policy and the law are the same people who are sitting in judgment and they should be independent.

The system is not self-correcting. You need an independent body to watch what is going on with the power to investigate. Independence is vital otherwise the decision-makers are investigating themselves, as happened with police recently. Currently there is nobody there to investigate when the political system goes wrong; the judicial system can only sit back and wait until a case is brought to court.

The independent watchdog must have wide terms of reference. It must have teeth, not be some watered down ethics committee - an anticorruption body with teeth. It must report to Parliament, not to government, and contain at least one non-Tasmanian member to help ensure independence. I am not quite sure how good that is but one can try. It must protect whistleblowers, be able to engage in retrospective investigations, but as people have been saying you don't investigate something from 20 years ago from scratch. It is the evidence that would go back 20 years.

CHAIR - I suppose in relation to that, if there is an investigation that is taking place and that investigation has to call on some evidence that occurred x number of years ago, they should be able to call on that evidence to either support one way or another the inquiry they're looking into.

Ms PEREY - Yes, but it is difficult, isn't it, to decide how far back you go. To have an independently guaranteed budget indexed to the CPI, I think that's really important that it is secure.

CHAIR - It's not going to be starved out of existence, that's what you're saying.

Ms PEREY - Yes, because they don't like what it's doing.

CHAIR - All right, thank you for that. Any questions at all?

Ms THORP - I think very early on in your comments you referred to a tax on freedom of speech, or made some allusion to freedom of speech. Could I put to you that the very fact you are sitting here today and are able to say quite strongly-worded statements about the integrity of senior public servants and appointments, and so on, would actually appear to the contrary?

Ms PEREY - Okay, that's in this context, but there are other contexts where I think freedom of speech is not being respected.

Ms THORP - Could you give me an example?

Ms PEREY - Well, I gave you one.

Ms THORP - Refresh my memory.

Ms PEREY - It was about the Triabunna protests and giving the names to Gunns. I didn't agree with either of you, actually, with what you were saying, because I think that was quite off, I think that was quite corrupt.

CHAIR - Would you believe, as I say with the car accident you would -

Ms PEREY - I don't think it's a very good analogy, I am sorry.

CHAIR - Okay. It's still a civil matter, but we'll agree to disagree.

Mr McKIM - You did mention the Gunns 20 as well, and it's been well recognised around the world that there are SLAPP suits, Strategic Lawsuits Against Public Participation. They are filed explicitly in order to discourage people from participating in public debate, and there have been a lot of legal experts, Ms Thorp, who think that was a SLAPP suit, so I think that actually backs Ms Perey's statement very strongly.

Ms THORP - I will have to agree to disagree with you.

Ms PEREY - But it is regarded as a SLAPP suit.

Ms THORP - We are all talking about having our own opinions here, and I have mine.

Ms PEREY - Oh, right.

CHAIR - In relation to the makeup of the body, do you believe there should be a full-time commissioner, or do you believe that as was stated by one witness, sometimes if there is a full-time commissioner, what occurs is that they endeavour to find work which may not be specific to what they're there for in order to become full-time? Or, should it be part-time unless the amount of work that's involved requires it to be full-time, and that depends upon the commissioner that you have at the time to say, 'There's two years' work in this, I've got to be full-time'?

Ms PEREY - I have sort of thought about what's needed, I haven't thought about the method to make it happen so much. I feel there's enough corruption and dodgy dealing going on in this State for a commission to be quite busy full-time for quite a while, so yes.

CHAIR - It would seem to me - tell me if I'm wrong - your views derive as a result of what you've read in the press or heard on the news.

Ms PEREY - And from whom one talks to. I moved to Tasmania about seven years ago, and it took quite a while to realise that this is, I believe, a very corrupt place, so much so that there's a general attitude that it's fine if you can get away with it. Like Bryan Green was

a perfect case and example. He really didn't think there was anything wrong with what he'd done. It's fair game, if you can get away with it. Okay, I am, as I said, a grandmother living in the suburbs. This is my perception.

CHAIR - We all live in the suburbs, we don't belittle anyone who lives in the suburbs.

Ms PEREY - Yes, but a member of the general public.

Mr MARTIN - One of the issues that is constantly coming up is people confuse the legality of an issue with the ethics issue. Do you think there is a difference there? I mean, just because something is legal, it does not necessarily follow that it is ethical.

Ms PEREY - I think ethics and morality should always come before legality. A thing can be legal and be totally immoral, yes.

Mr McKIM - Just really quickly - you have mentioned political donations. Tasmania does not have a State-based donations disclosure laws. So, first, do you think that would improve the situation? Secondly, what about banning or putting a very low cap on political donations and publicly funding political parties?

Ms PEREY - Excellent. I am very supportive of that.

CHAIR - Brenton, do you have any questions?

Mr BEST - No, I do not have any questions.

CHAIR - Is there anything else that you wanted to add, Elizabeth?

Ms PEREY - I think it is great what you are doing and I hope you get there and you establish an investigative body that has real teeth and real powers to investigate situations. I think it would be great.

CHAIR - Thank you very much for coming along and thanks for giving your evidence in the forthright manner that you did.

THE WITNESS WITHDREW.

Mr JAMES GRAHAM WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you for coming back again to provide us with your views. Your submission is already before us. We would ask you to speak to that and then we will ask you some questions. Do you wish me to go through the privilege aspect?

Mr GRAHAM - No, that should be all right. I am a little bit nervous. I should not be. Usually I am quite out there.

Mr LLEWELLYN - Do not be nervous, James. You never are when you are talking to me.

Mr McKIM - We should be nervous.

Mr GRAHAM - I know. I have a bit of a script here though, if that is okay?

CHAIR - Yes.

Mr GRAHAM - First I would like to thank the Government and this committee for the opportunity to be here today. I would also like to acknowledge the people that were here first and the contribution of the elders, who were probably in this room way before any of us. So I would like to acknowledge the fact that their spirit might still be here in a way.

I received a letter on 30 July 2008 thanking me for my submission, never once giving it any thought of how it or I would become part of this process. So you can maybe have a little idea of how surprised I was when I got the invitation to be here today. Since I had no copy of it I had to actually call up and get a copy because, in my own hearts of hearts, never thought this moment would happen. Within the time lapse I have since had an opportunity to reflect on my points presented in this submission. Is it possible for me to make an opening statement now?

CHAIR - Sure. Can I say, James, that nearly everyone who made a submission - and we received 130-odd - has been given the opportunity to come before us and speak to us.

Mr GRAHAM - That is a credit to you, Mr Chairman. I think that is great, if that is the case. Something bigger than all of us is going on here and to quote a young person from my own high street in New Norfolk, 'It is cool to break the law, it is dumb if you get caught'. Is it not always the ones that get away and mutate into a society where we will always find the one that is either corrupt or has questionable conduct? Somehow or other we just managed to that, for whatever reason. Then there is the situation within politics - and I am going to be quoting here and I will need to paraphrase the context within Mr Nick McKim's inaugural speech on Wednesday, 25 September 2002 -

CHAIR - Don't polish his halo, James.

Laughter.

Mr GRAHAM - in which he expressed his concerns about the quality of a debate during the proposed Bass Link interconnector. He had received some stick over his position and I quote: 'Let me be clear that I personally regard it as a badge of honour to be attacked in this way by the Government and I raise the issue here on behalf of the Tasmanian people who deserve a far higher standard of debate from their elected representatives'.

