

**THE JOINT SELECT COMMITTEE ON ETHICAL CONDUCT MET IN THE  
PREMIER'S HALL, PARLIAMENTARY ANNEX, PARLIAMENT HOUSE,  
BRISBANE ON 24 NOVEMBER 2008**

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DISCUSSION WITH **PROFESSOR BRIAN HEAD**, DIRECTOR, INSTITUTE FOR  
SOCIAL SCIENCE RESEARCH, UNIVERSITY OF QUEENSLAND.

**CHAIR** (Mr Wilkinson) - Thanks for giving up your time today to come along and speak with us.

**Prof. HEAD** - The committee would be aware that I did not make a formal submission in the sense of providing some analysis and recommendations under the terms of reference but I did supply some reference material, including an OECD report from 2004 which reviewed best practice and the state of play internationally with ethics regimes in the public sector. There was also a research report done by a research team at Griffith University led by Dr A .J. Brown, the so-called NISA report - National Integrity Systems Assessment. I think I sent a chapter of the forthcoming book called *Promoting Integrity*, which is coming out in a couple of weeks.

My own background relevant to this very briefly is that I have had a dual career as a researcher on public sector management and also a State bureaucrat. I worked in the Queensland Government between 1990 and 2003. During that period I headed a body called the Public Sector Management Commission between 1994 and 1996, which included the role of Public Service Commissioner, and from 1998 to 2000 I was the Public Service Commissioner. The period during I was working for the Queensland Government was one of great change and reform, considering a number of the issues that your committee is dealing with, but you would be aware, of course, that the time period is quite different. You have had a number of submissions and discussion around the background in Queensland and New South Wales in the late 1980s that led to ICAC being established in New South Wales and to the Criminal Justice Commission, later the CMC, in Queensland.

**CHAIR** - What was occurring in the late 1980s for the Criminal Justice Commission to commence?

**Prof. HEAD** - As a number of other submissions to your inquiry suggested, there was substantial public concern about systematic corruption, which was going undetected and uninvestigated, much of it to do with the police service. It is not an area I propose to say a lot about because it is not an area of my expertise. The linkage between corruption, for example, in the police service and the lack of surveillance by political leadership and by independent institutions of State was I think the major concern. So the first step was always identifying the nature of the problem before you start looking at institutional solutions. There was widespread concern in New South Wales and Queensland in the late 1980s that systematic corruption was being brought to the attention of the media but not being systematically attended to by government.

One would normally suspect that there are two reasons for that. One is that there is insufficient information arising from investigations to know the nature of the problem and what to do about it. The other line of explanation is normally a lack of political will or political leadership to address the problem one way or another. So I think when the Honourable Tony Fitzgerald QC undertook the royal commission in Queensland his view was that the problem was so systemic that fundamental institutional changes were required, and not just where he started, which was police corruption and political cover-up of that corruption. It reflected on the nature of the institutions of good governance much more generally. One of the quite distinctive features about Queensland was a period of about three or four years of thoroughgoing institutional reform, not just to do with the police service but also to do with the broader accountability systems of the Queensland Government. There were about 20 areas in which important reforms occurred. From one point of view that was Queensland catching up with the rest of Australia. Within four years or so Queensland was regarded as having been able to get to the front of the pack.

What we found in our research study from about 2000 onwards, by Griffith University, was that unless there is continual review and vigilance of these issues there is a risk of some back-sliding. Having put in place formal institutional solutions of some kind, people tick the box and then attention shifts to other issues. So the energy that is required to make integrity systems work well can fall away a little. That is partly why my view is that, as a lot of other witnesses have said, there are really two sides to these issues. One is, leaving aside the nature of the problems, having some appropriate institutional mechanisms; that is obviously critical. Your committee is investigating that and will come up with some suggestions. The other side of it is what I would call the culture. People discuss this in different ways. Some people talk about ethics and values; some people talk about political commitment. To me, the culture in which the institutions operate is a key to whether the institutions are going to perform the task they are being asked to do - well or otherwise. An example I was reminded of this morning was when looking at the league performance tables, so to speak, for countries around the world. Generally speaking, in the OECD group of advanced democratic countries, integrity assessment comes out fairly well, fairly strongly, but then there are some outliers, for example Italy where on the transparency international index of league tables they are number 45 rather than in the top group. Why is this the case? Italy is one of the foundation members of the European Union and OECD. To me, it is to do with the political culture, the historic nexus between business and politics and the failure of both institutions and political will to really tackle those issues in a head-on way.

**Mr MARTIN** - Where is Australia on the list?

**Prof. HEAD** - Australia, generally, is in the top 10. Depending on the various league tables you look at we are around about 7, 8, 9 or 10. Those international comparisons are generally comparing national governments but there is, I guess, a flow-on effect. If, for example, the provincial level was thought to be fairly corrupt then that would flow on into general perceptions. This is based on a combination of expert opinion in the countries themselves and some survey evidence of corruption perceptions. I wouldn't regard it as highly scientific but it is good diagnostics for saying whether a country seems to have a problem or not.

One of the issues that has come up quite strongly with your committee has been where the problems might lie. For example, is the public service, generally speaking, well regulated and doing the right thing - for example, vis-a-vis the political system and the police. As a former bureaucrat, I have to say that the feeling around the nation has always been that the public service has been well regulated for quite a long time, that codes of conduct have been taken seriously. I've had a glance at your State Service Act 2000, which to me represents a fine synthesis of the best kinds of public administration principles and so on. I don't see that as being where there are likely to be major problems. I have no information about the level of reported offences against codes of conduct or prosecutions of public servants. I don't have that sort of detailed knowledge but my general perception is that the public service arrangements are in fairly good shape. In the absence of a large number of prosecutions of public servants for misbehaviour I wouldn't have thought that's where your major area of interest would probably be lying.

A number of witnesses have raised issues about politicisation as a risk or a threat to integrity. That's certainly an issue that public servants and independent researchers and the media are concerned with from time to time. The nature of the problem I think is that at senior levels senior contracted managers feel at least an indirect pressure to be compliant with the wishes of a minister rather than to take a stand on matters where that may be warranted. The slippery-slope argument is that once that mindset becomes entrenched it is very difficult for senior public servants to then take a quite different point of view.

As a former public service commissioner, my view is that public servants need all the help they can get to act independently and with integrity where this is necessary. The only way we can be assured that they will do that is if the political system, particularly the ministerial ranks, exhibit strong actual and symbolic commitments to good behaviour and to independence and integrity and an office like the State Service Commissioner has sufficient stature to give some protection to public servants who do wish to make a stand when they need to and to protect, in effect, good behaviour from political influence.

**Mr HALL** - Brian, what you are saying is what we have heard in some evidence, that when Whitlam got into power he was concerned about the fact that the coalition had been in power for 23 years, or whatever it was, and therefore the public sector would not fulfil the new agendas of the Whitlam Government. Therefore quite a lot of political appointments were made and of course we have seen senior public figures on contracts. It has been put to us that often the minister hears what the minister wants to hear from some of those contract employees, those senior employees. Do you still see that as being an issue of some sort?

**Prof. HEAD** - I think there is a big difference between, for example, a new government wishing to work with people who are going to be effective in carrying out new policy and program directions, I will explain what I mean by that in a moment, and situations where, for example, a senior public servant gives in to a minister on, say, a procurement issue. I think they are rather different. As with the Whitlam Government or, for that matter, the Goss Government in this State, coming to office after a long period of opposition and some distrust of public service culture and capability, there is often a political assumption that the leadership of the public service needs to be refreshed in some way. There have been some quite damaging examples of large changeover of

personnel rather more, I think, than was ever warranted. So some protection for senior public servants under those conditions, I think, is certainly warranted. My view would be that if a robust merit appointment system existed then that should be respected in a bipartisan way.

I do not have a problem with contract employment as such. I think the notion of a permanent secretary for life is a bit of an anachronism but the notion of having, say, five- to seven-year contracts for chief executives, subject to performance issues and of course, integrity is inevitable and possibly desirable.

**CHAIR** - Should there be an appeal provision, Brian, at the conclusion of that seven years? Let us say that a contracted person often gave advice contrary to what the minister wanted, frank and fearless advice, should there be an appeal provision and who should these people appeal to if they say, 'I believe I've done a good job. I know you don't want to renew my contract but I've given you advice which I think on all of my investigation is the correct advice and yet you're getting rid of me, you're not renewing the contract.'?

**Prof. HEAD** - It is extremely difficult and there are a number of examples around the country in a number of jurisdictions where that has been an issue. For example, there was a famous case some years ago where a Mr Paul Barrett was I think head of the Defence Department in Canberra and clashed with the minister of the day who basically got rid of him. Unusually, I think uniquely, he took the issue to court in terms of unfair dismissal and the doctrine that emerged from that was that under the Commonwealth legislation if the minister and the chief executive could not get on then at the end of the day the ministerial will prevailed. This seemed to me a somewhat unsatisfactory situation in terms of protecting the interests of a senior public servant but in terms of the mix-and-match issues of needing some mutual trust and confidence, I can understand the operational reasons a minister would wish to work with someone who in some sense had their confidence.

The separate question is how do we look after the interests of the person who is shown the door and I guess there are two kinds of answers to that. One is all contracts have compensation clauses so there are financial protections of a kind but if the person wants to stay in the service, I would have thought that there was an important role for a central essential agency like the State Service Commissioner to have a capacity to redeploy a senior and experienced and valued person to another kind of position. Over the last 50 years public service commissioners have found ways and means of doing that in an intelligent way - for example, maintaining the salary level of the person and putting them in as, say, a deputy secretary in a major portfolio undergoing stress that needs extra resources or whatever. It needs a touch of goodwill from the Government of the day because otherwise there is the 'problem' of an additional senior person being on the salary books of an agency. I think it comes down to an interest in good governance and some goodwill and a bit of give and take.

**CHAIR** - Often what occurs is that if a person is at loggerheads with a minister, you know the process, they start the whispering campaign to endeavour to denigrate the public servant and then they endeavour to put him on a one-way bus somewhere. That is wrong.

**Prof. HEAD** - Yes. That can happen, but again I think that at an informal level - you cannot really prescribe these rules - one would hope that if it was not, for example, one of the

two or three senior ministers who was having the dispute, the senior ministerial group would see it as part of their role to make sure that those kinds of things are handled in a mature way rather than being left entirely to the discretion of one minister. I think there are probably some at least informal ways of handling that a lot better than has sometimes been the case in the past.

**Mr McKIM** - Professor, Tasmania is basically a greenfield site for any kind of an integrity commission or an ethics commission. Our structures are, I suppose in the view of many people, shallow or nonexistent. If the committee were to recommend the establishment of some kind of body to conduct independent investigations, can you address yourself in broad terms as to how wide the sphere of possible investigations might be? For example, in Tasmania we don't have an external police investigations unit at the moment, so police investigate complaints against themselves. In your view would it be desirable for such an organisation to have the capacity to investigate police? Could it or should it, in your view, have the capacity to investigate local government, members of parliament and the State Service? Are you able to give us a broad framework in response to that?

**Prof. HEAD** - Yes. I'm slightly hesitant to make recommendations on detail, which is essentially why I didn't put in a submission back in August, but my general view is that if a new watchdog body of some kind were to be formed, it should have broad scope. I think if it were to only look at, for example, half of the examples that you have listed, it would run the risk of adding to a patchwork quilt of small, under-resourced bodies that are not sure about their boundaries and therefore there is I think some in-principle case for saying that the default position should start broad and then there might be some overwhelming reasons to narrow it subsequently if the committee took the view that there were other satisfactory ways of dealing with some of the other matters. My suggestion would be to take seriously the notion that broad scope might be your starting point. The distinctive thing I would add, however, is that because there is not a view that Tasmania has widespread systemic problems and because there are some serious issues about financing a new body, an important principle to consider would be to build in a strong opportunity for such a body to refer matters to other bodies after initial assessment. In other words, the process might be that the new body would receive complaints and allegations on a fairly broad canvas. It would put a lot of its resources into making an initial assessment from the point of view of the severity of the potential issue, the risk of harm, as it were and, secondly, whether another body has the capacity, including legal capacity, to take over the investigation to a conclusion. The new commission, however called - standards commission, ethics commission or whatever - would to some extent be an initial filter for receiving the complaints and then delegate out as much as it could in practice to competent bodies, depending on the nature of the allegation.

**Mr McKIM** - Like the police, for example?

**Prof. HEAD** - Like the police, but again I don't know enough about the way your police service is currently organised to take a view. I would be surprised if there were no internal complaints group within the police service. If there isn't, I would have thought this was an opportunity to look quite closely at how that might best be done.

**CHAIR** - There is an internal body that does a pretty good job overall and it has been seen to do a pretty good job. It certainly has the reputation of not stopping and not charging

others if they believe somebody has stepped across the line. They will proceed right through to court and 90 per cent of the time they won't stop or not proceed to court. With that, that is okay, but that is for the lower ranks. In relation to a query about up the higher ranks, it may well be a different story.

**Prof. HEAD** - That has also been one of the ways in which the Queensland operation has worked across the board. You will no doubt discuss this with the CMC people later today. It seems to me there is a public interest and a public trust issue about senior people being seen to be investigated in a highly independent and transparent way, preferably not by their colleagues. So there may be some sense in which allegations against senior people need to be taken away from the field in which they are employed.

**Mr MARTIN** - Are you up to speed with what has happened in Tasmania currently with the police commissioner?

**Prof. HEAD** - You mean in terms of allegations?

**Mr MARTIN** - Yes, that the police commissioner had to step down. The investigations were carried out by his deputy.

**Prof. HEAD** - No, I am not aware of that. I apologise. Was this very recent?

**Mr MARTIN** - Yes. In the last two or three months. Can we go there?

**Mr McKIM** - I think it is a reasonable question.

**Mr MARTIN** - The commissioner was investigated. Complaints were made by the DPP. The deputy investigated, charges were made and the police commissioner stepped down. The deputy was then made acting commissioner and then out of the blue came the decision to appoint the former commissioner, which lasted for a day until allegations were made. Then the deputy commissioner is back to acting. So it has been a bit of a shambles.

**CHAIR** - Before we go any further, as you probably know, privilege attaches to our committees in Tasmania -

**Prof. HEAD** - Yes, of course.

**CHAIR** - but here there cannot be that privilege. I thought I had better mention that.

**Prof. HEAD** - Sure. I certainly will not comment on the individuals or the exact case.

**Mr MARTIN** - Is there a better way than the deputy or the underlings investigating their boss?

**Prof. HEAD** - I think that puts them in an untenable position and should be avoided in all circumstances. In the Queensland case, if it is a public service matter then an allegation against and investigation of a senior public servant, depending on their rank, may well be oversights or initiated by their chief executives, if it is the second or third level. I think that is in most cases a satisfactory pathway unless of course there is a perceived conflict

of interest issue. So if the secretary of a department has a close working relationship with someone who is under investigation then there may be a perception of wanting to be soft. To me this is an issue as much about perceptions as anything else. If part of your current exercise is to attempt to rebuild trust and confidence in the integrity of the system and to strike some blows for good governance then I think there is a strong case for saying where a very senior person is being investigated, the investigation should not be conducted by senior people in their own organisation.