That is a noble remark. That I acknowledge. For him there are times when certain conduct can be acceptable enough to become a badge of honour. Today, at this meeting, an opportunity has been created to explore when is a lie a lie within the context of untruths that are allowed under parliamentary privilege. So that is a point that we can maybe talk about and I would be interested to hear what your views are on that one. I have tried to present these two examples of a cultural, ethical dilemma within the question: what is criminal? If what we are talking about is corruption, that is really criminal stuff. What is the lowest common denominator? Those are the two things I am talking about. What is criminal, and what is the lowest common denominator that could maybe even become a badge of honour. Both are of concern to me.

When a person is in power has influence and more significantly makes decisions on how you are going to spend and use my money that makes me concerned at times to see how that is happening, in that context. Whether it be criminal or the lowest common denominator, I am angry about the way that our money gets spent sometimes. So that is another point that we can talk about too.

I am aware of the bill to constitute a Tasmanian independent commission against corruption brought in by the Honourable Terence Lewis Martin in 2008 and its three principal objects. I am just going to paraphrase them because that is where I am coming from too. In paraphrase they are about integrity, funding to investigate misconduct, and to provide ethical guidance for a society and in particular matters associated with public life and public funds.

In light of what I have said in my submission I would like to reinforce the importance of the ownership principle. There is no sense coming up with whatever we come up with out of the process if the human beings out there do not think they own it. It is not going to count for anything because that is the perception. It has to have the look, the feel that I know it is mine, a place I can go to and I will be taken for real at whatever level.

The principle of ethical guidance, which comes out of that sort of idea from the independent commission against corruption, could be expanded to include an educational component, which is the kind of stuff I am about. A recent example was what happened in my home town in New Norfolk when the Electoral Commission came up and our kids were having their school elections or something. They came up and they modelled what it is like to tick-off a box, what it is like to vote. These kids, as soon as they turn 18, will probably want to go out and vote, because there is nothing stupid or mysterious about it. So if this body had an educational component that they took into schools then our next group of leaders coming out of these groups will know what ethics and all that kind of stuff is about. So that was a good example and that was handy, so I can submit that. When you think about what these guys do, when you think about the make-up of the Tasmanian electoral body, that is probably the kind of look and feel of a body so that a guy like me could say, 'Yes, I could go to somebody like them'. I could have a chat to

them about my concerns about my sitting member or a civil servant or even my councillor at a local council election'.

In closing, the culture of 'you owe me one' is a scary one. I am a street urchin and that is the one that we love on the streets - 'You owe me one'. The baseball bat will sort that. No matter how it is spun, dressed down or dressed up, it will always be on the nose. They always have a stink about them. It does not smell like Yves St Laurent or Brut or one of those nice smells. It has that pungent, 'something stinks here' smell, something is rotten in the state of Denmark. By this I mean the public perception of who is doing the right thing. From the same perspective, this is a biggie. How huge is the importance of protection for those people that, as a duty of care, expose foreseeable harm for all in whatever concerns are being addressed by the body created to do the investigating. In other words, each and every one of us sitting around this table has a duty of care to significant others in our lives. Our duty of care to this man here is that if I can see some sort of foreseeable harm that's just on the horizon then I have a duty of care to be there for him. That to me is very ethical in its own right, having a duty of care for each and every one of us sitting around this table.

I cannot underscore the point enough that there needs to be some body watching the watchdog. That's a scary one too; who's watching whatever gets created out of this? Because for me to feel I have ownership of that process I need to know that somebody is watching my back on that one too.

Mr McKIM - Who do you think should watch the watcher?

Mr GRAHAM - It's going to be us anyway, all the Harrys and Joes and Marys that sit in these chairs. The media will do the spin and we'll talk to all our mates and stuff but if it's on the nose we're going to know. Where there's smoke there's usually fire. For me, if it's really criminal then there is radar, there are antennae. Ethics is always is a tough one because what is true for you is maybe not so true for me and what is honest for you might not be so honest for me. With this quality control thing they can tick off the boxes but the people out there go to work every day and then they come home and watch the news and some things get dressed up to look like something that's not what it's really all about. It takes a very discerning person to wade through the crap. So to answer your question, I think you will know very quickly if it's working. Where will be the champions in the media who really want this to work? We will be the champions - each and every one of us. I just took an oath. I am under the impression that all my politicians take an oath to do the right thing by me. Is it any different from the one I took, to tell the truth? Am I that gullible to believe that -

Mr McKIM - It is a bit different but it's effectively the same.

Mr GRAHAM - Still, you've taken an oath and we're expecting that to be honoured.

Ms THORP - Do you believe that there is a role the media plays by constantly beating up any suggestion of corruption?

Mr GRAHAM - We are talking about getting the claws out. That is what they like; they like that kind of stuff; that's what sells newspapers.

Ms THORP - Yes.

Mr GRAHAM - A minute ago I heard a voice come out of nowhere. Where did that happen?

Mr LLEWELLYN - Out of that black box. That was Brenton Best.

Mr GRAHAM - Out of that black box. So we have a guy here that is not here, but he can be here.

CHAIR - He can be here; that's right.

Mr GRAHAM - So I could spin that whatever way I want, can't I? I could say Big Brother was watching me.

Ms THORP - Yes and I hope you understood where I was at.

Mr GRAHAM - Yes, of course I do.

Ms THORP - I think it makes it very hard for people to be comfortable and have confidence. We've all made oaths too and each individual is doing the best we can and yet we've constantly got this -

Mr GRAHAM - Well, you're in a perfect position; being a teacher. When you were a teacher you could probably walk in corridors but as soon as you become a politician - did it happen or not?

Ms THORP - Yes, you're an overnight asshole.

Mr GRAHAM - Yes, exactly right. Again, where does that come from? They talk about trust and everybody says, 'Would you trust a used-car salesman?', and yet people buy cars from used-car salesmen. But if you ask them at a cocktail party, 'Would you trust a used-car salesman?' 'They are almost like a politician, aren't they?' Well, are they? I don't know. We still have to trust you guys to do the right thing by us. They all say they don't trust the used-car salesman but they still go and buy a car from them.

Mr MARTIN - James, why do you think people's perception is that they don't trust politicians, that politicians are so far down the list of trust ratings?

Mr GRAHAM - I think it is probably because of ignorance. Mr Llewellyn will know that I write letters, I talk to my politicians, I know these guys. I don't think we have taught the other people who could have been here today. Sure, you probably have 120 or 130 submission, but if you look down the list, how many of them would have been the individual? You are going to get all the academics and everybody -

Mr WILKINSON - In relation to this, a vast number are individuals.

Mr GRAHAM - Well, that is part of what this should be about. That's the success story here, that the individuals felt that they had a place. This is the tip of the iceberg. This must show you how much interest can be generated if you get it right, or at least try to

get it right. Get it started, it's going to grow and as soon as the community takes ownership of it and they realise that there is something going on there and stuff gets done, I think that will be the key. You guys have electorates and are out there telling folks, 'Look, I'm not the man. Take it to these folk'. I've been there, I know they get stuff done. When you are out electioneering tell them, 'I am one of the guys that put this thing together'. 'Are you now? I'm glad you did that kind of thing'. Take credit for getting this stuff started and I think people will react. Educators should take the mystique out of it.

CHAIR - So it is an education process?

Mr GRAHAM - I feel the biggest point is education. Set the role models. Watch question time. If a lot of people are watching it - 'Ouch! Is this kindergarten?' 'Oh no, this is the way it's done'.

Mr MARTIN - The upper House is different.

Mr GRAHAM - Well, it may be, but again it is that perception that those are people in there -

Mr LLEWELLYN - What about the media?

Mr GRAHAM - The media always have their agendas; they have their favourites. If you're talking cronyism - you know who to call if you want a story spun. The minders know who to call. Everybody's connected that way, but we know that.

Mr LLEWELLYN - Should they be more accountable?

Mr GRAHAM - That's a tough one. How does one define 'accountable'. For them it is bottom line accountable, sell the stories. That is pretty accountable. Get the story that sells the newspaper, that's pretty accountable. It is another of those words where it is 'I have been accountable because I showed up on time this time. I was late the last time so I was a bit more accountable today in my behaviour and action'.

I feel that the community is ready and they are hanging out for it. It is just how it is going to look, how it is going to feel, user-friendly. Do I feel if I have had my say there - I won't go away and phone the media and say, 'They're a bunch of you-know-whats'. Then when the media calls up they get the story - 'I went there and I got an outcome'. Well, let's see if it gets printed. That is another issue. If he tells his neighbour he got an outcome and it was about the same, you start connecting the dots and whoever would be in that position knowing it is out there you would really think twice about how grey the grey is. It starts to get a lot more black and white, doesn't it? The grey starts to fall away when there is somebody really deciding where the black and the white is. Grey tends to slip away.

CHAIR - It becomes more succinct, doesn't it? Unfortunately, we are tied to a time limit, James.

Mr GRAHAM - Thanks for this opportunity and it is a great first step.

CHAIR - Thank you for coming along. Thanks for giving your evidence and your submission as well.

THE WITNESS WITHDREW.

Mr KEN HARRIS WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED (BY TELEPHONE).

CHAIR - Ken, it is Jim Wilkinson speaking. Thank you for your submission which is number 50 of our 130-odd submissions. What we have been doing is opening it up to you to speak to it and then asking questions about it. Before we do that though everything you say within the committee is privileged and therefore if you wish to defame anybody or anything you cannot be charged. But if you go outside and say the same thing you can be charged.

Mr HARRIS - Understood.

CHAIR - Fire away.

Mr HARRIS - I am a bit nervous actually. I have never done this before.

CHAIR - We cannot see you. You do not look nervous.

Mr HARRIS - As I said in my letter I would like to make one alteration slightly. Where it says that I am calling on the Joint Select Committee to establish an independent anti-corruption body, the first point I would like to withdraw is that there is at least one mainland appointment. Is that okay?

CHAIR - Sure.

Mr HARRIS - The reason being that I thought it was a good idea at the time but I cannot now, reflecting on it, see that there would be any point. I cannot see any benefit either.

CHAIR - I should add we have with us Nick McKim, Terry Martin, Jeremy Rockliff, David Llewellyn, Lyn Thorpe and Brenton Best who is on the phone and Greg Hall is an apology.

Mr HARRIS - Right. Thank you. You just want me to speak on it, do you?

CHAIR - Yes, please. Or if you would rather us ask you questions?

Mr HARRIS - Perhaps I could go through the points and add bits as to why I have said things on those.

CHAIR - Yes, that is fine.

Mr HARRIS - My first point is good governance. I think good governance should be open, transparent and responsive rather than what appears to be in opposition to the main stakeholder - the main stakeholder being the taxpayer. I think there should be a mechanism to involve the average person to present his or her view to government. Of course it would mean the Government would have to want to gain that view from the public otherwise it should be able to justify its actions. In other words, it is open, transparent, participatory, responsive and also it has to be accountable and effective. Community involvement, I think, is at the heart of governance.

CHAIR - How are you going to get that community involvement? If there is an independent body set up, how is the community involvement going to be obtained?

Mr HARRIS - I am afraid I do not know how you would have to involve the community, apart from asking them with advertising and everything else. The problem is the apathy of the community. But I do think there are people who would welcome being involved.

CHAIR - Are you saying, if the community is satisfied that an independent body has been set up they would be more willing to come to that independent body to express their grievances?

Mr HARRIS - That is basically what I am talking about, yes. I think that would be the ideal way. If we go by what is called the ICAC, there can be problems with that, judging by one person's views on the web. The name of that person is Brian Martin who is, I think, a professor at a university in New South Wales - Wollongong, I think. According to him, it would appear that the ICAC does not work. He gives one instance - and I can read from it here if you would not mind?

CHAIR - Sure.

Mr HARRIS -

'With the New South Wales branch of Whistleblowers Australia, many members' experience of the State's Independent Commission Against Corruption invariably negative. Sometimes a whistleblower would make a submission to the ICAC and get no response. Sometime the ICAC would contact the whistleblower's employer, making things even worse. In surveying a couple of dozen people who had dealings with the ICAC ... and only one person had even been partially helped.

So the ICAC would have to be pretty well different and pretty well set up.

CHAIR - Thank you. Do you believe that the body should be a body which encompasses a full-time commissioner or do you believe it should be a part-time commissioner or a commissioner as required?

Mr HARRIS - I think a commissioner as required.

CHAIR - Do you believe also that there should be a separate executive set up?

Mr HARRIS - Sorry, I can't hear you.

CHAIR - Should there be a separate executive officer as well, set up to vet the complaints that come before it and make recommendations then to this commissioner - or at least summaries as to what the matter is all about? It goes from the executive officer to the commissioner and then the commissioner decides whether they should or should not proceed. Is that the way you envisage it?

Mr HARRIS - I think something like that. But anything that is referred to this executive officer, as you are saying, he should make sure that either the chair of the body or person in charge of the body should be able to then take it before them - it should not just be left just to the executive officer to make the decision. No one person should be able to make that decision otherwise you could be in the same position as you were before the thing is set up to start with.

CHAIR - I note in your submission you spoke as well about the confidentiality of the investigation and also the need to make all the inquiries in camera as opposed to being in the public view. Do you believe that is important?

Mr HARRIS - I am just trying to go through my letter.

CHAIR - Last paragraph.

Mr HARRIS - The last paragraph, 'The body should include an ethics committee component' and so on.

CHAIR - 'Adequate mechanism to maintain the confidentiality of investigations and protect...'

Mr HARRIS - That is right. Yes, it has to be able to keep everything confidential, especially for the individuals that are raising the allegations. The body should have that capability of keeping confidentiality within themselves.

Mr MARTIN - One of the issues that is raised by some people is that of retrospectivity. Some people would argue that if a body is set up, it should not look at things that have happened in the past but just look at things that happen in the future. Do you have a view on that?

Mr HARRIS - There would have to be a time line on it, I suppose, because you do not want retrospectivity onto something that happened several years ago, even though there could be repercussions about that thing at that time.

Mr MARTIN - What about things in the last few years?

Mr HARRIS - I have not really thought of the actual time line, but they should be able to go back to within the last two to three years.

CHAIR - Are there any other questions at all for Ken? There do not appear to be. Did you wish to sum up at all or say any closing words?

Mr HARRIS - I have something here that touches on something that we have probably already discussed. I jotted it down earlier. Maybe what we really need is some form of community-based process that reviews the performance of our servants - by that I am saying, yes, those servants are the elected members and the public servants. That is a bit of a sum-up.

CHAIR - That is good, thank you. There being no further questions, I thank you very much for supplying us with your submission and also for giving evidence today, and your interest in the matter, Ken.