This is something that really should be outsourced as quickly as possible. This does bear on the capacity issue because, if the group that does end up doing the investigation is under-resourced and has a list of matters to be undertaken and this is going to then take six months or whatever, there is a real risk that the organisation will be thrown into chaos while this occurs. I think that is highly undesirable. It is very important that matters of that kind be expedited and that an initial assessment be concluded as quickly as possible so that if, for example, there is no basis for charges of some kind, whether under a code of conduct or criminal matters, then the organisation can return to normal and get on with its life. In smaller organisations, in particular, and even large ones where a senior officer is subject to allegations, the effect on efficiency and effectiveness is potentially quite outstanding.

**Mr MARTIN** - I was going to come back later, but the discussion has ranged a little bit, to the definition of corruption. Does there have to be illegality?

**Prof. HEAD** - I have read quite a lot of literature around this recently, and I am sure your witnesses are probably saying the same thing, that there is no universal fixed definition. On the whole, corruption is the harder end and probably involves criminality. The word is also used fairly loosely but I am quite happy with the notion that corrupt behaviour is likely to attract criminal attention and not just code of conduct attention, which would be various forms of non-administration, misconduct or unethical behaviour.

The way of dealing with it would switch and the nature of the penalties available would switch as well.

**Mr McKIM** - Brian, on a couple of matters that you raised in your most recent chapter that you provided the committee, firstly, when you were talking about Italy before, you spoke about the historic nexus between business and politics and I just wondered whether you could give us a view on political donations disclosure and whether you think it would be desirable for any jurisdiction or any State in Australia to have its own State-based donations disclosure board, which Tasmania doesn't currently have. Perhaps you could answer that first.

**Prof. HEAD** - I don't know your legislation in detail.

**Mr McKIM** - We don't have it.

**Prof. HEAD** - No. My general view would be that campaign disclosures and any other kind of political donation are very important matters for the integrity system and good governance as a whole.

If it turned out, for example, that Commonwealth provisions about thresholds and so forth, and regimes for disclosure seem to be pitched at the right level, then adopting something similar for Tasmanian jurisdiction might be one way to go.

I think the absence of a regime, if that is correct, is a real problem. I don't have a prescription about what the dollar figures need to be. What I do think, however, is that the disclosures need to be timely and they need to be on a continuous regime rather than episodic or periodic, like every three or four years.

**Mr McKIM** - Or even, potentially, every year.

**Prof. HEAD** - Oh yes, absolutely. At one extreme it could be, at the time of the donation, put in a register and made publicly available within three months or whatever.

**Mr McKIM** - Or even almost instantaneously via the Internet, perhaps.

**Prof. HEAD** - Yes, absolutely.

**Mr McKIM** - Thank you.

**Mr HALL** - Brian, you said that, in principle, due to the resources that we have in Tasmania, any new body that we might set up should refer any complaints or allegations to another appropriate body.

**Prof HEAD** - Yes, where possible.

**Mr HALL** - So that acts as a filter, I think you said.

**Prof HEAD** - Yes.

**Mr HALL** - Are you concerned that having something like that - and there have been reports from other States, and whether they have it here or not, I am not too sure - MPs or senior bureaucrats have, in fact, been maligned by a process. For example, they have trial by media and all that sort of thing and it has been very damaging here. How do we get over that? How do we handle that in a better way?

**Prof. HEAD** - I think it is very difficult and the other testimony that I've seen just recently indicates how difficult it is.

**Mr HALL** - Has that sort of thing happened here in Queensland?

**Prof. HEAD** - Yes, absolutely. It may be an interesting issue to ask the CMC about their practices, but it's certainly been a concern to, for example, serving public servants and no doubt to elected politicians that some matters that are subject to allegation but in no way proven, do seem to find their way into the media fairly quickly. I think the official line from the investigating body is that they don't do debriefings, but there's a lot of stuff that seems to get out.

If the matter is not a criminal matter, it seems to me to be quite unfair and possibly opportunistic if it is a practice to demonstrate that an investigating organisation is on the



ball, part of perhaps their organisational self-promotion as much as looking after the good governance of the State. If a code of conduct matter comes up, generally speaking an independent investigator will be appointed by a department to have a look at the issue rather than having a purely internal investigation. Say, for example, a contract investigator of some kind might come in and do an independent report for the chief executive. I think that's a highly desirable way to handle a lot of issues. Under those conditions, there is no media disclosure, there's no speculation in the press, there's no sullyng of reputations.

Where a matter is on a much grander scale and the allegations are quite serious, then it's quite likely that there will have been some pre-publicity about the issue, and the fact that an investigation is under way will be publicly known, so it is very difficult under those conditions to halt speculation, and so long as the Press doesn't engage in libellous comment, then there's not much we can do, I am afraid.

**CHAIR** - It does happen, though, doesn't it Jim, that your Criminal Justice Commission - where there is an Australia-wide body, and that body investigates crime, normally large crime - carry out investigations, and I've been involved with a couple of them, and all the evidence that is obtained is in camera. The actual witnesses aren't allowed to tell anybody that they're giving evidence, and they do hush it up extremely well, and that inquiry could go on for some time. It can be done, can't it, where the actual rules are very strict.

**Prof. HEAD** - Yes. I think it does happen where, for example, a major crime is being investigated as against political or public service infractions, because you don't want to tip off the crime bosses as to how much material you have, or what your modus operandi might be. People in the public sector seem to not be protected in quite that way, and I suspect it's from occasional over-zealousness on the part of investigating bodies that a little bit of publicity is seen to be part of showing that there is a strong culture of promoting integrity.

**CHAIR** - And some could argue they're giving the body that's doing the investigation a reason for being.

**Prof. HEAD** - Yes. I don't personally want to go too far down that path, but I think it is a risk. I think there are a lot of people working in those bodies who probably frown on that kind of activity. I note that our own commission here in Queensland is in the habit of putting quite a deal of material on their web site from current investigations; I find that slightly surprising, I have to say.

**CHAIR** - Should it be like in the Children's Court or the Family Court where they just call people Mrs A against Mr B or something along those lines - where the names of the people involved are held in camera?

**Prof. HEAD** - I don't really have a view on that. I am inclined to think that matters shouldn't be commented on, other than from a process point of view. The substance of submissions ought not to be publicly canvassed until there is a conclusion to the investigation.

**Mr HALL** - Brian, I noticed that with your CMC only conduct that could possibly involve a criminal offence committee be investigated. That means any ethical misconduct, if I can put it that way, is not investigated. That's the case here in Queensland?

**Prof. HEAD** - For elected members?

**Mr HALL** - Yes.

**Prof. HEAD** - That's my understanding but I haven't refreshed my memory on that one.

**Mr HALL** - What is your view of that?

**Prof. HEAD** - I think this is obviously an historical compromise going back quite a long time in terms of respecting the processes of parliament and the special quality of parliamentary representation and independent institutions, presuming that the burden for articulating principles and standards for members' conduct ought to lie with Parliament and that parliamentary committees or other devices ought to be capable of overseeing potential breaches of those code-of-conduct issues. Hence, the CJC, which became the CMC, is only concerned with the harder end, the issues that are potential breaches of the Crimes Act, for example, rather than a code of conduct. It seems to me a reasonable and sensible way to go. I see no value in anybody in Tasmania looking at every potential issue of political conduct and having to run that through their filter.

**Mr HALL** - So our existing privileges committee ought to be able to take care of that?

**Prof. HEAD** - I think that's a matter for people such as yourselves to form a view about, whether the parliamentary committee system is doing a good job or whether it needs some extra powers, energy, staff or whatever it might be. I am not an expert on the kinds of matters that go to the privileges committee but I know a lot of them around the country are fairly low-grade issues and not really matters that would be of interest to the police. I am as much concerned about things such as how robust and capable are committees such as the Public Accounts Committee and the Public Works Committee. Historically in Queensland we didn't have them until the late 1980s - though I might need to check my facts on that. There was not a robust parliamentary committee system in this State until the late 1980s and it really only took on its modern form in around about 1992, when a number a new committees were added. The committee that oversaw the CJC was one of the new bodies set up in about 1990. The good governance issues hinge as much around the quality of the parliamentary committee system as around some of the other matters that you're looking at.

**Mr MARTIN** - There have been a couple of years of issues in Tasmania and allegations that have led to this committee being formed. There has been a view expressed that, regardless of what we might recommend as setting up a body, an ICAC or whatever, there needs to be a line drawn in the sand. There needs to be some sort of commission of inquiry held to investigate the matters that have led to the current situation so that the line in the sand is drawn before the new body comes into play. Would you care to comment on that?

**Prof. HEAD** - It is very difficult for an outsider who has not lived through that experience to have a view. At one end of the spectrum jurisdictions that have undergone major

traumatic events may well need that kind of cleansing exercise so that people can be assured that there is full understanding and appreciation of the nature of the issues and whether the proposed solutions are adequate, so if there are people who have got away with very bad behaviour then someone catches up with them. I don't know whether that is the situation in Tasmania.

The risk would be that to do a thoroughgoing commission of inquiry in a number of matters would be very expensive, take a long time and may come up with no more sophisticated solutions than you are in a position to make over the next few months. I regard that more as a political judgment call than a matter of whether the good governance of the State requires that retrospective deep investigation.

**Mr MARTIN** - That brings us to the next issue as to whether the new body that we may recommend should have retrospective powers?

**Prof. HEAD** - Retrospectivity means different things. I would not see the new body in the business of creating new offences and therefore retrospectivity is not about the retrospective application of a new regulatory regime to cover behaviour that was not formerly misconduct or criminal, so it is not retrospective in that sense. In the sense of matters that require to be investigated and which happened prior to the creation of the new body, I see absolutely no reason why those matters could not be investigated by the new body.

**Mr MARTIN** - One of the other issues that has been raised regarding the WA and New South Wales bodies has been trial by media. That has been thrown up as a reason not have a body.

**Prof. HEAD** - We touched on the media issue a few minutes ago. Certainly it is not a justification for avoiding having such a body; I think that is a furphy. The challenge is to make sure that the operating procedures of such a new body do not inappropriately generate media publicity that is detrimental to people appearing before it. The conservative view that we do not really need a new investigating body because it would just lead to a lot of hype and frenzy and tabloid journalism rather than getting to the root of things, I do not think there is any merit in that argument.

**Mr McKIM** - In the latest chapter that you have provided to the committee you touched on the issue of whistleblower protection -

**Prof. HEAD** - Yes.

**Mr McKIM** - In that chapter you have effectively referred readers to some of the other work that has been done on that issue.

**Prof. HEAD** - Yes.

**Mr McKIM** - Can you give us perhaps a broad view of how an ideal-world whistleblower protection framework might operate?

**Prof. HEAD** - I am sure that you will ask that question to my colleague Dr A. J. Brown this afternoon because he is one of the great authorities on this matter. My view is that we

need to be quite careful about what we mean by 'whistleblowing' and 'whistleblower protection'. I will spend a moment on this if you do not mind to be clear. Under, for example, a code of conduct, if a public servant is considering becoming a so-called whistleblower there are normally procedures for providing information and advice to superiors about a matter that requires investigation of some kind. The starting point in all whistleblower legislation is that there are internal procedures for reporting such matters and there is an obligation on a manager who receives such information to take things seriously and to be judged in terms of whether they have done the right thing in receiving that information, acting upon it and referring it more broadly. So the starting point is sound internal procedures for providing information about possible problems and infractions, therefore not covering up, not hiding material and not lying about it.

The whistleblower problem arises at a second level where the informant believes that the internal procedures for handling that matter are, in some sense, unsatisfactory or corrupted or they have hit a brick wall of some kind, that no-one is listening. The question then is: what entitlements do they have to further publicise that matter? The great debate in Queensland at that time - and I was Cabinet Secretary at that time and heard the conversations - was about who should then be the recipient of the information. In other words, the correct channels. If your immediate boss or manager does not seem to be doing the right thing, where do you go next, and that second step has to be properly protected.

**Mr McKIM** - In fact you might even be blowing the whistle on your boss.

**Prof. HEAD** - Well, this is true. In which case you might be foolish to go the boss first.

**Mr McKIM** - As you are actually required to do under the Tasmanian act, interestingly enough.

**Prof. HEAD** - That may well be something that needs to be looked in terms of public service operating procedures.

The big debate was then about what is an appropriate place to take that information, as against going straight to the media. I do not believe that it is in the public interest to have a regime where someone who claims to be a whistleblower is entitled to go straight to the media to make allegations. I believe that the notion of appropriate channels and making the system work properly is the starting point.

If people who are not public employees have the information then it is not quite the same issue in the first instance. Presumably they might provide information to the police if it is that kind of matter, or to an independent office such as the Ombudsman or the Auditor-General or the various other independent bodies. It is important that any whistleblower regime specify some offices which may receive such information. The key thing then is the protection of the person who discloses the information. The intent was always that if that person behaves in the right way then they deserved protection. The practical problem has always been that if it is a complaint against your boss then how can you realistically expect not to receive some kind of indirect consequence or reprisal or whatever. That becomes tricky but it is circumstantial. There are cases where you turn out to be a hero and everyone is really pleased. There may be other circumstances where the allegation you are making is a misunderstanding and you

have severely embarrassed a lot of people and your colleagues think that you are being very stupid and send you to Coventry.

**Mr McKIM** - I accept that you may not have read the Tasmanian act in detail but if you are prepared to accept my assertions, you can answer hypothetically if you feel more comfortable. The Tasmanian act makes it clear that if you blow the whistle to a member of parliament you are not covered by the protective component of that act. Can you respond to that, firstly?

**Prof. HEAD** - I cannot recall whether that is a feature of the Queensland act. It is something that Dr Brown would know. I do believe that the first port of call should be an organisational one in order to allow that system of governance to work properly and taking a matter to a member of parliament in the first instance, without having tested the organisational reporting, seems to me premature.

**Mr McKIM** - If this committee were to recommend the establishment of any kind of an authority or commission, could that be a place where whistleblowers might be encouraged to turn?

**Prof. HEAD** - Yes, I believe that is the nature of such a body. I think I would support that. The risk is that a lot of frivolous complaints might be directed to the new body but it is a risk worth taking from that point of view. When the Queensland body was established in 1989-90 and Sir Max I think was the first Chair, a lot of allegations I believe came through in a first wave of a pent-up kind of testing of whether this was a useful avenue for exploring some of the matters that I think required to be attended to.

It became a feature of the Queensland system that if an allegation of a serious nature was made, that person had an obligation to report it to the new body. In other words, there were circumstances where, depending on the gravity of the potential offence, that matter should be reported immediately to the new body as a matter of course and not treated as purely an internal matter for investigation. So, for example, in the case of the police commissioner in the Queensland situation it would not have been possible for that matter to have been handled internally because the CJC or the now CMC act requires that the commission be informed immediately and the commission then makes a judgment as to whether it will, as it were, take over the matter for investigation or whether it is happy to leave it with another body to have a look at.

**Mr McKIM** - Do you have a view on whether whistleblower protection should be extended to the private sector?

**Prof. HEAD** - That would be very radical. I think people would need to think quite carefully about what would be the process being recommended for someone in the private sector. For example, you can think of examples where a firm is engaging in conduct that is prejudicial to the health and safety of the community. To take a very blatant case, it would seem to me that if a person has done what we said for the public service, that is to say raised concerns internally and been rebuffed and then gone somewhere else, then if they are victimised as a result of that, there should be some kind of protection available to them. I am not sure under what kind of legislative instrument that might occur but I think in principle there should be protection of a whistleblower if it is clear that, for

example, their dismissal is linked to that kind of public interest disclosure, but it is a brave new world and good luck if you prosecute that one.

**Mr MARTIN** - Brian, as a cursory overview in summing up, I ask you to give a five-minute analysis of the Queensland Crime and Misconduct Commission, the strengths of the Queensland body compared to alternative models, and then I am going to ask you about the weaknesses.

**Prof. HEAD** - Gosh.

**Mr MARTIN** - It is a tough one, isn't it?

**Mr McKIM** - You are just checking to see whether anyone is looking?

**Prof. HEAD** - Yes.

*Laughter.*

**Prof. HEAD** - I'm aware they are next in line.

*Laughter.*

**CHAIR** - Remember that privilege issue.

**Prof. HEAD** - Yes, I understand and that is fine. I have enormous respect for the system that we have in Queensland because it has done a fabulous job. It is notable that the Queensland commission has been probably more concerned with major organised crime issues than with public service misconduct so it is very important from the start to acknowledge that a lot of the ethos and culture of the CMS is heavily influenced by that kind of emphasis on major crime. The public service misconduct jurisdiction is relatively small and there are a lot of delegated referrals that go on. When I was Public Service Commissioner I encouraged this because I thought that it was not in the public interest that a lot of fairly minor matters were clogging up the system for the commission. They developed some protocols with the public service about the need to be informed and the need to reach an agreement within a few days about how the matter would be handled. It is very much a time-linked decision process, are we going to have it or are we going to let you do it?

The commission has also had a strong education arm. I know that has come up in a number of the submissions, including the government submission to your committee. This seems to me a very important and useful thing to do, a coordination point for education and training and prevention activities. It can be as small or as large budget-wise as one chooses to make it. I think that the education and prevention work would benefit from a central coordination point but I think it would be unwise to assume that a new body would take over this role from the rest of the public agencies. It is not that at all. At most it should be a coordination point working with the numerous other agencies that have an important interest in education, training and so forth.

**Mr MARTIN** - Has this been done well by the Queensland body?

**Mr HEAD** - They do quite a lot. I think it has taken them some time to gear up to be able to cover the whole range of client agencies that they cover. This is a huge task, we are talking about the local government sector as well as State agencies and so forth, so that is why I say it is important to work with the other agencies to ensure that they are doing a good job with education, training and prevention work and the role of the central coordination point is to make sure that there is high-quality information and to work with the other agencies to make sure there is a strong cycle of renewal of this education and training. So it is not just done once and you come back to it in 10 years and see how it is going, I think a continual loop is required.

But the investigations for the public sector, I think, are generally regarded as having worked well under quite difficult conditions.

**Mr MARTIN** - Are there weaknesses in the Queensland model that we should learn from?

**Prof. HEAD** - I think it is a scope issue. I have not seen anything in submissions to suggest that anyone is recommending the same scope for Tasmania. There does not seem to be any support for the major crime area, which accounts for probably more than half the resources. I think there are some issues relating to particular powers around, for example, mandating answers to questions. That will always be politically and legally a controversial matter. I do not have a particular view on that one. But it is regarded as a wholly professional outfit and they have been part of the reason that the Queensland jurisdiction has a very different reputation now from 15 years ago.

**Mr MARTIN** - How important do you think the personalities involved are in making it a success?

**Prof. HEAD** - I think that is really important. I am glad you raised that because I think the whole issue of leadership style and the character of the people who are the face of these bodies is really important. It is very hard to prescribe what that means. But I think it is quite important that the public face, the senior person or people are highly credible and experienced people, possibly from out of the State, and that they are not overly wedded to, for example, either a policing or legalistic or whatever style of running the operation, but are very interested in what I would call the good governance agenda which is a broader agenda than what you might call the policing and 'gotcha' kind of agenda. So, ideally, a new body would have two sides to their operation: on the one hand, enhance public trust that misbehaviour will be investigated and brought to account and on the other hand, playing a very strong, symbolic and educative role in elevating the tone and sense of commitment to good governance. If one person can fulfil both those roles, so much the better.

**CHAIR** - Brian, what do we call it? Do we call it a corruption commission, an integrity commission or an ethics commission? The public sees a lot in a name, I think, and if you call it a corruption commission the public might think there is corruption going on, therefore this is the commission to stop corruption. Ethics and morality commission, I do not know. What do you suggest?

**Prof. HEAD** - I do not think the name of ICAC is very suitable. I think the answer that I gave to the last question about the dual nature of it is quite important and I think that is reflected in the terms of reference to some extent. I personally rather like the notion of

standards, rather an anticorruption or ethics. I know that you have received some strong suggestions that ethics is important to use as terminology for a number of good reasons around not dragging it down into operational management principles. My view is that something like standards, which is a UK term, is not a bad compromise because it allows you to emphasise the values, principles and ethics side of things, but at the same time suggest that investigations of malpractice of whatever kind will be taken very seriously and prosecuted. So that's my two bob.

**CHAIR** - Thank you for your time. I have just noted down a couple of things here that we are looking at. The first thing is whether we need a commission, and if so, how is it to be - and please pull me up anywhere - made up? What powers should that commission have, such as phone-tapping and mandatory question answering, et cetera? If there a commission, who should be the commissioner? You have answered that. Then I have 'resourcing' and a there is a little arrow from that saying 'outsourcing'. If it cannot be properly resourced within the commission, who can you outsource to assist? How will it interact with the other bodies that we have in place in Tasmania?

We have, for example, the Public Accounts Committee; government business enterprise scrutiny committees, which look at government business enterprises or State-owned companies; the Estimates committees; the Parliament itself, with the questioning that goes on there and also select committees that can come from Parliament; the Legislative Council being the House of review of the House of Assembly; the Auditor-General; the Ombudsman; the Privileges Committee; the Public Works Committee; and the media. So they are some of the safeguards there, but how are they working? One of the questions was when did the Privileges Committee last meet and what did it last do? It was a number of years ago that any action was taken by the Privileges Committee. Should there be retrospectivity or not? We have spoken about that. Should there be an initial inquiry for the drawing of the line in the sand? We have spoken about that. Privacy issues, the name of the body, the independence of the commission, how should it be linked to Parliament, your whistleblowers, your party donations disclosures, your educative arm of the commission, training, prevention, continual professional development - they are the issues that I have marked down. Do you think I have missed any?

**Prof. HEAD** - That sounds pretty comprehensive. I am glad you have not asked me to comment on all of those matters. I think the Tasmanian Government submission, which I read over the weekend, seems to take the view that the nature of the problems being addressed is not as severe as elsewhere and therefore a more modest version of a commission might be appropriate, which has the benefit of also saving some money, and that working in a cooperative way with that patchwork of existing institutions might give strength to whatever new body was required. I cannot help agreeing with that, up to a point.

The coordination issues and exchange of information with those other bodies is quite important. Dr Brown and I have said several times that it is very important as part of the culture of the way these things work that there be opportunities for the heads of agencies to talk about issues of duplication and overlap, about referral of matters where warranted, exchange of information and a bit of problem-solving and possibly identifying any gaps in coverage which need to be perhaps referred back to government for further consideration. So I think that coordination and cooperative spirit is actually quite



important. In terms of powers, I think the key thing is that serious matters have a place to go. I think more trivial matters are likely to be able to be well-handled but as I said before, I think there is a threshold question about whether you want to encourage a system where all matters go through the filter before being referred or whether it is satisfactory for some categories of minor matters to stay where they are and not have to be referred at all? I think there is a serious definitional issue about how to do that. In terms of building public trust in government, I think it is important that the citizens are convinced by what you recommend, that important matters will be taken seriously because there is an independent purpose-built body to do that. And, by the way, it is not just about prosecutions, it is actually about ennobling - not enabling - the spirit of the laws.

**CHAIR** - Thank you for your time. When this was first discussed in the Legislative Council two names that came up were yours and the Dr Brown's as the experts in the area, so thank you very much for your expertise.

**DISCUSSION CONCLUDED.**

DISCUSSION WITH Mr PAUL HOOLIHAN MP AND Mrs CHRISTINE SMITH MP,  
PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE, PARLIAMENT OF  
QUEENSLAND.

**CHAIR** - Thank you for coming along, Christine and Paul. You can see the names in front of us. Greg Hall is a member and Deputy President of the Legislative Council and the member for Western Tiers in the north-west of Tasmania; Terry is member for Elwick, north of Hobart in the south of Tasmania; Nick is the Leader of the Greens in the House of Assembly in Tasmania; and I am an independent member for Nelson, which is mainly Sandy Bay and Kingston.

Thank you for giving up your time to come along today and give us some evidence and expertise in relation to what we're looking at. It's an issue that has come about over the last 12 months I suppose, in Tasmania, where there's been a bit of a call for a standards commission, ethics commission or integrity commission; whatever you want to call it. I know there's been a commission in Queensland for a number of years and so we'd like to tap into your expertise, please.

**Mr HOOLIHAN** - I hope we'll be able to assist you, Mr Chair. My name is Paul Hoolihan. I am the member for Keppel and I am the chair of the Parliamentary Crime and Misconduct Committee in Queensland. With me is Mrs Christine Smith, the member for Burleigh. Mr Simon Finn has been held up at his office and will be here shortly. I also have my research director and my principal research officer here and they would be only too happy to clarify any matters on which we touch today.

As you indicated, Queensland originally had the CJC, the Criminal Justice Commission. Then there was an attempt to have a separate CJC and Crime Commission, and that was amalgamated in 2001 to become the Crime and Misconduct Commission. We operate under the Crime and Misconduct Act 2001. The commission itself is made up of a full-time commissioner and four part-time commissioners and we also have a parliamentary commissioner who is independent of both the committee and the commission itself. The oversight committee for the CMC, being our committee, is actually a bipartisan committee of the Parliament. As you are aware, we're a unicameral parliament and we have myself as the chair and as a government member; Mrs Christine Smith, Mr Simon Finn and the Honourable Dean Wells MP as government members. Then we have Mr Howard Hobbs from the Liberal-National Party who is my deputy, Mr Jack Dempsey of the Liberal-National Party, and Mrs Elizabeth Cunningham, who is an independent member for Gladstone.

**CHAIR** - Have you got Jack Dempsey on it just for the name, Paul? Adds a bit of punch to the committee!

*Laughter.*

**Mr HOOLIHAN** - Yes, I think he was actually named Jack for that reason. His father was an Irishman and I think it sort of carried over.

*Laughter.*

**Mr MARTIN** - Can I clarify the numbers as far as party affiliation is concerned? I was just trying to keep track of them.

**Mr HOOLIHAN** - There are four Government members and three other members: two from the Liberal-National Party and one independent. I am a lawyer by profession and it has been part of the appointments to have a lawyer as the chair. A lot of what we do may not necessarily be based on specific legal principles but that has been the way it has panned out.

The CMC is a single oversight body. I realise there are some other States where there are multiple oversight bodies, such as New South Wales - or you have the CCC in Western Australia. They have pretty much the same jurisdiction as we have. The major difference between Western Australia and our committee is that their committee is disbanded on parliament being prorogued. Our committee continues, whether or not we continue in our seat, until a new committee is appointed by an incoming government.

**CHAIR** - How do you get matters coming before you?

**Mr HOOLIHAN** - We oversight the CMC itself. The CMC has two strings to its bow. They have a crime group and a misconduct group. They oversee units of public administration and the Queensland Police Service. Our act sets out that when official misconduct occurs then either criminal acts or misconduct has to be reported to the CMC. They do an assessment of what sort of matter it is. I will try not to pre-empt our own circumstances at the moment. We are presently undertaking public hearings in respect of a three-yearly review of the operation of the CMC and we took evidence on that last Wednesday and Thursday. I will try to remain objective. We have not yet met on that evidence. We have not yet considered some of the information that has been provided and I do not want to pre-empt in any way what any final decision may be. So at the present time I am dealing objectively with what we have now.

**CHAIR** - As you probably know committees within the State have parliamentary privilege but we do not have parliamentary privilege here so everything you say is not privileged.

**Mr HOOLIHAN** - I appreciate that and will be very mindful in how I approach it.

They do an assessment as to whether or not it is a matter serious enough for them to deal with it or they can refer it back to Ethical Standards units or Ethical Standards Command, as in the Queensland Police Service, for them to investigate it. They do continue the oversight of some matters. Some may be referred back to the Unit of Public Administration or the police service as disciplinary matters rather than misconduct matters and they will then be handled by the Ethic Standards Command or Ethical Standards Unit. It can be dealt with by the Unit of Public Administration as a disciplinary matter rather than misconduct or a criminal matter.

That may result in charges; it may result in matters dealt with within the department. The CMC has a protocol whereby they can recommend charges to the ODPP and that would remain with the Department of Public Prosecutions. In the carrying out of their duties very often people may have complaints about how things were done or what was done and that virtually enlivens our committee's jurisdiction. We receive complaints from the public and we are charged with overseeing the work that the CMC has done and how it

was done. We can take evidence from witnesses but in many cases we have the parliamentary commissioner, who also has investigative powers. He can be requested to look at matters of complaint. We do not have investigative powers in terms of our personal deliberations.

**Mr HALL** - I noticed a couple of statistics of your CMC. I think the budget is something around \$35 million-odd with around 266 employees. Tasmania being a smaller State we have to cut our cloth to suit. I am wondering what sort of percentage of the resource goes into actually investigating crime - organised crime compared to, say, ethical misconduct? Do you have a rough breakdown on that?

**Mr HOOLIHAN** - It would be very difficult to give you a breakdown because it is all wrapped up in one. Robert Needham may be able to give you that. I'm not sure how much of a breakdown they can give because it is all intertwined. I guess our cloth is cut according to the size of the State and the larger government departments they cover. They also have powers of inquiry into organised crime. They also have confiscation-of-profits powers and that is factored into some of the costs. They don't get all the money back themselves but their annual report usually shows some of that in the revenue stream.

**CHAIR** - In Tasmania if there is a criminal matter and, say, a person has been charged with a drug offence, the court can order the confiscation of profits to the Crown. Are you saying the commission has those same powers?

**Mr HOOLIHAN** - They can bring an application for confiscation of apparent profits from criminal activities. I appreciate the part of your question dealing with the court ordering it confiscated but that, as I understand it, would refer to moneys that were seized as part of that investigation. The CMC's powers go beyond that. They can in fact sequester property or money which may have been acquired with the proceeds of crime.