Mr HARRIS - Thank you very much. I am glad to have participated.

THE WITNESS WITHDREW.

Mr PAUL MAURICE DAVIS WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Paul, thanks for coming along. What we've been doing is letting you speak to your submission and then, after that, asking any questions. So I will hand it over to you to start.

Mr DAVIS - Thank you very much. Thank you for the opportunity to be here; I know it's rather onerous to hear every one of the many submissions which were presented and I suspect many of them, including mine, have had some very similar central points with respect to the general thrust of the need for such a committee.

I won't go over those sort of main structural points again; they're in there - the fact that we need to have one and that it should have wide powers and a degree of independence and how they may be structured but I'd be happy to talk about any of those points.

I would like, though, to take the opportunity to focus on a couple of perspectives which are a little bit broader but, in my view, actually are the heart of the matter. To illustrate it; I mean, the Chinese use the same word for danger and opportunity. A small state like Tasmania is actually well placed - there's nothing better than being small because you can flourish in situations where bigger organisations, bigger entities or bigger States have much more difficulty.

In Tasmania's case we can see the benefit of that by simple image of clean and green and what that has done for export of foods, tourism and so on. Similarly, the whole issue of corruption needs to be seen - or the need for a committee - in a context of the broader picture. It's not simply a question of making sure that if somebody has broken a law then they will be brought to judgment for that. That is very much the tip of the iceberg. For every law that is broken there is a vast amount of maladministration and poor decision-making - decision-making which is made not for the transparent reasons of what may be good for that particular area of activity but also for distorted reasons so that as long as it can be dressed up to meet the stated requirements of a particular policy then that's good enough. The rest of it is something for mates or an investment that wouldn't stand up if it weren't for government assistance that bleeds resources from one section of our State to another section.

These issues are not ones that relate to one side of politics or another. It's all about good governance, which relates to good economics, more jobs and a sound future for our State. Again, I come back to the point that being small is an advantage because in a big State, the size of Victoria or New South Wales, with endemic problems, it is extremely hard to turn that around. For a small State, effecting change is much easier.

Ms THORP - The Schumacher philosophy.

Mr DAVIS - I don't know; it may well be.

Ms THORP - Small is beautiful.

Mr DAVIS - Oh yes, indeed. I think the other aspect that follows through from what I was saying is that it would be unwise in the current international climate of economics to

underestimate the positive potential for a State which is known for its probity, for its transparency of decision-making and for its logic and rationality in its decision-making and allocation of public resources and furthermore, in the management of the consequences of those decisions.

So, again, this area is very much opportunity, not risk. A cynic may say, what is the risk to me as a politician or as a party, but, in fact, it is a huge opportunity for Tasmania to have the equivalent of a clean, green image attracting tourists and welcoming our exports, if we can have one of the highest possible levels of probity.

Ms THORP - If we are talking about the image of the highest level of probity and good governance et cetera, we have a lot of institutions in Tasmania already, the Auditor-General, the Solicitor-General, the Commissioner for Children - our list is quite substantial. Am I understanding you correctly that the point of this other body is not necessarily to do something that all these others cannot, but more to give an impression that they are?

Mr DAVIS - With respect, no, not at all. I believe that from a managerial point of view it would be correct to say that the others cannot do it. I believe that we need a separate body with acknowledged independence in order to undertake that process. But I also believe - and this is quite important - that the existence of a commission would make it far easier for the existing functions, such as the Auditor-General, to operate to the highest level they can achieve.

Ms THORP - How is that?

Mr DAVIS - Because, without putting too fine a point on it - and there is no suggestion of history in this - just in managerial reality the Auditor-General is internal to the structure of governance. The existence of another body outside which is seeing that the rules are stuck to would make the Auditor-General's job much easier, in my view.

Ms THORP - I do note in your submission that you mention that the commissioner of the proposed body be appointed by the Premier on the recommendation of that body.

Mr DAVIS - No, I have suggested a joint parliamentary committee, which oversees the commission.

Ms THORP - It says here that the head of the commission should be appointed by the Premier.

Mr MARTIN - On the recommendation of.

Ms THORP - Yes, that is what I said, not the joint committee. Is that not what you meant?

Mr DAVIS - The oversight committee that I suggested is a joint parliamentary committee, which oversees what the commission does.

Ms THORP - The head of the commission be appointed by the Premier?

Mr DAVIS - The Premier - and I think I said -

Ms THORP - On the recommendation?

Mr DAVIS - Yes, on the recommendation of the oversight committee so that the commission is very much answerable to Parliament in a transparent manner. I speak as one who does not have a lot of experience of this type of thing.

CHAIR - The plan you put forward though, Paul, is a plan that a lot of people have a lot of experience in the area, are putting forward.

Mr DAVIS - Interesting.

CHAIR - In relation to the commissioner, himself or herself, should that be a full-time position or should it be a position that is left to the commissioner, depending upon what work is available at the time? Sometimes if it is full-time people find work to make it full-time.

Mr DAVIS - Indeed. I would be inclined to think that the latter situation, one where the time allocated responds to what is necessary, is probably the best way to go. I guess, to be honest, that would be something that would need to be reviewed after one year and after two years of operation to see how much came before it.

Ms THORP - On page 3 of your submission, under point 3, you say:

'The responsibilities of the commission will be the uncovering and thorough investigation of corruption, maladministration, unethical conduct.'

I am particularly interested in point (b) where you say:

'The instigation of those prosecutions will be through recommendation to and cooperation with the Director of Public Prosecutions.'

Would you like to elaborate a little on that?

Mr DAVIS - It was my feeling - and again this is not a particularly educated point of view at all - that the actual process of prosecution should be able to be adequately carried through by the Director of Public Prosecutions.

Ms THORP - Is this after the commission has done its work?

Mr DAVIS - After they have done their work if they believe there is a case to be answered they would present that to the Director of Public Prosecutions and, hopefully in cooperation with him, that prosecution would take place.

Mr LLEWELLYN - The police would need to be involved as well.

Mr DAVIS - Indeed.

Mr McKIM - Why is that?

Mr LLEWELLYN - Someone needs to charge the person if there is going to be a prosecution.

Mr McKIM - The DPP can charge people. You used to be the Attorney-General, you must know that.

Mr DAVIS - I feel that if the relationships work well, things will work. If they don't work well, as long as it is transparent and the role of the oversight committee and indeed the annual report of the commission itself are undertaken, that will come out quite quickly and a solution would have to be found.

CHAIR - Paul, what happens if you and I know that it is unethical, immoral or whatever you want to call it, but it is not contrary to the law; where does it go then?

Mr DAVIS - That is a very good point. It is a big area. One aspect of could be covered from a point of view of naming and shaming, as it were. In that sense, it may well be very supportive of conclusions reached by the Auditor-General because there would be some potential for looking into the same areas. I think, secondly, there would be political consequences in a transparent environment.

CHAIR - Should it go back to the joint select committee of Parliament, let's say, to oversee the body and decide what should occur - even though there is a privileges committee already?

Mr DAVIS - I think that would vary with respect to what the problem is. There may be issues with local government, maladministration, which are not necessarily prosecutable but clearly operating badly or it may be directly with a government department. I think there would certainly be scope for it to go back to that committee.

CHAIR - It might be for that committee to rechannel it to the appropriate body within the department where the immorality or whatever has taken place.