**Mr HALL** - The CMC has been in operation since -

**Mr HOOLIHAN** - The CJC was 1991 and then the CMC was 2001.

**Mr HALL** - When the CMC came into operation did that come into play at the same time?

**Mr HOOLIHAN** - There was an oversight committee for the CJC also.

**Mr HALL** - As well, was there?

**Mr HOOLIHAN** - Yes. Certainly it was differently constituted. I was not on the committee that far back and I cannot answer how that oversight committee operated. None of us was then on the committee.

**Mr HALL** - A new broom.

**Mr HOOLIHAN** - Well, yes.

**CHAIR** - There was a bit of conflict, was there not, between the oversight committee and the CJC in the early 1990s?

**Mr HOOLIHAN** - I think that may have been some bedding down and certainly I understand there was some conflict. I am unable to give you any specific areas.

**Mr FINNIMORE** - I am Stephen Finnimore, Research Director for the committee. At the time of the CJC there was a Queensland Crime Commission established in approximately 1997 to commence in 1998. It was essentially a merger of that crime commission and the then CJC that formed the Crime and Misconduct Commission. On the commencement of the CJC it did have a parliamentary oversight committee which transformed pretty well seamlessly when the CMC came into being from the Criminal Justice Committee to the Parliamentary Crime and Misconduct Committee. The membership was carried over.

**CHAIR** - When I said there was conflict, there was some talk at the time about this commission not being answerable to anybody. They are continuing with their work and it is costing x million a year. It is like a runaway truck: how do you stop it and how can you rein it back in? That was the comment I got from two members of the Queensland Parliament.

**Mr FINN** - There was a significant change of culture in Queensland so I am not surprised that you heard those concerns.

**Mr MARTIN** - How important is it to have a parliamentary committee to oversight it?

**Mr HOOLIHAN** - I think it is very important - to stop that perception of it being a runaway truck. We are undertaking a three-yearly review. We want to prevent that perception by people that it can do whatever it likes because that is quite clearly not part and parcel of the act. Although there are some concerns by some members which we may need to address in that three-yearly review, I think it works reasonably well.

**Mr FINN** - We have bi-monthly joint meetings with the parliamentary committee and the CMC and their commissioners. A report is provided to us at these bi-monthly meetings on all of the ongoing investigations. It gives us an opportunity to interrogate the CMC about where they are with any of those investigations, and fairly robust discussion takes place. That is informed by the information that comes directly to the committee but also enables us to constantly monitor timeliness of investigations, staffing levels and so on.

**Mr MARTIN** - At these joint meetings do you get details of the investigations?

**Mr FINN** - We do, but not the full detail. We get reports of investigations. We have a power to ask for more information.

**Mr MARTIN** - In the relationship between the parliamentary committee and the CMC, do you have power over them?

**Mr HOOLIHAN** - Yes, we do.

**Mr McKIM** - For example, could you summons the commissioner to appear before you and answer questions?

**Mr HOOLIHAN** - Yes.

**Mr McKIM** - Could you subpoena documents from the CMC?

**Mr HOOLIHAN** - Yes. As a matter of fact if you have a look at section 295 of the act, our own officers are entitled to inspect. The parliamentary committee or a person appointed or engaged may inspect any non-operational record or thing in the commissioner's possession and take copies or extracts. Our functions and powers are set out in Part 3, Division 1 of the Crime and Misconduct Act.

**Mr MARTIN** - With majority government on the parliamentary committee is there a criticism in the way that you have the power to interfere in an investigation?

**Mr FINN** - Firstly, we are required to have bipartisan decision making, so decisions of the committee must be bipartisan. I am not aware of criticism of government using its numbers to direct an investigation, certainly not in my time, or whether that has happened historically.

**Mr FINNIMORE** - And not in my time. The power to go and look for documents and things does not allow for you to go right into what might be called 'operational' material, and that was part of the reasoning for the establishment of the Office of the Parliamentary Commissioner. Again, in 1998 he or she - currently a he - does have full power to go and examine records at the CMC and with some restrictions does have royal commission powers.

**Mr McKIM** - I am speaking purely hypothetically here; is it intended that your committee be an avenue for allegations of malfeasance or corruption against the CMC? In other words, who would a member of the public go to if they believed that there was crime or corruption inside the commission?

**Mr HOOLIHAN** - That would come to the committee and we would, depending on the circumstances, request the Parliamentary Commissioner to investigate those matters.

**Mr McKIM** - And he has those powers?

**Mr HOOLIHAN** - He has those powers, yes. The other function of this committee, which I did admit at the start, is that we make recommendations to the Attorney as to the appointment of the commissioner and part-time commissioners and the parliamentary commissioner. Certainly it is advertised publicly for people who may be interested. They would then be short-listed but we also have the power. That must be bipartisan.

**Mr FINN** - So that parliamentary commissioner role is really important for us because if somebody comes to us with a situation that you talk about, concerned about the functioning of the CMC, by us being able to refer it to a commissioner with those powers takes it out of the political arena in any case. We get that person to investigate and report back to us and then we determine the course of action.

**Mr MARTIN** - Just in layman's terms, you have combined monthly meetings and then if at the meeting you are not happy with progress of that investigation, what do you do at that stage?

**Mr HOOLIHAN** - At the end of what part of investigation? At the bi-monthly meetings we have a confidential briefing paper from the CMC dealing with their specific investigations and we will go through that, we will ask questions of them. It is fairly robust in terms of that; it is confidential. If any matters come to light we have powers to request the CMC to set guidelines for doing certain things, protocols to make sure that the way they do things is in accordance with what the committee requires done.

**Mr FINN** - Those hearings are recorded, so there's a transcript of the hearings. In that situation, if there was a particular inquiry operation that I was concerned about, we drill down to the questions. Obviously if you're sitting in a room you can't necessarily answer everything, you don't have everything at your fingertips, so speaking personally, I'd say, 'I'm really not happy with the way this is going, we want a report to the committee for our next meeting on what your plan is for that investigation in terms of what the issue might be, timeliness or other detail. We will ask the research people of the parliamentary committee to liaise with us so you can get us as much information as possible to consider it there.' So we would follow up if we had concerns in that way.

**Mr MARTIN** - In the hypothetical situation that the next meeting still did not satisfy you, what action would you take then?

**Mr FINN** - My understanding is we would discuss as a committee whether we requested a parliamentary commission to investigate that directly. We could engage the parliamentary commissioner of our own volition without there needing to be a complaint.

**Mr HALL** - If allegations are made against, say, an elected member or a senior bureaucrat, for example, and you decide that an investigation should take place, what safeguards are put in place to perhaps stop that member or that particular person's reputation being maligned or sullied or whatever through media, or is it an almost impossible task?

**Mr HOOLIHAN** - I don't wish to dodge that question, but that's one of the matters that we are considering in terms of the three-yearly review. It is of concern to members of the committee. It wasn't initially written into any protocols or guidelines; in a lot of cases any complaint of that nature would go initially to the CMC, the committee may not even see it. That's where those protocols, those guidelines need to be finely tuned. There have been concerns by members of the committee, over the time that I've been Chair, as to just that set of circumstances, and that will be something that we do need to consider in the three-yearly review.

**Mr FINN** - If I can just comment on that. To be frank, it's really very hard. We get allegations come to us that this thing leaks material, and we ask them about it. In most cases they can establish that there are a number of potential sources of this information, so you can't really work out where it came from. One of the issues we have is that the CMC quite naturally draws upon the police force for its staffing, because the police are trained investigators and deal with investigating crime. The police force quite naturally has a symbiotic relationship with the media which I find all the time. I find that police rely on media to solve crimes, to publicise crimes, and that media rely on police to print their stories. So the culture of police develops with their relationship with the media, and we need to be really careful of that. Organisations like the CMC don't have that culture and don't allow police to bring it in with them; that being the case, though, investigations

are often solved by media attention and it's a struggle to work out how you regulate it. It's not impossible, but it's near impossible to investigate leaks.

**CHAIR** - Have there been any investigations over the last couple of years where there have been leaks and people's reputations have been sullied to an extent where you think it's too difficult?

**Mr HOOLAHAN** - I don't know whether we can answer that question because I think some of the detail in that does remain confidential.

**Mr FINN** - But it's fair to say we've had allegations. We've had people come to us and say, 'Here is a media report, they're significant public figures under investigation. The only possible way this could have appeared in the media is from a CMC leak'. We would then ask the CMC to provide a response to that allegation and the CMC has come back and said, 'Internally we find no evidence of this, but here is the range of places that we know of that it could have come from'. So there have been allegations.

**CHAIR** - I suppose all you can do is try to do all you can to find out where that leak is and that, to some degree, drags the reins in, doesn't it?

**Mr HOOLIHAN** - It does, and perhaps if people have a subjective point of view about where the leak may have come from. But subjective points of view are not any sort of evidence and that is why anything of that nature we would ask CMC to look very closely at and provide us with their own detail.

We do have a safeguard and Stephen may be able to clarify parts of it. Under the Police Powers and Responsibilities Act and under the Crime and Misconduct Act there are certain regular reports which must be provided by the CMC and the Police department in relation to surveillance devices, warrants, witness protection and assumed identities. The CMC do have a witness-protection capability and they also can get a warrant for surveillance devices, although up until recently not telephone-interception powers, although the Commonwealth has indicated the Premier has put it before Parliament that with the PIM - the Public Interest Monitor - being involved, Queensland will endeavour to have the Commonwealth accept our proposal for telephone-interception powers.

**Mr FINNIMORE** - I was just going to clarify it or extend on that a little bit. A number of the exercises by the CMC with its coercive powers as outlined by the chairman are now subject to statutory obligations upon, in most cases, the Parliamentary Commissioner to conduct in effect audits of the exercise of those powers and there are some inconsistent provisions in some of those matters. There was a report by the CMC directed at the committee and in other cases there is an inspection by report to the Parliamentary Commissioner who in turn provides the report to the committee and those reports are tabled in the Parliament. That is a relatively recent statutory requirement. Prior to that, the previous committees were in the habit of issuing a series of on-rolling audit references to the Parliamentary Commissioner but you can buck those inquiries and reports pursuant to order.

You also touched on a body we have in Queensland or an office in Queensland called the Public Interest Monitor. Its main role is when the CMC is applying to a court for a warrant for various coercive powers and the Public Interest Monitor appears before the



judge in most cases, the opposing magistrate, to argue for the public interest, to play devil's advocate for the CMC making an application - - it is an application body as well - and there is also some reporting accountability back to the PIM after the coercive power agreement has been exhausted. The QPS and the CMC have to provide a compliance affidavit into the court and the PIM has a role over inspection of the records after the event as well.

**CHAIR** - How many people are involved in the PIM?

**RESEARCHER** - The PIM is traditionally a lawyer in private practice who does this on a part-time basis assisted by two deputy PIMs. They will appear on short notice at some of the hearings which can take place on short notice at all hours of the day and night.

**Mr HALL** - Do you have a parliamentary privileges committee and, if so, do they meet often, and are they effective?

**Mr HOOLIHAN** - We have a separate Members Ethics and Parliamentary Privileges Committee. That is constituted the same way as the PCMC with seven members and they meet every sitting week, the same as what we do. We have a number of committees of parliament that sit - the Public Accounts Committee, the Public Works Committee, MEPPC, which is parliamentary privileges. We have the Legal, Constitutional Administrative Review Committee, LCARC, and us. We are constituted under the act. We also have the Scrutiny Legislation Committee.

**Mr HALL** - Can we have a bit information, if possible, on those committees, particularly on the Ethics and Privileges Committee and the roles and functions?

**Mr HOOLIHAN** - Yes.

**Mr HALL** - Do you consider that to be an effective committee?

**Mr HOOLIHAN** - Yes. On matters of privilege within Parliament, very often the Speaker will have a matter raised and he will ask that that be reduced to writing, given to him and he can refer it to the Ethics and Privileges Committee.

**Mr HALL** - What is the composition of that particular committee?

**Mr HOOLIHAN** - It has seven members.

**Mr FINN** - Similar to us.

**Mr HOOLIHAN** - Yes. There is a government chair, three government members and three opposition or independent. We now have a Green independent. We have a One Nation member and we have four independents. The Liberal-National Party was separate until they amalgamated earlier this year so there may have been a Liberal member or a National Party member, a non-government member.

This is my own personal comment. I was on LCARC before I was appointed to chair this committee and, regardless of any political points of view, I find that the committees that I have had any dealings with work very well, independently of political affiliation. I

think it is the wish of every member of parliament to make those committees effective and operational to the degree that people can have faith in the political spectrum.

**Mr FINN** - I echo those comments. I previously was on the Ethics and Privileges Committee. But this committee, the PCMC, is the only one with a bipartisan requirement. It is not required of other committees. I did a term on the Ethics and Privileges Committee and the vast majority of our decisions were unanimous. It was quite uncommon for there to be a vote on the committee because it is an ethics and privileges issue and you strive to reach consensus.

**Mr McKIM** - Regarding the requirement for bipartisan decision-making, does that require unanimity in any decision that the committee makes? What do you mean by bipartisan?

**RESEARCHER** - Simply, a majority of the committee and that includes at least one non-government member.

**Mr McKIM** - Okay.

**Mr FINNIMORE** - It is required for a number of decisions by the committee.

**Mr McKIM** - So even though the Government has the numbers it cannot, of itself, make a decision on this committee?

**Mr HOOLIHAN** - It cannot make a majority decision.

**Mr McKIM** - Right. Just so I understand, there are seven members?

**Mr HOOLIHAN** - Yes.

**Mr McKIM** - The Government has four and there are three non-government members?

**Mr HOOLIHAN** - Yes.

**Mr McKIM** - For any decision there needs to be, firstly, a majority of the committee and, secondly, at least one of that majority needs to be non-government?

**Mr FINNIMORE** - For significant decisions, so decisions in relation to taking action in relation to a complaint about the CMC, the Parliamentary Commissioner; decisions to support or not support nominations for appointments of chairpersons.

**Mr McKIM** - That is in the act?

**Mr FINNIMORE** - Yes.

**Mr McKIM** - Thanks.

On a slightly different matter, from time to time ethical issues arise, probably for all members of parliament and certainly for ministers. Does either the committee or the commission have the capacity for an MP or a minister to ring up and say, 'I'm in this position, can you advise me?'

**Mr HOOLIHAN** - We have an integrity commissioner to the Queensland Parliament and you can approach the Integrity Commissioner. He is appointed for three years and any member of parliament can discuss matters with the Integrity Commissioner to query whether what you want to do is within the integrity of Parliament or what you have done and how you may need to fix it. It may well be an ethical matter later on but the Integrity Commissioner is a senior barrister - he's a QC - and the previous Integrity Commissioner was a retired Supreme Court judge. Any matters which a member feels may compromise them - that probably isn't exactly the right word - but any concerns and dealings with the Integrity Commissioner are confidential.

**Mr McKIM** - Thank you.

**CHAIR** - That Integrity Commissioner a part-time position, I take it?

**Mr HOOLIHAN** - It is part-time, yes.

**CHAIR** - And it's a paid position?

**Mr HOOLIHAN** - It is a paid position. Regarding the part-time, I think it is really when required. I don't think there is a specified weekly requirement for him to be available because very often it would be at the request of an individual member.

**Mr McKIM** - That's nothing to do with the CMC portfolio?

**Mr HOOLIHAN** - No.

**Mr HALL** - So he or she may or may not give legal advice?

**Mr HOOLIHAN** - He will give a written ruling, if required, in relation to the detail provided and how it is suggested that you proceed. I haven't needed to speak to them about concerns of mine, but there have been people that I know who have done so and they follow his advice. If you have someone with that expertise who is there to protect the integrity of what you do for the benefit of the people of Queensland then I believe you would need to follow that advice. It may be very marginal as to whether you need to notify somebody, whether you need to divest yourself of shares if you are doing certain jobs, things like that.

**Mr MARTIN** - To clarify, I am trying to understand exactly the extent of information you get from the CMC. If, for example, the CMC have started an investigation into one of your parliamentary colleagues, do you get information about that?

**Mr HOOLIHAN** - Yes, but we wouldn't have the name of the person.

**Mr MARTIN** - Not the name of the person?

**Mr HOOLIHAN** - No. Very often, if it is a police investigation, it will be officer No. 1, officer No. 2, officer No. 3. That is contained in their briefing paper but until there has been some action taken by the DPP or charges have been laid, we normally wouldn't -

subjectively we may be aware but not very often. You may be aware that there is a question mark over somebody but that is never provided.

**Mr MARTIN** - So you are never privy to information that would put you into conflict as to whether to let a parliamentary colleague know?

**Mr HOOLIHAN** - No. In actual fact, even if we had that information, we are bound by confidentiality within the committee and you wouldn't have to go to the Integrity Commissioner. I would have thought that if you breached that confidentiality -

**Mr FINN** - Sometimes that's not always the case. You could know things about where an investigation was up to and what the next step was, and they were expected to report or detail like that, but not interview transcripts or any of that kind of finer detail. So you could know things that they wouldn't necessarily know.

**Mr MARTIN** - With respect to the committee, could there be a conflict and worry about having information that could help a mate or could damage an opponent?

**Mr FINN** - There is probably an individual response for each member about how they deal with those kinds of things. I think naturally it is difficult if one of your parliamentary colleagues is under investigation and you know information, and that is why the confidentiality provisions are important.

In my experience, the reports that we receive are more about the mechanical nature of investigations rather than details so rarely would we get any really specific information, and you would only know the case if it was a publicly listed matter anyway. One of the things that has happened in Queensland, particularly under the Beattie administration, is regular referral to the CMC. So any question over anybody got referred to the CMC and I think it is fair to say - and it is probably continuing - that the Beattie administration very much used the CMC as a clearing house. So there would be reports about things fairly regularly. It was used as an open and accountability government measure, so you would find out details but nothing that was specific to an operational matter of a case.

**CHAIR** - To get a bit of an idea of the process, if I want to make a complaint do I make it to the commission itself?

**Mr HOOLIHAN** - A complaint in relation to what?

**CHAIR** - Let us say a complaint into what I believe is a case where there may or may not have been some money changing hands for certain favours from members of parliament. Where do I go?

**Mr HOOLIHAN** - First off it would be a complaint to the CMC. If it came to your knowledge as a whistleblower, as a member of the public, you would be required to reduce it to writing mostly. But you can now lodge a complaint online, which would virtually be in writing anyway. They are then required to assess it in terms of what is complained of.

**CHAIR** - Who assesses it?

**Mr HOOLIHAN** - That is done by the CMC themselves. They have an assistant commissioner, crime. They have an assistant commissioner, misconduct. They have committees within their own sections that look at the information available. They are authorised to investigate or, as I said initially, within many government departments, bearing in mind that Queensland Health has 65 000 employees and the Education department has 85 000 employees. In units of public administration it may well be assessed as something that should be handled by the Ethical Standards Unit or Ethical Standards Group within those departments.

**CHAIR** - So they have an ethical standards group within those departments?

**Mr HOOLIHAN** - Yes, and under the act any suspicion, and it is only suspicion, of misconduct or criminal activity is required to be referred to the CMC. It may not be something which comes within their area but it is required to be reported. It is either reported directly or they can do it on a referral with a list of matters monthly.

**CHAIR** - So the secretariat then, if I could call it that, the Assistant Commissioner says, 'I don't believe this matter should go to investigation by the CMC but I believe that should go to the Ethical Conduct Committee of Health'. Do they then have to make a written conclusion which goes to -

**Mr HOOLIHAN** - They would refer it to the individual department and they can give instructions about how matters proceed, depending on what their assessment is as to the severity, and that is set out in section 40 of the act.

**CHAIR** - Right. If it is a matter that then should proceed for investigation, where does it go? It is a criminal matter, let us say.

**Mr HOOLIHAN** - If it is a criminal matter, it would most probably be referred to the police to investigate or the CMC would investigate it themselves.

**CHAIR** - If the police investigate it, are they doing that independent of the CMC?

**Mr HOOLIHAN** - Yes.

**CHAIR** - If the CMC want to investigate it, do they have their own resources?

**Mr HOOLIHAN** - They have their own investigators.

**CHAIR** - Do they use the police at all for the investigation procedure?

**Mr FINNIMORE** - They can, depending on what investigation is involved. There is quite a large component of police who are members of the QPS, the Queensland Police Service, but there is a command of Queensland Police that are attached to the CMC.

**CHAIR** - Is there ever a duplication of both the police and the CMC investigating the same matter?

**Mr HOOLIHAN** - I am not aware of it but it may well occur. It could happen, but I think the lines of communication are set up in such a way it would be fairly unlikely.

**CHAIR** - Why I am asking that is because, let's say the police became aware of a crime and the CMC became aware of it from another source, the police are investigating the matter because of the information they have and the CMC are proceeding because of the information they have. It seems to me that there could be a duplication unless the police and the CMC -

**Mr HOOLIHAN** - There could be, but I believe that at some stage in the investigation they would come together because of the oversight. The ethical standards command of the police service have regular meetings with the CMC. As you may be aware, the CMC arose out of the Fitzgerald Inquiry into the Queensland Police Service originally and consequently they are fairly well intermeshed so that there are regular meetings, regular briefings and regular attendance to those matters which are of concern.

**CHAIR** - Let us say that the CMC investigates a matter and says, 'Look, it falls just short of illegality. It does not infringe any sections of the criminal code but we think it is behaviour which is pretty poor, it is immoral' - or whatever the case might be. Where do they send it?

**Mr FINNIMORE** - They can send it to themselves.

**CHAIR** - What happens if they send it to themselves?

**Mr FINNIMORE** - They will deal with the higher-level matters themselves and investigate. If they believe it is a lower-level matter they will often just refer it back to the agency itself to deal with, with monitoring of various degrees by the CMC. That monitoring on the lower level can be back-up advice only - 'Just let us know the outcome'. If it is a more serious matter or if it has some hairs on it, if you like, the CMC can require regular updates or there can be joint investigations and regular reporting, those sorts of things. There is an obligation on the CEO of every public sector agency, including the police service, to report a matter to the CMC when he or she becomes aware of it. The CMC's jurisdiction to deal with criminal matters outside the public sector is really limited to organised and serious crime, and most of that stuff has to come through a crime reference committee. There is QPS input into those referrals anyway, so the prospect of there being investigations intended, if you like, without the other knowing, is pretty remote.

**CHAIR** - What about in cases where it is immoral behaviour? Does it go back to the agency as opposed to going back to you to say, 'This person needs some CPD, continuing professional development, in relation to whatever it might be'.

**Mr FINNIMORE** - That does not come to us at that stage.

**Mr FINN** - The committee has no original jurisdiction - if I can use that expression - save in relation to officers of the CMC itself.

**CHAIR** - So that matter would go back to the agency which would carry out the disciplinary procedure as it thinks fit, or as the CMC thinks fit?

**Mr FINN** - Yes.

**CHAIR** - Which one?

**Mr FINN** - Generally as the agency would see fit. CMC can make recommendations.

**Mr HOOLIHAN** - The CMC can make recommendations but it would depend on the set of circumstances.

**CHAIR** - Can it send it to your privileges committee of parliament to act in the way they believe appropriate?

**Mr HOOLIHAN** - If it was to do with a member of parliament.

**Mr FINN** - They could probably go back to the Speaker and request a referral to that committee. It would be unlikely that they would investigate a privileges of parliament matter.

**CHAIR** - Do you have an Ombudsman up here?

**Mr HOOLIHAN** - Yes.

**CHAIR** - Auditor-General?

**Mr HOOLIHAN** - Yes.

**CHAIR** - Does the CMC at any stage in the filtering procedure say, 'This is probably not a matter for us. I think you should go to the Ombudsman or the Auditor-General'?

**Mr HOOLIHAN** - The Auditor-General is charged with a slightly different approach anyway because he has statutory powers in relation to the financial administration of government, but certainly the CMC, if they perceive that it is matter that the Ombudsman should have - it is not a criminal matter, it is not misconduct by an individual person but the decision made has been an administrative decision which may well have been wrong, not legally wrong but maybe wrong in terms of departmental requirements - then the Ombudsman has an obligation to take that over. Usually the Ombudsman's brief relates to administrative decisions and actions.

**CHAIR** - Does the parliamentary committee or the commission have any educative role and, if so, what?

**Mr HOOLIHAN** - The CMC has an educative role and in actual fact, anecdotally, I suppose I should put it, because we are considering some matters which were raised in our public hearing last week, but they are capacity-building within units of public administration; they have seminars to try to raise the profile of honesty and integrity within individual departments and they do quite a lot of that.

**Mr FINN** - And legislative review is part of that education and preventive role. So with things like the rollout of tasers, we introduced a taser trial and CMC had a role in looking at that trial. We have had issues of management in indigenous communities and the CMC has held public inquiries where they have travelled around Queensland having

public hearings on how best to manage policing in indigenous communities. So they have helped -

**Mr HOOLIHAN** - Gold Coast City Council.

**Mr FINN** - Yes, so they do have a preventative and an educative role. Obviously, that is sometimes where the rubber hits the road in terms of resource allocation -

**CHAIR** - Some might argue that that is a parliamentary or government matter as opposed to a CMC matter. If it is going to be a legislative or policy matter as to how that is going to be dealt with, why should your independent body, the CMC, do that as opposed to the Government in power at the time

**Mr FINN** - That is a question worth asking, but I think that in terms of things like the taser trial, the CMC is the body that has the expertise in terms of overseeing the police force. So if you have a trial like that then they have a role in evaluating that trial and making their recommendations into it. They are probably closer to that than, perhaps, a parliamentary committee.

**Mr HOOLIHAN** - I guess a better example was that they looked into police move-on powers and rights in public space, which could be productive of some very questionable actions by police officers - move on

**CHAIR** - Sound like a reasonable direction for a police officer!

**Mr HOOLIHAN** - Yes, that is right, and I think because of the capacity for those sort of things to go wrong, the CMC carried that out as investigative meetings and submissions.

**CHAIR** - The final matter that I want to touch base with you on is induction process for members of parliament. It has been touched upon a bit. When most people get into parliament get a pat on the back, 'Well done', and you are on your own.

**Mr HOOLIHAN** - We have a three-day induction. I do not know whether it started with -

**Mrs SMITH** - I think it might have started in 2001.

**Mr HOOLIHAN** - We meet with all of the different groups in terms of integrity, in terms of privileges, in terms of standing orders, in terms of how to keep your nose clean. Basically you are here, you are an elected member of the Legislative Assembly and the people of Queensland expect you to be squeaky clean and this is how you manage it. I know one of the groups we met with was media people who spoke about how they deal with members of parliament. I am not sure that some of them followed through with what we were told but never mind.

**CHAIR** - Do you carry that out or does the CMC carry that out?

**Mr HOOLIHAN** - No, that is done by the parliamentary service and I think the Speaker - the clerk's office - manages it.

**CHAIR** - You have a code of conduct, haven't you?



**Mr HOOLIHAN** - Yes.

**CHAIR** - And that is the parliamentary conduct committee?

**Mr HOOLIHAN** - Yes.

**CHAIR** - Okay.

**Mr FINN** - Just before we move on, Jim, you are obviously getting information from us and you will have identified this, but at the core of some of your earlier questions about how you would process complaints is the fundamental issue of devolution, which is what we are grappling with as a committee now. What matters do you devolve back to agencies and how do you define them? How do you work out the significance of matters? We have had evidence to us that in some cases up to 90 per cent of matters referred from a department come back to them for outcome reporting only, which is mainly pertaining to issues within government departments.

One of the things we are grappling with at the moment - and if you are establishing your procedures you are in a good position to work this out from the front end - is how you instil public confidence in the system when matters are devolved back. It is particularly the case when it is the police force. If a member of the public complains to CMC it gets referred back to the police and they then end up with us because they come to us to say, 'We sent it to the CMC and all they did was refer it back to the coppers who made the decision'. CMC has assessed it as a relatively minor matter and it has gone through ethical standards and they are satisfied but the member of the public is aggrieved and we end up having to write to them and say, 'All of this is above board according to us'.

**Mr HOOLIHAN** - They write to us as a complaint.

**CHAIR** - After it has been dealt with by another body?

**Mr HOOLIHAN** - After it has been dealt with by that body, by the CMC or the CMC overlooking the QPS, they will write to us as a complaint and say, 'We don't believe that this happened'. Our role then is to look at the circumstances and if necessary have it investigated by the parliamentary commissioner, but to look at the circumstances surrounding it.

**Mr FINN** - Not only in crime; it could be a public servant whose matter has been referred back to the department's ethical body to deal with.

**CHAIR** - And you could send it back to the CMC if you wished?

**Mr HOOLIHAN** - Yes.

**CHAIR** - And say, 'We believe this is a matter that needs further investigation'?

**Mr FINN** - We could do that. But really grappling with that issue of devolution is critical to working out how your system operates.

**Mr HOOLIHAN** - I think it may be worthwhile if I could just follow on from that. This is something which came up in our public hearing and we have not yet made a decision on it. If you have a look at section 15 of our act it defines 'official misconduct' as a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services if the person is or was the holder of an appointment. It may well be from your own point of view in that front end that Simon referred to that you need to look at where and how the bar is set. We have not yet made any final determination or recommendation but from your own point of view, if you are considering a formation of a committee I think that may well be one of your major grappling points.

**Mr MARTIN** - Have you had the bar set somewhere and there has been a problem or have you never set the bar?

**Mr HOOLIHAN** - The bar has never been set as a definition. There are guidelines and protocols and in section 40 the CMC can give you those guidelines. We can request to say they issue guidelines but even within, and I suppose the police service is the best example of this, what some people perceive as misconduct may well only be a breach of discipline within the police service. If people have the perception there is misconduct but it is dealt with by the police service as a disciplinary matter and there is a penalty imposed, there still could be and sometimes is a perception that they got off lightly because the police treated it as just doing the wrong thing. It was merely a breach of discipline but really this was some moral and ethical thing that they should have dealt with. The bar has never been set. I think the only way that the bar can be set, and it is something that you may need to grapple with, is on a case-by-case basis sometimes.