Mr DAVIS - Also, with respect to that, I can see how someone may feel that if that were to occur then things might get lost up the appropriate channels and come out 27 years later or something. Again, there must be openness and transparency, and let's say fearless reporting by the commissioner - and the commissioner would, in my view, have to have the right to speak independently to the media and so on at times. That transparency and openness would make it much more difficult for things to be buried. Again, what we are really talking about is the future for all Tasmanians, jobs for our children, because that is what flows from good government. The opposite of that is unfortunately also true. It would be a change but it is a bit of a motherhood change. It would be rather hard to speak against it.

Ms THORP - I am just wondering how you envisage the process by which a particular issue would be taken up, if you like, by the commission. What would they have to ascertain to make sure there was something worth investigating, for example?

Mr DAVIS - Regarding a complaint made to the commissioner, there would need to be guidelines for that being responded to and followed up.

Ms THORP - Burden of proof stuff?

Mr DAVIS - No. The commission would have to be obliged to make some response to a complaint that is put forward. That does not mean necessarily to investigate it. It may be that the response is that -

Ms THORP - 'We don't see anything'?

Mr DAVIS - Yes, that is correct, but if it is a question of maladministration, bad decision-making or inappropriate use of public resources, I believe that the commission should have wide-ranging powers to investigate such a thing. What then comes from that depends on the type of problem. It could be uncomfortable from a political point of view if complaints get into areas of, as I said, misallocation of resources where on one hand a government department is spending huge amounts of money in an area that may be deemed inappropriate or may be beneficial to some private interests or something of that nature and in the rest of its portfolio or the rest of its area of activity it is short of funds and cutting back services. I think that that would be a very appropriate area for him to comment on. Obviously it would take some skill on the part of the commissioner to know -

Ms THORP - I was going to say to be able to second-guess every kind of budget or funding decision.

Mr DAVIS - I would think that there would not be that many.

Ms THORP - I have not been a minister for very long but the kind of decisions that are made about funding are enormously complex.

Mr DAVIS - Indeed, and very few of them would have a case for being investigated. It would have to be one where there was clearly something out of line.

Ms THORP - What about protection for people who may have their names raised in this forum, and then nothing happens after that but already with speculation in the media their name is mud? What do you do about that?

Mr DAVIS - Indeed. It is the other side of whistleblower protection. Again, it is not something that I had thought of or perhaps have the knowledge to comment on in detail other than to say that I think one of the responsibilities of a commissioner would be to take that into account and to maintain confidentiality.

Ms THORP - There would be arguments, wouldn't there. The whole point of this new body is transparency, confidence of the community that everything is out in the open and yet the commission is receiving complaints about an individual or an organisation which may or may not be true. I am not saying it is deliberately mischievous but it may be a misunderstanding of what the process is.

Mr DAVIS - Indeed.

Ms THORP - Meanwhile, back at the ranch, until the commissioner makes a decision about whether or not to proceed or in fact may proceed and then find there is no case to answer, that individual or organisation may have their reputation shredded.

Mr DAVIS - And it is during that period of investigation that I would have thought an inclination towards confidentiality should apply. I do not know what sort of precedents there may be for that.

Mr MARTIN - I think a number of witnesses have given evidence that that should be the case.

CHAIR - You have your National Crime Authority, Paul, that takes evidence and it is evidence in camera. Then, of course, if you are charged, it goes through the process but up to that stage nobody knows that they are investigating a person or a company, it just goes through that intermediate stage and once they decide one way or another if they are to charge then it becomes part of the process like any other process where the Press can report upon it.

Ms THORP - All of us as members of parliament have had constituents who have come to us with grievances. They have not felt the court system or whatever system has treated them well. We could potentially have another body to which someone may go for recourse, have the commission decide not to proceed and they still feel they haven't had the kind of recourse, or whatever the correct term is, that they think they should have had. I cannot imagine there being a body concerning which everyone is going to say, 'Oh well, they said Yes', they said "No", now I'm completely happy', can you?

Mr DAVIS - No, absolutely not, but in terms of a body which could have a very positive impact on how our State is managed in a broader sense and perceived as a State that it would good for an ethical organisation or company to invest in, I do think that as a body it could have a big impact on that but I do agree with you; it could not satisfy everybody by any means.

Mr MARTIN - Paul, one of the issues that has come up is the issue of retrospectivity. Some people would argue that if a body is set up, whatever its form or name is, it should have a line in the sand drawn and not have the ability to look back at issues that are in the past but only to look at issues that come up in the future. Others would argue that you may need to look at the past to deal with current issues. Do you have a view on that?

Mr DAVIS - I, as yet, have not seen any argument that would convince me that it should not be able to look in the past. I am not saying that there may be circumstances or perspectives that I am not aware of. For instance, if it is a straightforward broken law, why wouldn't it be looked at?

Mr MARTIN - You've done the crime, pay the time?

Mr DAVIS - Yes. On the other hand, it might be more palatable just to start from 1 January 2010 or something.

Mr MARTIN - That would be more palatable to anyone who has done anything wrong in the past.

Mr DAVIS - That is the implication of it so I would not like to be one who is standing up arguing for it.

Mr MARTIN - An issue that has been raised today is campaign donations, donations to political parties. Do you think they are a problem; do you think they should be capped?

Mr DAVIS - I have not given it a lot of thought. I am not familiar with the rules that apply to State level. I probably should not shoot from the pocket on that other than just say transparency is essential and they are always potentially a problem. I would rather give it some thought before I went beyond that.

CHAIR - Paul, thank you very much for coming along and giving us your submission and answering the questions. It was most helpful.

THE WITNESS WITHDREW.

Mr JOHN CHARLES WHITE WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Welcome, John. I understand you wish to give an opening statement and then go in camera. I point out the fact that you are privileged within the committee but as soon as you go outside the committee it is not privileged. Evidence given in here can't be defamatory but if that same evidence goes outside and is defamatory, a defamation proceeding can follow, as you probably know. I am just saying it to be doubly sure.

Mr WHITE - Thank you, Mr Chairman, but I am well versed in the defamations laws of this State at the moment!

CHAIR - Right. I will leave you to make your opening statement.

Mr WHITE - There are some documents that I would like to distribute at various stages, but I should say thank you to the staff here for assisting me in having them done. I do not wish to distribute all of them, I only wish to distribute some of them, pending going in camera.

Mr Chairman, members of the committee, I have voluntarily come here today to ensure that the errors in due process associated with the TCC issue are not repeated and that nobody else has to experience a situation whereby an allegation is slowly and surely transformed into assumed facts which are then relentlessly repeated until they become accepted truths. In developing this submission I would like to use my experience with the TCC and my prosecution by the Crown as a precedent.

In the honourable committee's deliberations as to whether or not there should be the establishment - and I use the term loosely - of an ICAC or an ethics commission, I believe that the first priority should be to ensure that we do not lose sight of a fair and proper justice system with due process for all participants. If created, the future commission must be given the appropriate legislative tools with which to work.

You will be relieved to know, Mr Chairman, that I do not intend to go through the TCC's 10 large volumes of witness statements, transcripts of police interviews and other documents which are voluminous, complex and traverse a number of years, nor the Auditor-General's report, nor the KMPG audit, and also note the two extensive files of media clippings with respect to the TCC and myself which alone are possibly in excess of 1 000 pages.