**Mr MARTIN** - How do you put that in legislation?

**Mr HOOLIHAN** - We have the Crime and Misconduct Act which we are currently reviewing on a three-yearly review. We may come up with some answers in our three-yearly review but at the moment, I have to tell you, that I do not have any advice.

**CHAIR** - It has to be discretionary, though, I would have thought.

**Mr HOOLIHAN** - How do you deal with it in a discretionary way so that those people who make the complaint feel that the discretion, if you like, has been exercised in a fair and reasonable way?

**CHAIR** - You are never going to please everybody, are you?

**Mr HOOLIHAN** - No.

**CHAIR** - If you have a body or a well-respected person then you can say that body or that person has done their job. They believe that this is the situation and that is it.

**Mr HOOLIHAN** - Because of the way the CMC has operated, though there is always a percentage who feel it could have been done better, generally Queenslanders have accepted that the CMC do discharge their duties honourably and honestly. If they say, 'We've looked very closely at it and we don't believe that anything untoward has occurred', then the majority of citizens accept that they have done it properly.

**CHAIR** - Because often if it is too prescriptive you might miss out something and then the person has just as much as reason to say -

**Mr HOOLIHAN** - If you make it too prescriptive what happens to the things you do not prescribe?

**CHAIR** - That is right.

**Mr HALL** - We have been charged to make a recommendation to Government consistent with our terms of reference, and the question of retrospectivity raises its head every time -

**Mr HOOLIHAN** - In terms of legislation?

**Mr HALL** - No, in terms of what may or may not have happened in the past - should we have a commission of inquiry or should we recommend that sort of thing. It has been put to us by a couple of witnesses that perhaps it is better not to go back down that track because that could cause a new start to any organisation to be problematic. They did that in Ireland and it cost millions of dollars and all it did was make a lot of lawyers rich and nothing was achieved. Have you a view on any of that?

**Mr HOOLIHAN** - I have a personal view, not as chair of this committee, that retrospective legislation or retrospective anything is abhorrent. You could have all the inquiries you like but not necessarily retrospectively, mainly to find out what occurred and to make sure that it does not happen again. But as a result of any of that I am very loath to countenance anything retrospectively. That is a pure and simple personal comment.

**Mr FINN** - I would not be establishing a committee with powers to investigate retrospective matters. I think parliament has enough power to set up a review into retrospective things, quite separately from giving that power to an established committee.

**Mr MARTIN** - Your committee has a role in appointment of the CMC commissioner?

**Mr HOOLIHAN** - Yes, the commissioner and the part-time commissioners; we make recommendations as to their appointment. Certainly it is done by public advertising and nomination, but we meet with prospective candidates and make recommendations.

**Mr FINNIMORE** - The appointment process is run by and the appointment made by the relevant minister - currently the Attorney-General. Any nomination cannot go forward unless it has the prior bipartisan support of the committee.

**Mr McKIM** - So you have a veto?

**Mr FINNIMORE** - In effect, yes. Similarly, the parliamentary commissioner is an officer of the Parliament and formally appointed by the Speaker, again with bipartisan support of the committee.

**Mr MARTIN** - So effectively that means that the Opposition has to sign off on it?

**Mr FINN** - For all intents and purposes the Opposition has to agree, which is what you want anyway. When putting these people into these positions you want them to have the confidence of both sides of the House.

**Mr MARTIN** - From a government perspective you'd want the imprimatur of approval from all sides.

**Mr FINN** - Yes.

**Mr MARTIN** - Our task is to come up with a recommendation as to whether we need a body and, if so, what sort of body. If I asked you to do a SWOT analysis, tell me what the strengths and weakness of your model are?

**Mr HOOLIHAN** - The real strength is that the CMC in Queensland is, and has been, independent of Government. To some degree they may appear to have powers that no-one else has, and there are powers they have that others don't; that is where oversight comes into it. The people of Queensland have seen the work they have done and by and large accept that they are fiercely independent. Governments don't control them. They are there for the benefit of the community and those people they oversee. There are some weaknesses that we are grappling with concerning devolution. Christine may have her own point of view about weaknesses. I find that there are some limitations on our powers as a committee to obtain some information but any information that we need or request has never been withheld by the CMC. I think that comes from continuing dialogue between the CMC and the committee and our insistence that things not only appear to be done but actually be done properly.

**Mr FINN** - A strength is the three-yearly review of the act and having a body that oversights them. There are some people who believe that any crime watchdog body will fundamentally corrupt itself sooner or later.

**Mr MARTIN** - Is there a threat of that?

**Mr FINN** - Yes, I think there is a threat with any organisation that that can happen, in fact with any institution in society but particularly crime watchdogs or crime oversight bodies. One of the strengths of our system is that it has a parliamentary committee that oversights it. It has a commissioner you can call on and who has extensive power. It requires bi-monthly reporting and three-yearly review. You have always to be doing that active oversight process. Every term of parliament reviews the act and can make recommendations about fundamental change to that body.

**Mr MARTIN** - Is there anything else, in your experience, that we should learn from?

**Mr HOOLIHAN** - In my experience, no, but there may well be instances of things that we have never come across yet, but I think we've run across a fairly wide spectrum.

**Mr MARTIN** - How important do you think it is to get the right person as commissioner?

**Mr HOOLIHAN** - Well, I guess you're never going to know really but it works or appears to work in terms of the joint meetings. We have the assistant commissioners, the part-time

commissioners, the commissioner and on many occasions we have the chief legal officer at those meetings, so it's not just with the commissioner.

**Mr McKIM** - In terms of your three-year review I assume the results of that would be publicly available?

**Mr HOOLIHAN** - Yes.

**Mr McKIM** - Are you able to give an indication of the timeline for the review that's currently underway? I only ask because it might actually inform some of our deliberations.

**Mr HOOLIHAN** - We are due to report during this term of parliament.

**Mr McKIM** - When does that finish?

**Mr HOOLIHAN** - In theory this Parliament can run until 15 October without proroguing. If it's prorogued, the election act requires a minimum of 26 days and a maximum of 54 days for an election.

**Mr McKIM** - So, you probably won't report any time in the next three or four months?

**Mr HOOLIHAN** - We would possibly report by April or May. The report from the 2006 committee was completed and was tabled by me after I took over as the chair.

**Mr FINN** - We can keep you informed of progress through Stephen. We held our public hearings last week. The transcripts of those public hearings don't become public until the committee has signed off on them, but when they become public you'll be as informed by those witness submissions as we were. The CMC itself put in a submission with 12 or 13 recommendations.

**Mr HOOLIHAN** - And they have been tabled and published.

**Mr FINN** - Yes, so Stephen is able to get a copy for you.

**Mr HOOLIHAN** - A little light reading; it is 147 pages.

**Mr FINN** - It gives you an idea of where they see we should be changing the act or the operations.

**CHAIR** - Thank you all for coming along and answering questions and giving us an insight into the committee.

**DISCUSSION CONCLUDED.**

DISCUSSION WITH Mr ROBERT NEEDHAM, CHAIRPERSON AND CHIEF EXECUTIVE OFFICER, CRIME AND MISCONDUCT COMMISSION.

**CHAIR** (Mr Wilkinson) - Thank you very much for coming along and for giving up your time. We appreciate it.

**Mr NEEDHAM** - It is my pleasure, Mr Chairman. I have no submission, of course, we didn't make any submission to your review, but I am pleased to be here today. I assume you are interested more in my comments about paragraph (b) of your terms of reference, about whether you should have an ethics commission. I find it fairly difficult to make a categorical statement because I don't know enough about Tasmania and the size of your public service, the size of your police service, however as a general rule I would submit that an ethics commission serves its society really quite well.

It is not the be-all and the end-all, it won't solve all your problems; it will be and it should be a part of an overarching ethics framework within your society. That's made up of a number of elements: the rule of law itself, your courts, your Auditor-General, your Ombudsman, if you have one in Tasmania. In Queensland, we have what's called the Integrity Commissioner which is another part of it, but it's all the various bodies that are interested in these sorts of aspects. It should involve your public service commission, or whatever body is in charge of the overarching effectiveness and the operation of your public service itself, and all of those areas working together should work towards the goal of integrity in the public sector and in the political and the public service life within your community.

Integrity is not something that can be imposed by a body such as the CMC, integrity is something that must be embedded within the organisations. In Queensland where we have 10 000 sworn police officers, I often say to them that the CMC cannot force integrity upon an organisation of that size. Our investigating a few complaints, our prosecuting a few people is not going to embed integrity in 10 000 people plus the 4 000 public servants, non-sworn officers, within the service. Integrity must be embedded within the organisation, and I see it as our role to work with the senior levels of the police service, and indeed in all public service departments and in all what we call units of public administration, which are local governments and various public sector bodies. It is our job to work with the senior executive in all of those organisations to assist them in instilling integrity in those various bodies.

**CHAIR** - How do you do that?

**Mr NEEDHAM** - We do it in a couple of ways. The most public way of course is our investigations in the serious matters. I might say we get 3 800 or 4 000 - it varies a little bit from year to year - complaints each year. About 1 200 or so of those are matters that are really not within jurisdiction or do not need any further work, but of all those others, most of them we send back to the agencies to investigate themselves. We investigate only about 100 matters each year ourselves.

We do that for those very high-profile public matters, say an allegation against a premier or against a minister or against a senior public servant, or a serious allegation of corruption within a unit of public administration, or a matter that is of great public

interest that we should do, or a matter that suggests there is a systemic problem within an organisation. We do those matters because in many ways it's in the public interest or alternatively we can get the biggest bang for our buck in doing those.

The other matters we send back to the public body to deal with itself. In doing that, we then work with that public body in what we call capacity building; building their capacity to deal with those matters. At times we will assist them; we will put one of our investigators with them to conduct the investigation, if need be. In other cases we will do it, but with them reporting to us and getting advice from us, getting directions from us as extra things they should do, or if they need to utilise any of our powers that we have and they don't, say accessing telephone records or bank records, things of that nature. So we work in with them in that way for dealing with matters. On the prevention side we work in with the organisations to assist them to prevent corruption in the first place, prevent misconduct.

We have a training arm that does seminars. We will go into the organisation if it's a big enough one and conduct training seminars within the organisation on dealing with conflicts of interest, setting up fraud corruption control plans - those sorts of things. All those aspects.

May I hand up to you the standard framework of our organisation, which shows you the various areas. There will be some areas that will not interest you, such as our crime area, I would imagine, and our witness protection. It is more the misconduct area you would be interested in, which ties in with part of what is called witness protection and operation support. The operation support is forensic computing, which of course you need now in virtually every investigation you do, and the surveillance and technical. That is the covert side of it.

**Mr HALL** - In regard to the crime component of it, what sort of percentage of resource and time does that take up in the whole organisation, roughly?

**Mr NEEDHAM** - Probably about a quarter, off the top of my head.

**CHAIR** - Is there any duplicity with that? One could argue in a small jurisdiction like Tasmania that if there was a matter that went before the commission in the first instance that appeared on initial investigation as a criminal matter not involving the police then the matter should be handed over to the police for investigation.

**Mr NEEDHAM** - Exactly.

You should not and we should not be an alternative police service. We were given the role of our criminal function. The Queensland Crime Commission was set up back in the 1980s and in the early part of this decade the crime commission was amalgamated with the then Criminal Justice Commission to become the Crime and Misconduct Commission.

I think it works well for Queensland but I don't know that you would need it in Tasmania. We do have organised crime in Queensland. We do have a fair amount of crime in the way of outlaw motorcycle gangs, ethnic gangs, ethnic groups and drugs. Most of our work is in the drug area but at times it can go into other parts as well.

Part of the rationale is that if you have serious-enough organised crime it is virtually inevitable that there will be some linkages between that organised crime and police corruption. We do occasionally, but only occasionally, strike some links that way and we have had operations that our crime area is doing with our misconduct area working in with them because there is a linkage through to suspected police misconduct. That is not the norm, it is more unusual but the two do work in well together. For us it also works well in scale, in that having a surveillance and technical unit there would be times when we would not have the need for that in the particular investigations we were doing in misconduct but they can always be utilised effectively and well by our crime area. There is no down time because they can always be working on the crime area. There is continuing demand for their services from that area.

**CHAIR** - In relation to surveillance and phone tapping especially, in Tasmania the court has to give the authority to tap phones. Do you have to do that here, do you have to come before a court or is the commission able to do that themselves?

**Mr NEEDHAM** - We do not have telephone intercept powers.

**CHAIR** - You don't at all?

**Mr NEEDHAM** - At all. Neither us nor the Queensland Police Service. I might say that I am hopeful that we will have them by about the middle of next year. The Government has announced they are on their way and that the legislation is being prepared now. When they come we will have to do it in the same way that every other State does because that is in fact governed by the Commonwealth legislation; each State has to adopt complementary legislation so we will do it exactly the same way. Your police do not have their own phone-tapping facilities. As I understand it they use VICPOL and get the material down the line from VICPOL and would do their own internal monitoring, because of the size of the organisation and the linguistics involved.

I would imagine that you would not have the organised crime level in Tasmania that we have in Queensland. We are not as bad as New South Wales or Victoria. It is gradated.

**Mr MARTIN** - Over the last two years in Tasmania there has been a public perception of things being wrong within government, which has led to the formation of this committee. We are tasked with finding whether we need a body or not and also what sort of body. With the Queensland model can you do a SWOT analysis, what you see as the strengths and weaknesses?

**Mr NEEDHAM** - For the misconduct part?

**Mr MARTIN** - Yes.

**Mr NEEDHAM** - The strengths are the fact that we are large enough to have a dedicated team of investigators who can build up their expertise. We have sufficient complaints come through of a serious nature that do warrant investigation by the CMC, so that we can effectively maintain that body of investigators and continue to occupy their time. I would be a little worried in Tasmania as to whether you would have that. I do not know



the size of your public service. Are you able to give me some indication in round thousands, tens of thousands?

**CHAIR** - It would be tens of thousands, I would say, but I could not say exactly.

**Mr NEEDHAM** - In Queensland we have about 250 000 of just public servants in Queensland and then, on top of that we have all the local government and I have often heard it said that the budget for the Brisbane City Council is about the same size as that for Tasmania. So it would be in effect, I would imagine, as if it was an organisation just overseeing the Brisbane City Council, except of course that it would be bigger in that it would have an educative role and other things that in Queensland are done by the State Government and not just the council.

I would be a little bit concerned as to whether you would have sufficient to keep them going all the time to be building them up and maintaining that body of expertise. It is no good having investigators unless they know what they are doing. You would certainly want to have them not just investigating, you would want to have them doing this prevention work as well and the capacity building into the agencies, which would occupy a fair bit of their time. We have that in Queensland. We have that scale but even there we have problems at times because we have just over 300 staff. In the misconduct area alone, from memory, we have about 90 to 100. Then we have all the corporate support and the surveillance and everything that goes on top of it. Even there, at times, we have difficulty with the planning and bringing people through with the expertise to head it.