I would like first to draw the notice of the committee to the following factors put to His Honour, the Chief Justice, on Wednesday 5 December 2007 by the Director of Public Prosecutions, J.T. Ellis QC, in the Crown's statement of facts to the Supreme Court, 5 December 2007. The first point is:

"The TCC's appointment was "due not only to its application having satisfied the Minister of the matters required by section 20(1) of the Building Act 2000 but also to its' -

that is, the TCC -

'being the only eligible applicant to be able to be selected.'

This position was supported by the Auditor-General in his report No. 64 at page 3, which says:

'No evidence was found of any undue influence in any Minister in the appointment of the TCC as an authorised body.'

For the record, Chairman, it was Minister Cox who was the appointing minister in August 2003.

Further, the DP said to His Honour, the Chief Justice:

'The TCC's profit was legitimate.

There was no corruption or impropriety by Mr White in seeking others to lobby on his behalf.

The Crown accepts that Mr White had no knowledge that his actions amounted to an offence.

It is the only known example of this offence. That is contrary to section 69 of the Tasmanian Criminal Code 1924.'

It's 15 months now, Mr Chairman, and I have had time to peruse and consider, with some comfort, the findings of Chief Justice Underwood and I would urge the committee to read his comments on sentencing dated 10 December 2007, which I now table. If it's appropriate, Mr Chairman, may I give them to Mr Donnelly to distribute.

CHAIR - Sure.

Mr WHITE - The Chief Justice's comments on passing sentence on me, dated 10 December 2007, in summary are:

'There was nothing unlawful about Mr White lobbying.'

That's on page 3.

'Mr White had no idea that by signing the agreement -'

that is, the Service Level Agreement of 15 February 2006 -

'he was committing any wrongful act.' (Page 4)

As an aside, Mr Chairman, my legal advice was from the law firm Dobson, Mitchell and Allport who advised me as company secretary to the TCC that it was okay to sign it; that is, the Service Level Agreement. After all, it was an agreement that was being negotiated between a private company and a government department, with both parties

having their own legal advice and the normal procedure in place relating to commercial-in-confidence.

CHAIR - Are you reading from the report in relation to that - of the sentence comments?

Mr WHITE - Mr Chairman, as an aside; it is a comment by myself; it is not from the Chief Justice.

CHAIR - Okay, thank you.

Mr WHITE - Again, I apologise: the comment 'It was after all an agreement that was being negotiated' - is my comment also.

The advice - and this again is a comment by me - to Workplace Standards Tasmania from the Solicitor-General on 19 December 2005 in relation to some sort of service level agreement was that some form of security was normal, a bank guarantee and from three to five years. They were the contents that were being negotiated between the parties. If I can go back to His Honour's comments:

'He, that is White, acted on reputable legal advice... and the level of culpability is very low.'

That is page 4. His Honour went on to say:

'No-one adverted to the Criminal Code, Section 69, until well after the event.'

That is also on page 4. His Honour also said:

'I was told and the Crown did not demur to the fact that had Mr White realised his conduct was unlawful he would not have signed the agreement.'

Further on page 4:

'Mr White is of hitherto good character. He has made many contributions to society through public and charitable service.'

On page 5 he asks the rhetorical question:

'One might wonder why the prosecution was brought against Mr White in the first place.'

He then goes on to say on page 6:

'I have formed the tentative view that the publication (Sue Neals, Chief Reporter, the *Mercury* newspaper, Thursday 6 December 2007 on page 3) is a contempt of court.'

I would, with respect, draw the committee's attention, again, to the words of the Chief Justice:

'One might wonder why the prosecution was brought against Mr White in the first place.'

This is my comment, Mr Chairman. I do not believe that I am in a position to attribute motivation to the DPP, that is Mr Tim Ellis QC, as to why he then decided to pursue this case to such an extent, nor would I presume to do so especially when there was no allegation of dishonesty or corruption on my behalf. Nor, Mr Chairman, was there any 'mens rea' on my signing the Service Level Agreement, the last draft of which had been prepared by the then head of Workplace Standards Tasmania with, I believed, Crown Law advice.

Again, I draw your attention to the Chief Justice's words:

'Mr White had no idea that by signing the agreement ... he was committing any wrongful act.

He acted on reputable legal advice.

The level of culpability is very low.'

Mr Chairman, what is done is done. I would, however, urge this honourable committee to look at it from the perspective of future accused persons from within the political or senior public service arena. I would also draw the attention of the committee to the fact, with respect, that there was a lengthy police investigation, all at taxpayers' expense, where the police were not sent out to investigate a crime, they were sent out to find if one had been committed. I say this lightly, Mr Chairman, perhaps they should be on the Fox Eradication Taskforce.

Laughter.

Thanks, Mr Llewellyn, I am glad you appreciated that. I think it was lost on others but we will proceed.

Mr Chairman, I made full disclosure to the police, including also waiving legal privilege for my solicitor as at no stage did he or I, for that matter, believe that an offence had been committed, let alone that I would be charged with two breaches of the Criminal Code. With respect to the three accused, Green, Nicholson and myself, five charges were laid, all three with one count of conspiracy but only two of us, Bryan Green and myself, for signing the Service Level Agreement, which was claimed to be a breach of section 69 of the Criminal Code.

CHAIR - The conspiracy charge was not proceeded with.

Mr WHITE - Yes, thank you Mr Chairman.

After 10 months and at a considerable expense to the Tasmanian taxpayers, the three charges of conspiracy were dropped, leaving a charge each against Bryan Green and myself: that is, for having signed a document, the final draft prepared by Workplace Standards Tasmania which had been openly negotiated between the parties and with a

final clause, clause 11, which stated that the Service Level Agreement was to go to Crown Law for completion.

The Auditor-General, in his report No. 64, states that there should have been an agreement between the parties - page 43, recommendation 4. Despite the police inquires over a period of some three to four months, the Auditor-General's report 64, as well as the KPMG audit and two jury trials against Bryan Green, the result was no conviction against Bryan, none against myself and, in effect, no penalty against any of us. Again, both Bryan Green and I signed the Service Level Agreement on the basis of independent advice from legal experts. In Bryan Green's case, it was his senior departmental adviser and in my case, the old-established and well-respected Hobart firm of lawyers, Dobson, Mitchell and Allport which the Chief Justice referred to as having provided reputable legal advice.

In the committee's inquiry as to whether a commission should be created in a bid for transparency and accountability with respect to parliamentarians and senior public servants, it is important that there is not created a different form of injustice that can rob people of their character, their reputation, their basic legal rights to a fair trial with the presumption of innocence denied to them. The sub judice rule must be applied. Presumption of innocence is paramount and the use and abuse of parliamentary privilege needs to be carefully scrutinised, in my view with respect to Standing Order 171 of the Standing Orders and Rules of the House of Assembly - that is, 'No member shall use offensive or unbecoming words in reference to any other member of this House', plus the rule against matters sub judice.

I wish to table, Mr Chairman, page 343 of Erskine May, Parliamentary Practice, twentieth edition. I believe this is a precedent which applies to the Parliament of Tasmania.

'Matters awaiting or under adjudication in a criminal court or a court martial and matters set down for trial or otherwise brought before a civil court may not be referred to in any debate or question though the House is more recently resolved to give the Chair some discretion to allow reference to be made to matters awaiting or under jurisdiction in all civil courts in certain circumstances.'

Mr MARTIN - I did not realise you were coming until late last night. Can you remind me what happened? Did you plead guilty to the charge?

Mr WHITE - Yes.

Mr MARTIN - Can you remind me what that was in relation to?