It is very difficult to bring people in from outside to head these investigative teams and everything so to have the experience to be able to do it, we have to basically build ours and we still find that very difficult, even with the number we have.

**Mr MARTIN** - If you were tasked with replicating Queensland on our scale, how would you go about doing that?

**Mr NEEDHAM** - Probably I'd look at recruiting from similar bodies interstate. The difficulty then is that you have to rely upon the pleasures of living in Tasmania unless you outbid them money-wise, which is generally fairly difficult to do. Certainly, in Queensland we cannot outbid New South Wales and Victoria and certainly not the Commonwealth. They can pay more than our salaries are and I imagine Tasmania is in that same situation, that your salaries are not as high as Sydney or Melbourne salaries. That makes it fairly difficult to engage good people.

Without wishing to promote myself in any way, I think it is necessary that you have a person of very good repute and integrity heading the organisation.

**Mr MARTIN** - That would be crucial, wouldn't it?

**Mr NEEDHAM** - Utterly crucial. If you do not have that, you may as well not even start the organisation.

**Mr MARTIN** - One of the other issues that has come up is whether a new body should have retrospective powers to look at the instances that have happened in the past.

**Mr NEEDHAM** - I'd have no difficulty with that. I wouldn't call them retrospective powers. You would be setting up a body which would be investigating allegations of misconduct and it should be just any allegations of misconduct that are brought to it or that it perhaps perceives itself by its own intelligence. You could set a time line on it. With our crime area, we had a time line put on it which takes it back - now it's a fair way - but at that time it took it back, from memory, about five years. I wasn't there when it was set up. You don't want it to go back forever. I see no difficulty, if misconduct has occurred in, say, five years prior to the setting up of the body, why it couldn't investigate and deal with that.

**CHAIR** - An allegation could come to you today, but obviously the allegation doesn't start on 24 November, it started some time previously so therefore you'd have to have retrospectivity in order to look at those matters and where they commenced.

**Mr NEEDHAM** - Otherwise you'd be telling them to sit and twiddle their thumbs for a fair while until the next instance of misconduct comes to their attention.

If I can give, by analogy, royal commissions. If you were to set up a royal commission to look into some instances of alleged misconduct, they are always looking at alleged misconduct that occurred prior to the time they were set up. They are set up for that very purpose and no-one ever complains that that is unfair, setting up a new body with perhaps new powers to do it.

**Mr MARTIN** - Some of our high-profile academics in this area have suggested that there needs to be a line drawn in the sand and that if we are going to set up an ICAC-style body then it should start with a clean sheet and, in order to achieve that, there should be a commission of inquiry or a royal commission to look at issues over the last couple of years, and deal with them before the new body was set up. Do you have a view on that?

**Mr NEEDHAM** - It is true that a number of these types of bodies have been set up following a royal commission but that's not the only way in which it can be done. You can go to other bodies that were set up. ICAC in New South Wales was set up without any royal commission. It was set up in about 1989, from memory, prior to the Fitzgerald reporting.

There is no reason you must have a royal commission first. You can set up your standards commission and charge it with dealing with any misconduct that has occurred since this date - say, about five years before its commencement date - and it can go on from there.

**CHAIR** - There has to be a term of reference to look at, as opposed to just sending out this commission on a fishing expedition to see whether there is anything in order to commence a standards commission or ethics commission.

**Mr NEEDHAM** - With a standing body such as an ethics commission that you are looking at, its terms of reference really come from its act as to what its function is and what it is to look at.

**CHAIR** - Is your act a good act to follow?

**Mr NEEDHAM** - Yes and no. I like the structure but I wouldn't suggest you follow our act to a T because it suffers from one defect that I raised with our parliamentary committee again, just last week, at their three-yearly review hearing.

This act is a combination of the Criminal Justice Act and the Queensland Crime Commission Act. When they were amalgamated, my understanding is that the drafting instruction was to bring the two acts together into a new bill by making minimal changes, and that has caused some problems.

So, putting those sorts of things aside, like getting a warrant for using surveillance devices, we have different provisions under the crime function to those under the misconduct function, which is silly. We should just have uniform provisions for those. Issues of privilege at hearings vary depending on whether it is crime or misconduct. That should be rationalised.

But our structure that you have there, I think, is a good one. I would certainly recommend that you have a parliamentary committee oversighting.

**Mr MARTIN** - You're in favour of them?

**Mr NEEDHAM** - Totally. Some of the other bodies in other States were set up without it and they are gradually all being changed to bring them within that sort of mould. Every body that is set up should have that sort of accountability regime. No body, commission or anything should be set up without an accountability regime. We are accountable to the people of Queensland through our parliamentary committee and through them to the Parliament and then on to the people. That is the way we put it, the Parliament and the people of Queensland through our parliamentary committee.

**Mr MARTIN** - We had evidence this morning from three members of that committee. One of the things I was exploring with them was the fact that there is a majority of government members. Is there any perception in the public that it is there to oversee the issue of control by government?

**Mr NEEDHAM** - No, there isn't. Our act requires that decisions of the parliamentary committee, in most instances, are things they operate on by what is called a bipartisan majority. That means it has to be a majority which is compromised of more than just the government members. It means there always has to be at least some of the opposition members in agreement with the particular section. I have been involved because I was the parliamentary commissioner before I became chairperson; I have been involved with a number of committees since 2002, and in my experience they normally always operated on a unanimous basis and discussed things and worked it out until they reached a unanimous agreement on what they were doing. I came into this without much experience previously with politicians and I had the healthy scepticism of most members of the public, but they really do take their duty seriously and politics, when they get into the committee, seem to be put aside. That is my experience and that is the way it should operate.

**Mr MARTIN** - You have bi-monthly meetings where the committee receive progress reports on various investigations. When I first heard that I was a bit concerned about what degree of detail is received. Say, for example, you were carrying out an investigation

against another member of parliament. If the committee were to receive too great a degree of detail it would put them in a very difficult position of having knowledge about a mate or an enemy.

**Mr NEEDHAM** - That's true. We do not give them great detail; we give them general detail of how the investigation is going, more on the basis of time lines and that sort of thing. We do not give them the finer details of any investigation, but we give them sufficient detail that must at times cause a few uncomfortable moments, but they are bound by confidentiality under the act.

**Mr MARTIN** - Has there ever been a leak?

**Mr NEEDHAM** - I suspected a leak on one minor occasion but in general I have found them to be very honourable in their dealings with the commission.

**Mr MARTIN** - I gather from what you're saying that you haven't had this experience yet, but is there a potential for the committee to ever try to heavy you, or influence you to drop a line of investigation?

**Mr NEEDHAM** - No, that's never happened in the time I have been involved as commissioner or chair. It would be fairly difficult for them to do that under the act. They have no real power to direct us not to investigate any matter. They can ask us to investigate something but that's never been done, to my knowledge. They cannot direct us to not investigate something. If they give us formal directions about how we should do something, those directions have to be tabled in Parliament, so it can't be done quietly, if they were to give us formal directions. That should be in any legislation - if they are going to give formal directions it should be tabled so that it cannot be done behind closed doors.

**Mr HALL** - Robert, following on from Terry's line of questioning. I think in some other States it has occurred that there have been leaks, if you like, where somebody's reputation - whether they are members of parliament or senior bureaucrats - can be sullied or besmirched by trial by media, if you like. Is that a concern to you and are there ways of overcoming that?

**Mr NEEDHAM** - It is a concern. The ways of overcoming it are a difficulty. We find that if we have a big investigation, which is going to be of some public interest, if it goes on for any period of time it is inevitable that at some stage it is going to leak out. You cannot really avoid that because you are going out and interviewing people. You are interviewing witnesses. You are getting files from public service offices. You are doing all these sorts of things and you are speaking with people who do not have bounds of confidentiality, and they can then go and tell other people and it will go on and the media will eventually get it and it will be out there.

When it does, we try to minimise any harm. We generally will only confirm we are doing an investigation. If there are factual inaccuracies; if they are printing things that are disadvantageous to the reputation of the person and it is totally inaccurate, we will correct the record. Otherwise we try to avoid any comment, but it is inevitable that will happen and it will get out there.

**CHAIR** - The Commonwealth Crimes Commission has police officers looking into murders and major crime. I have been involved in a number where it has been kept in-house and nobody knows what happens and the actual witnesses are not allowed to say anything, as you would be aware. They seem to do it quite successfully, don't they?

**Mr NEEDHAM** - If we call witnesses to closed hearings we can put obligations of confidentiality on them, but we do not call all witnesses to closed hearings. There are a lot of peripheral witnesses that we just interview in the normal way. As I say, when we are getting files from public service offices they then know that there is an investigation into this particular matter and it will eventually get out. We were doing inquiries checking the flow of money orders through the postal system and, would you believe, to check those you have to go through boxes of old cancelled money orders. It is not computerised in any way, so we had staff sitting for weeks and going through these boxes trying to trace the flow of money orders. Someone from the post office spoke to the media and they got a very garbled and an incorrect version of what was going on, but they cobbled their stories together and put it out there. It is terribly difficult to stop. Might I say, I am very impressed that since I have been there - almost four years - I have never had an instance where I thought a leak came from within the commission.

**Mr HALL** - I want to ask about the name Crime and Misconduct Commission - CMC - here in Queensland. Obviously we are charged with making a recommendation to government as to what sort of process or scenario that we want to set up and, quite rightly, we have talked about the crime aspect and the fact that we do not have the same level of organised crime - that I know of - in Tasmania, so that is something we may or may not talk about. If we took out the word 'crime' and just left the words 'misconduct commission', that to me has in some ways negative connotations. I am being hypothetical here, but do you have something you could recommend that we may use?

**Mr NEEDHAM** - I do not know whether it would be suitable for Tasmania because of the size and the work that would be there. I would prefer - and there is no media here; I do not want them reporting it - a name that did not use the term 'misconduct'. In Western Australia they have the Corruption and Crime Commission, with the word 'corruption' first because their crime role is really terribly small. You might not like to use the term 'corruption' in a smaller place like Tasmania because it might sound too bad, if you know what I mean, but the problem I have with 'misconduct' is that it can lead to a misconception on the part of the general public. Really what we are involved in with our own investigations is more the corruption aspect, the serious matters, and we have this issue where every complainant thinks that their complaint is the most important ever made and should be investigated by the CMC. I feel that if the term used was 'corruption' it would give more of the impression to the general public that we are dealing with that more serious level of misconduct, because most misconduct, the smaller misconduct that technically comes within our jurisdiction, is really managerial.

As I said before, to get that ethical culture within an organisation - if I can give an easy example, in the police service, a large problem is of course excessive force used in arresting someone. We do not investigate every allegation of excessive force and neither should we, and really those sorts of matters need to be dealt with at the local level within the police service so that the inspector or the senior sergeant in charge has to take responsibility for these complaints about excessive force used by his troops and to get to the stage where, when they are dealing with this all the time, instead of washing their

hands of it and sending it off to the CMC, they deal with it themselves by instilling into their troops that this is not the way to behave and you can more effectively operate doing it this way instead of thumping people. Yet when we have an allegation by a citizen they think that we should investigate it, and it is very hard for us to get the message across to the normal citizen of the way it needs to be done and I think it is contributed to by this term 'misconduct'. So if I had my time again, I would prefer to be called the Crime and Corruption Commission.

**Mr HALL** - In our case, we take out the word 'crime', but then we are only looking at corruption, aren't we?

**Mr NEEDHAM** - Yes, and that might be too drastic for a small jurisdiction like Tasmania. Whether you call it something else - you are referring to it as an ethics commission or something and perhaps you could use a term like that.

**CHAIR** - The standards commission, somebody said.

**Mr NEEDHAM** - Yes, perhaps some term like that might better suit your jurisdiction.

**Mr HALL** - As you say, you have more than 300 staff and obviously they have a lot of different roles within the organisation, but are your staff drawn from ex-policemen, ex-military security, ex-all of those areas?

**Mr NEEDHAM** - We are unusual in that we use serving police on secondment to us. We are the only body I know of that does that. Most of them use ex-police from other States, ex-AFP, these sorts of situations. We do have some ex-police who are with us. We have some ex-UK police who have come to Australia and work with us. It was set up that way by Fitzgerald and that suggestion came from him. Pros and cons - the pro is that in investigating things within the police service they know how the service works, they know how they think, and that is an advantage. They know how to get into the place and find out things. If you had people who had no inside knowledge that could be a disadvantage. If we are doing a biggish investigation into a department, we try to get an officer from that department's ethical standards unit or whatever it is called in that organisation, one of their senior investigators, seconded to us and put onto our investigation team, because they know how things work in that department. If you have something like Queensland Education, it has 85 000 employees, so it is very handy to know how things work in an organisation as large as that if you are investigating something in there. So it has that advantage of having the police.

The disadvantage is that some of them see it as a retirement job, that it gets away from the hurly-burly of Saturday nights on the streets of Brisbane where there are drunks and fights and all other sorts of things. It is more of an eight to four sort of job.

They do not have to go out in all weather, they like it and they just stay on, which is not good, and we are putting steps in place to ensure that does not happen. I think that ideally they should be with us for a period and then go back.

A further advantage, and I am sure that it does work in some cases, is that they learn ethical standards while they are with us. When they are with us all investigations are

conducted in the most scrupulously ethical way. So they can learn the proper ways and that you can get results while doing things properly.

And they take that back, we hope, with them into the police service. Out of the 13 assistant commissioners, or 15 if you count the deputies, more than half of those have been through the CMC or CJC. So your senior levels in the police service have served their time at the CJC or CMC.

We think that helps; it sets a bit of a standard in with them and they know us and do not see us as the sort of two-headed monster, which used to be the way in the early days that CJC was feared, and it should not be by the senior officers, as long as they are not corrupt. It should be seen as a partner to assist them.

**Mr HALL** - We heard some evidence this morning that within the Parliament you have a separate ethics and privileges committee and there is also an integrity commissioner. Do you think that those two mechanisms have assisted in members of parliament in particular keeping their noses clean, if I can put it that way? Have they assisted? You obviously look after complaints against local government also; are they a greater source of annoyance or work to you than State Parliament?

**Mr NEEDHAM** - In the past the local governments have been a bigger problem. Backbench members of parliament very rarely become involved with us. Our work with parliamentarians is normally with ministers. The complaints of improper conduct and so on are normally against ministers and the Speaker. The CJC had an inquiry into parliamentary expenses, use of travelling allowances and those sorts of things. That was a similar situation with our inquiry with respect to the Speaker. It was parliamentary allowances. We really do not have that much to do with backbenchers.

The ethics commissioner does not apply to backbench members of parliament, he applies to ministers and senior public servants. The idea there is that if any of those particular officials have concerns about their own conduct as to whether something might, say, constitute a conflict of interest, they can approach the integrity commissioner and receive a written advice.