Mr WHITE - Section 69 of the Criminal Code, which is signing a document that interfered with a minister's future discretion. I had an appointment to come and see you at some stage and, strangely, that appointment couldn't be completed.

Even after charges were laid, and prior to the matters being completed, both Houses of the Tasmanian Parliament continued to prosecute the TCC matter under parliamentary privilege - and that is my comment and my belief.

The media will always be attracted to what they consider to be tall poppies and high-profile people. It is important, though, that in that, the commentators do not become the prosecutor, judge and jury, nor should they be assisted in that role by breaches of the sub judice rule which gives privilege to otherwise damaging and defamatory comments. Again, I refer to the Chief Justice's comments on sentencing at page 6:

'I have formed the tentative view that the publication (on 6 December 2007) is a contempt of court because at the time of the publication proceedings were pending, the publication was not a report of those proceedings in the court and the account could be seen as having a tendency to prejudice or embarrass those proceedings.'

Finally, I would urge the committee in their bid to improve accountability and access to justice that those who are already large targets are not pursued without due process, natural justice and with all the protections that are given to any other accused persons, again including the sub judice rule.

CHAIR - If a committee is set up, John, should any of the investigations, as happens in the National Crime Authority, be held in private without any indication to anybody concerned as to what the investigation is about, who is involved and the witnesses?

Mr WHITE - That is true but, again, I have appeared on behalf of clients twice before the National Crime Authority and there is an aspect of secrecy that doesn't sit happily on some occasions. On the other hand, I am more sympathetic to that than the process that has recently happened in Western Australia where a gentleman I had not heard of before, Mr Julian Grill, was taken before an ICAC and now he is notorious for having been before it, although there wasn't, I believe, any basis at the end of the day for his having been there. He is now notorious throughout the nation. Again, I am referring to character and the effect that matters can have without any proper access to either have a say or remedy it.

A prosecution under section 69 of the Tasmanian Criminal Code was complex and due to its uniqueness, obscurity and because of the political sensitivities I believe a second opinion should have obtained in relation to the DPP pursuing this matter. As the DPP told His Honour: 'It is the only known example of this offence.'

Without an amendment to section 69 of the Criminal Code I consider there will be, possibly, a deluge of requests to the DPP for prosecutions of government members and public figures over political activity and executive action. To an extent this has already commenced. Further, once the conspiracy charges had been in my case dismissed, the process I believe that should have taken place was a doubts removal bill as referred to in the letter to the DPP from Mr Green's barrister, dated 8 May 2007. I therefore urge the committee that in any consideration of an ICAC or an ethics committee they recognise that the first priority should be to ensure that we do not lose sight of a fair and properly operating justice system with due process for all participants and that the ICAC or ethics committee be given the appropriate legislative tools with which to work and there be no reduction to the basic tenets or fairness which are referred to within the definition of ethics - that is, natural justice and procedural fairness.

Mr Chairman, I will answer Mr Martin's question once we are in camera.

Mr MARTIN - You have answered it.

Mr WHITE - I will go a bit further.

CHAIR - Are there any questions in open forum?

Mr McKIM - I was going to ask, Mr Chairman, what the view of the committee was. We have heard Mr White's statement. My view is we ought to at least be able to pose questions based on that statement of Mr White in open proceedings. Mr White obviously will answer them in whatever way he wishes. If we want to go in camera later, I am certainly happy to do that but I am not persuaded that we should not be able to ask question in open committee of the statement we have just heard.

CHAIR - Sure, in relation to what has already been given in open forum there is no argument as to questions being asked there, I believe, because it was given in an open forum. In relation to matters which may arise as a result of some questions, Mr White obviously is able to say he can answer that in camera if necessary and then give reasons whilst it is in camera.

Mr McKIM - Thanks, Mr Chairman.

Mr White, I think you have strongly implied that you were not investigated with due process. Firstly, is that your view and, secondly, if that is your view, could you be specific as to the lack of process that you think occurred?

Mr WHITE - I will do that in camera, Mr Chairman, if the committee will bear with me on that.

Mr McKIM - Perhaps I could ask a more specific question based on something specific that you said. You said you thought a second opinion should have been obtained. I take it you mean by the DPP?

Mr WHITE - Yes.

Mr McKIM - So in your view the DPP should have asked somebody else for an opinion as to whether he should have charged you, is that correct?

Mr WHITE - Yes. I believe that a wise DPP, due to the uniqueness, complexity, obscurity and political sensitivity of the matter, should have obtained a second opinion.

Mr McKIM - From the private legal fraternity?

Mr WHITE - I don't mind - from another DPP in another State. If you are interested in a little bit of gossip, a relative who is a judge in Victoria said that this matter would not have proceeded in Victoria as it has done in Tasmania. That is anecdotal but I accept that as being a proper comment.

Mr McKIM - You also said that you thought there would be a further deluge, I think was your word to the DPP, of similar requests to investigate. Of course that would require the Attorney-General to refer it to the DPP in the current circumstance, would it not?

Mr WHITE - Yes, and I think, as you are probably aware, it has already happened in Parliament in relation to the previous Premier, Mr Lennon.

Mr McKIM - I am not aware that the DPP has been asked by the Attorney-General to investigate anything else. Do you have contrary information?

CHAIR - Before we get into that area, I think any matters that may impinge upon any prosecution should not be asked here, especially in open forum. That is my view.

Mr McKIM - Fair enough.

Mr BEST - How do you feel personally as to what has taken place?

Mr WHITE - I think I said, 'Time to move on'.

Mr BEST - You obviously feel, though, that you have been punished by what has happened with the printing and so forth of comment?

Mr WHITE - My view is that it is time to move on, Mr Chairman.

Mr McKIM - I am not quite sure what you mean by it is time to move on.

Mr WHITE - Sorry, for me personally.

Mr McKIM - Okay, thank you. Do you support the creation of an independent investigative body in Tasmania?

Mr WHITE - I think one of the factors is cost, without saying yes or no. Queensland I think has four million people, 20 per cent of the Australian population, and it costs them \$36 million, I think, to run their ICAC and they have had limited success. But, as I read their report, they have now become a self-promoting body. I would like to refer to somewhere in Tasmania, slightly flippantly, in camera, Mr Chairman, that I think has become a self-promoting body. But I do not believe that it is important because part of the reason for this committee being in session now is the so-called TCC scandal. If the TCC scandal had not occurred, we would not be here.

Mr McKIM - I am not so sure about that. But anyway, thanks for sharing that view with us. You have said, though, that you think you were investigated without due process. Would you not have been reassured or possibly more reassured about the process by which you were investigated if it had been conducted by an independent authority rather than, as it was, as I understand in your case, police acting at the behest of the DPP?

Mr WHITE - Again, I made the point earlier that the police were not sent out to investigate a crime, they were set out to find one and there is a difference with a process that has the steam that was behind it in relation to the TCC.

Mr MARTIN - John, why do you say that?

Mr WHITE - I have a thousand pages of press clippings which basically say there were all sorts of evil goings-on in relation to the TCC. There was a three- or four-month police investigation. There was the KPMG audit. There has been the Auditor-General. None of them has managed to come up with anything that was able to persuade a jury or a judge to penalise Bryan Green or myself.

Mr MARTIN - You pleaded guilty, though.

Mr WHITE - I will come back to that in a minute. I pleaded guilty to signing the document and that was based on a decision by the Chief Justice that signing the document was the offence.

CHAIR - We had evidence earlier on from Mr Melick in relation to mens rea or not mens rea. In other words, mental element as to whether you believe you are committing a crime or not at the time you do it and that is what Mr Melick was talking about earlier on today.

Mr WHITE - There was no mens rea. I simply signed a document on the advice of my legal adviser who said, 'It's okay to sign'. After he had brought it to me and I had signed it and had legal advice, Bryan Green's advice from the head of Workplace Standards Tasmania was, 'It's all right to sign it'. I have a letter to my solicitors of 20 December 2006 from the Director of Public Prosecutions:

'I remain open to persuasion, although my view is that there is no element of corruption. The section simply means what it says, that is, signing the documents, the offence.'

There is no element of corruption. There is no element of dishonesty. That is what I am peeved about - pursued because there was a view of a technical breach, and the way to fix that is a doubts removal bill and that is one of the things I put to the committee today. That is what should have been done.

Mr MARTIN - Who should have done that?

Mr WHITE - I was unable to do it.

Mr MARTIN - Who should have done it, though? Who are you saying should have done it?

Mr WHITE - I think the DPP should have referred it to the Attorney-General at the time, Mr Kons, and said, 'This is how you fix it ' because I am aware now of other contracts, if you like, between individuals and the Government that breached this section.

Mr MARTIN - Can you give examples?

Mr WHITE - No.

Mr McKIM - Why not?

CHAIR - Again, what we are endeavouring to do here with questions like that is open up issues which I think everybody realises should be in camera.

Mr MARTIN - I would agree with that. John, just going back to the comment you made about police, you said that the police were sent out to find a crime.

Mr WHITE - Yes.

Mr MARTIN - Can you explain that?

Mr WHITE - There was a view at large being promoted that there was some scandal in relation to the TCC. The first thing is that we were not properly appointed. Secondly, there was some conspiracy in the fact that the TCC asked for an arrangement with the Government which allowed the Government to take over the TCC if we were unable to provide the service, or alternatively if they decided to get rid of us it gave us an opportunity to work our way out of it - in other words, an exit strategy. That is what was being done by Workplace Standards Tasmania and the TCC. The final clause of the service level agreement said it still has to go to Crown Law to be completed. When I was interviewed by the police I told them I had signed the document. I waived legal privilege for my solicitor to give a statement to the police because nobody knew or believed that there had been anything done wrongly. Sorry, Mr Chairman, I get quite heated about this.

Ms THORP - Perfectly understandable.

CHAIR - Any other questions in relation to the opening? Otherwise we shall move in camera.

Mr WHITE - Before we do let me finish. I apologise for my terseness to Mr Martin. The Chief Justice, in one of the decisions that he handed down in relation to the State of Tasmania versus Green, Nicholson and White - this is where we had sought particulars from the DPP in relation to the actual acts that made up the offence.

I do know that a request made on behalf of Mr White to specify the physical acts by which it is alleged the defendant formed the agreement to commit the crime was met with the answer from the Crown: "That is a request for evidence, not particulars".'

The Chief Justice went on to say:

'Whether this is an appropriate response is not presently before me for determination'.

There was another piece of advice that I was given, that is was probably possible to make an application to the court that, because of the publicity that had been generated in relation to the TCC, it was probably not able for us to have a fair trial. I am not aware of the decision of various parties, but mine was that I do not believe I have committed any offence and if you run that argument and lose it, it does you no good except to get it all repeated again. If you win it, there is still the stigma that somehow you got out of it. At the end of the day I signed the document. The Chief Justice said in his legal opinion or ruling of the court that signing the document was the offence.

Mr MARTIN - John, I have asked nearly every witness this question about the need for an ICAC or a similar body. One of the things that has led to a lot of confusion is that people look at things as to whether something is legal or illegal. What an ICAC might look at is going further than that - that, irrespective of whether something is legal or illegal, whether it is ethical or moral. Do you have a view about whether that question is important or should be investigated by something like an ICAC? Or should it just come down to the law? If something is ethical or moral or not, is that relevant?

Mr WHITE - Yes, it is, because it is the old argument about ethics, morality or fairness, but I focus narrowly on section 69 of the Criminal Code. I consider there will be possibly a deluge of requests to the DPP for prosecution of government members and public figures over political activity and executive action. It's very hard to defend yourself when there are allegations that there has been an improper activity when it's being, first of all, repeated in Parliament, which gives it parliamentary privilege, and then it becomes reported relentlessly and persistently until the assumed facts become accepted truths. You have to stop that but nobody thinks it's appropriate or proper to in any way damper the media. The media, in my opinion, are not ethical. They only need to sell their particular media item.

Mr MARTIN - The law is in most ways black and white. There are obviously grey areas but ethics and morality is a subjective judgment and each of us has our own set of values, morals and ethics that have been created through our journey through life. That's what makes this whole issue of ethics more difficult to judge. In your case - forget whether it's legal or illegal - do you think what you did was ethically or morally wrong?

Mr WHITE - I committed a technical breach of the law that was unknown to anyone at the time it was done.

Mr MARTIN - Yes, but forgetting about the law, just whether you -

Mr WHITE - No, there was nothing ethically wrong in what I did. I had a fiduciary duty to the company I was working for. I think there is an error when you start using the criminal law in certain areas of commercial activity.

Mr MARTIN - I am just talking about the ethics issue. To me, the ethical issue is much more important than the legal issue.

Mr WHITE - It was totally unfair what happened, but it happened. What I don't want to happen is for it to continue to happen to others. If, in your wisdom, you recommend an ethics committee or an ICAC to be set up, it has to be given the ethical tools, the legislative tools and the decent people who are able objectively and logically to work processes through.

Mr MARTIN - I have a final question along the lines I have been going because it's a question that is out there a lot in the public - more than the legality of what happened. From an ethical point of view, which is your subjective judgment, you don't have a problem with the fact that a minister of the Crown signed a monopoly agreement the day before a State election?

Mr WHITE - No. We had a monopoly agreement from when we were appointed.

Mr MARTIN - But extending it for another three years the day before the State election; you don't have a problem with that?

Mr WHITE - The Auditor-General said it should have been in place from the beginning. We started in August 2005 after the Supreme Court, Mr Justice Evans, had said Bryan Green's decision was correct - only one. We started to negotiate a position. We wrote to the minister; we had an appointment with the minister; we saw an adviser and said this is what we are trying to do. But after six months I would have thought the Government was in a position to sign it.

Mr MARTIN - The fact that it turned out to be the day before the State election -

Mr WHITE - That's got nothing to do with it. It's seen by some to be important but you're believing the fact that there was something about the Liberals' huff and puff that they were going to do to us if they got into office. It had nothing to do with it. That came out on 7 December. We had started the process in August 2005. Some five months later the Liberal Party said that. What could we do - stop? It was in process and it was a proper and open process between legal advisers on both sides with a final clause that it was to go to the crown law for completion, clause 11 of the Service Level Agreement.

My mistake was in relation to clause 9 which, according to the advice I received, was okay to sign and the advice from Workplace Standards to Mr Green was the same. Workplace Standards wanted the agreement in place. There were two willing parties negotiating to try to get an agreed position between the pair of us.

Mr MARTIN - Yes, I think the only issue was on the day before caretaker government came into place. I think that a lot of people had an ethical problem with it.

Mr WHITE - That is okay.

CHAIR - We can move in camera now thank you.