**Mr HALL** - But members of local government do not have that same -

**Mr NEEDHAM** - No. In Queensland very few of our local governments have the party-political system. Might I say that the party-political system can have its advantages in controlling people more. I smile a little bit because from talking to your Mr Wilkinson I understand your upper House is mainly comprised of independents.

**Mr HALL** - You have three independents here and unfortunately we have a Nick over there. He's a party person.

**Mr McKIM** - I am not in the upper House. Do not smear me with that update.

*Laughter.*

**Mr NEEDHAM** - We have found that with independents in local government you can have factions that form between them and all sorts of allegations and fights go on and it can become very messy.

**Mr MARTIN** - I had 20 years in local government.

**Mr NEEDHAM** - It can become very messy, but not always. The problems arise more often in those areas where there's very fast development going on, and there's money in development. Wollongong in New South Wales was a prime example of it. There are then temptations, there is then money, there are political donations to councillors coming up to election time, and those sorts of things, and they cause problems.

**Mr McKIM** - I wanted to go back to the way that you are constituted in terms of the majority of your investigators being seconded from your police service up here. What about the issue of one of your investigators in that circumstance investigating someone who may have been and may again be their boss in the police service? How do you get around that issue, if you think it is an issue?

**Mr NEEDHAM** - Well, they would never investigate someone they had been very closely involved with. We have 10 000 sworn police in Queensland, so if it did happen that they were to be investigating someone that they knew well, or that they had been under them, that had been their boss, all they'd have to do was say to us, 'Sorry, I know that person too well', and they'd be taken off the investigation.

**Mr McKIM** - Do your investigators who are seconded over from the police service conduct investigations into allegations against police?

**Mr NEEDHAM** - Yes.

**Mr McKIM** - Is that a sort of fox in charge of the chook house scenario?

**Mr NEEDHAM** - We do refer to ourselves as a civilian oversight body; all our senior officers are civilians. Most of them when they get to that top level are lawyers. Any police officer in doing an investigation is always under the final supervision and control of a non-police officer, so those sorts of things are taken very much into account. I would think in a State as small as Tasmania it would be very difficult for you to second police officers in to be investigating police because it would be too small.

**Mr McKIM** - Yes, I was going to ask you that.

**Mr NEEDHAM** - I really think it would be just too small to do it.

**Mr McKIM** - In other words, the police service would be so small that there would be a risk of those overlaps occurring on quite a regular basis.

**Mr NEEDHAM** - I would think so, yes.

**Mr MARTIN** - Coming back to the issue of corruption, your definition of corruption, is it limited to things that are illegal?



**Mr NEEDHAM** - In our act they use the term 'official misconduct'; it is defined in our act. It basically means an improper act by a public official, which is either a criminal act or a disciplinary matter that is so serious that it could warrant the dismissal of that officer. So it's not the very minor disciplinary matters, it has to be a matter that is serious enough to warrant dismissal. But that is still pretty broad because anything that is a criminal offence, such as stealing a biro, is technically official misconduct. We do get lots of things referred to us, even sexual harassment, workplace harassment. If they are bad enough they can warrant dismissal, yet they're clearly not the sorts of things that we should be investigating. They are managerial issues, and need to be dealt with within the workplace in the normal way.

**Mr MARTIN** - Where do you draw the line at what to investigate and what not to investigate?

**Mr NEEDHAM** - The system we have is this. The head of each unit of public administration is obliged to report to us any issue, any complaint or any information that he or she has that raises a reasonable suspicion of official misconduct. They report them to us. We do that these days to a large number of them by a system of schedules, and I won't go into the details. If you were setting it up, I'd suggest that whoever is drafting your bill come up and talk to us and we'd go into this in the finer detail.

We assess it to see whether it is a matter that we should investigate or whether we should send it back to the department. If we send it back to the department, the very lowest level matters, we will tell them that we want outcome advice only. They know that when we are sending it back we're not saying, 'You have to investigate it'. It might be a matter that you can deal with by way of informal resolution. If it is a management matter you don't need to investigate, you just need to get in and do your management role. It might be a matter that's best to go to mediation - those sorts of issues. That is up to the department as to how they handle it. The more serious ones we will say to them, 'You investigate or you deal with it, but we want you to give us a report before you finalise it.' If we think we need to keep an eye on how they're going to do it or check that they've done it correctly or don't need to do more, we might do that. A more serious one will require them not only to report to us before they finalise it but also to report to us on an interim basis on the way through as to what steps they are taking and how they are proposing to investigate it. So there are those various ways that we deal with it. Then we have a monitoring area that monitors their investigations. These reports that come back to us, we check their investigation to see if we are happy as to how they have done it and we can require them to do more work on it or whatever. If we are really unhappy, and we do this on a number each year, we take the matter over and complete it ourselves. On top of that, we also do audits into the departments. Every now and again a department will be audited. We go in and take a selection of their files and audit how they have dealt with a particular matter. We also do audits of just checking their systems to see that the systems they have in place to deal with the matters are appropriate. We don't just leave the departments alone; we do all these things on top of it. That is becoming a larger and larger part of our role.

**Mr MARTIN** - A hypothetical situation: a senior minister, a day before a State election is called, signs a contract against the advice of his department with a private company that gives them monopoly rights for  $x$  number of years and the company happens to be owned

by a former government minister. It might not be anything illegal, but would you investigate that?

**Mr NEEDHAM** - With any elected official, which includes ministers, our role is limited to conduct that could be a criminal offence. Official misconduct has to be a criminal offence or a disciplinary matter so serious that it could warrant dismissal. You can't dismiss elected officials, so for elected officials it has to be, at its worst on the allegation, a criminal offence. In a circumstance such as that we would be looking very closely to see whether there was a criminal offence. In those circumstances as you posit them to me hypothetically, it raises the possibility that there is a criminal offence involved. There are all sorts of criminal offences dealing with members of the executive. If they carry out their duties in an arbitrary fashion rather than in accordance with how they should properly be carried out, technically under our code - and your code is somewhat similar to ours - it can be an offence. So conduct of that sort we would be looking at.

**CHAIR** - The Queensland code and the Tasmanian code are pretty well similar.

**Mr NEEDHAM** - Yes, your code was based on the Queensland code.

**CHAIR** - Can I run a couple of things past you? Acting as the devil's advocate, one might argue that there are already a number of oversight committees within Parliament, which would include the Public Accounts Committee, Public Works Committee, Government Business Enterprise Committee - which we have, where members of parliament are able to examine certain government business enterprises or State-owned companies - Estimates committees, parliamentary select committees, Parliament itself - House of Assembly and Legislative Council - Auditor-General, Ombudsman, Privileges Committee, and the media. Some might argue that the bodies are there so therefore do we need any other bodies? What is your answer to that?

**Mr NEEDHAM** - The answer to that is that you have left one body out, and that is the police service. None of the bodies that you mention can really investigate the more serious misconduct - criminal misconduct. None of those bodies can investigate that. The one that would have to is the police service, because it can. Now in the past it has been found that investigations of ministers and people of that ilk are generally not terribly well carried out by police. They are investigations that are in some way a little bit daunting to take on. I do not know of too many situations in Australia where a police service has investigated and charged a minister of the Crown. I have been involved in commissions where we have charged quite a lot of them in Queensland. We have an ex-minister under charge at the moment in Queensland.

You really need a body such as the special commission set-up to be able to take on that role of investigating a serious allegation against a minister of the Crown.

**CHAIR** - In a jurisdiction the size of Tasmania one could say you have a secretariat that would have to be properly resourced. You would have maybe a full-time commissioner with a number of part-time commissioners, depending upon work involved. Does that seem to be the fair bones of a commission?

**Mr NEEDHAM** - For an ethics commission you would need a commissioner. We have part-time commissioners. Ours is the only State with a commission as such. I am the

chair and the full-time member. I have four fellow commissioners who are all part-time. It works okay. In every other jurisdiction they don't have that and it works okay. So you can go one way or another. Part of that, I am sure, was Fitzgerald's accountability, that you have not just all power in one person but you have this body of five. I am easy with it; you could go either way. If it was a smaller organisation you might want to save the money of the part-time commissioners. You would need a secretariat and corporate support - the sort of thing we have here.

**CHAIR** - Are you able to say what numbers you would need? Are you able to say what would be an appropriate amount of resources?

**Mr NEEDHAM** - In the second one I have given you is the break-up of our misconduct area. We have three teams there. You would need at least one team.

**CHAIR** - A team involves how many people?

**Mr NEEDHAM** - We work with multidisciplinary teams and that is the strength of them. So you would need to allow for training, recreation leave, for a bit of a build-up. You would need at least three investigators; that would be the very minimum. You would need at least one financial investigator, preferably a couple. You would need some intelligence analysts - at least two or three. It is very hard to think in such small numbers. It would be very difficult to have a surveillance team with such small numbers because for surveillance to be operating properly we have just increased one team from five up to six. If you are tailing someone you can't do it with one person or two. You have to have a number of people in contact, so one is dropping off and another one is coming on, changing around all the time. With a senior person you need six or seven on that. Then you have to have a couple of technical people, the ones who can break into your house and put the bug in the ceiling.

**CHAIR** - Some might argue, why don't you tap into the police force and use the expertise from that?

**Mr NEEDHAM** - That is fine until you are investigating the police. I do not know whether you could do it on a cost-pays basis, like you have with the TI using Victoria Police. I mention that because it is the closest physically to you. You pay for expertise from their office as it is needed for those sorts of things. It would be very difficult to see how you could do it in a very small organisation. When you have a very small group in a small area you would have to be changing your covert operatives around because their cover gets blown. They could go into your investigation team then but you have to bring in new blood, people who are not known. It would be very difficult to do it in a small jurisdiction.

**CHAIR** - If needs be you could always bring in more, couldn't you? If you started with a number, then, depending on the work involved, you may have to employ more or you may have to outsource people to do the work et cetera.

**Mr NEEDHAM** - Yes. It would not be easy in that sort of way.

**CHAIR** - Should the commissioner come from within the State or should it be from outside the State because of the perception issue?

**Mr NEEDHAM** - The commissioner needs to be a person of the utmost integrity, and with sufficient ability to be able to do the duty. I do not see any reason why it could not be a person with those attributes from within the State.

**Mr MARTIN** - Who should choose the commissioner?

**Mr NEEDHAM** - In Queensland, they are required to advertise nationally for my position. I cannot then say how it is done because I was head-hunted, I did not apply for the position. I presume there is a selection panel put together for it.

**Mr MARTIN** - Should it be the Government or the Parliament?

**Mr NEEDHAM** - In Queensland it goes through the minister responsible; that used to be the Premier but now is the Attorney-General. Under our act, before it can go on for appointment to Executive Council it must receive the bipartisan support of the parliamentary committee. So in effect the parliamentary committee has total power of veto. That is the way it should be. It must be done on the basis that the person who is appointed is supported by both the Opposition and the Government.

**Mr McKIM** - Did you appear before the committee before your nomination was confirmed?

**Mr NEEDHAM** - Yes, I did. They knew me because I was at the time the parliamentary commissioner. It was quite funny actually. They asked me to appear before them and I assumed it would be almost a formality because I had known them for three years but they grilled me for about three-quarters of an hour. That is appropriate. With our commissioners, there is no selection panel for them. It is advertised. It goes through the Attorney. The Attorney is required to consult with me before recommending it to the Executive Council and again there must be bipartisan support from the parliamentary committee. The parliamentary committee always meets with any candidate for part-time commissioner and questions them, interviews them, quizzes them.

**CHAIR** - So we have the commissioner and the deputy commissioner. We then have to look at the size of the secretariat and powers such as telephone intercepts, mandatory answering of questions et cetera. We then look at resourcing. We look at outsourcing. We look at how it will interact with other bodies. We look at retrospectivity or not, whether that initial inquiry will draw a line in the sand. We look at the privacy issues, the naming of the body, the independence of the commission, whistleblowers, party donation disclosure, education arm of the commission, training, prevention work, continuing professional development, and an induction process for members of parliament. Is there anything else?

**Mr NEEDHAM** - Some of those issues are ancillary but they are not parts of an ethics commission. Things like party donations are matters that an ethics commission might want to comment on, and we have made recommendations in the past about those things, but that is separate and apart.

One matter was mentioned before and I think it is a good idea: this requirement to advise the commission about any allegations of official misconduct, even though it is a nuisance, a lot of things are sent back and we are looking at ways of streamlining it

further. We have already done it to a certain extent. The advantage of it is that we keep computer records of complaints and we can see if an issue is bubbling up within a particular organisation. A simple example was policing in the CBD. On Friday and Saturday night it becomes like a war zone there, but we started at one stage to get a lot of complaints about use of excessive force by police. We ended up charging one particular police officer with that. More importantly, as the issues bubbled up it was realised there were too many coming through and we were able to take it up with the police service. The assistant commissioner and the chief superintendent of that region took it on board and, on our advice, altered their method of policing with the troops on the ground. The number of complaints fell away totally.

So that monitoring of what is going on is an important part of the commission. That is why I think that obligation to report is important. It has advantages in that the department can be seen to be not sweeping anything under the carpet. We report it to the CMC. It has advantages for politicians, of course. They can say, 'I have sent it to the CMC and I will wait and see what they say'. It can be used that way and it does get used that way at times. Overall, I think it is a good way to have your organisation structured.

**CHAIR** - Thank you very much for your expertise and time.

**DISCUSSION CONCLUDED.**

## DISCUSSION WITH Mr KEVIN LINDEBERG.

**CHAIR** - Thank you very much for the time you have made available to speak to us today to provide us with your expertise. As you've probably seen, we will open the forum up to you to say what you want and think is appropriate and then we'll ask you some questions.

**Mr LINDEBERG** - Thank you very much, Mr Chairman. I'd like to make an opening statement which I think will go for about seven minutes, if that's okay, maybe a bit longer. I've tried to cull it.

**CHAIR** - Sure.

**Mr LINDEBERG** - First of all, my senior counsel, Mr David Rofe QC of Sydney and my lawyers, Ryan and Bosscher, extend their apologies to the committee but they are caught up in respective matters before the court so I am appearing here by myself today.

Mr Chairman, thank you for your kind opportunity to appear before your committee today to speak to my public submission No. 24A which derives from my first-hand whistleblower experiences in the 18-year Heiner affair. The body of evidence gathered over its life is prodigious and appropriately available. I suggest that there are two issues of concern which justify my appearance here today. Their function, under the overarching democratic principle of equality before the law for all, was described by the 18th century attorney, Sir Thomas Fuller, and later by Lord Denning. Lord Denning put this principle most succinctly during his 1989 interview when he said:

'There is not supposed to be one law for the rich and powerful and another for the poor and oppressed so next time anyone should come along and say to you, "Do you know who I am?", I hope you would find Fuller's words useful: Be you never so high, the law is above you.'

Mr Chairman, the two issues of particular concern should march together in harmony between the governed and the governors. Their resolution will maintain public confidence in and respect for the institutions of government so that people are not disposed to take the law into their own hands to remedy grievances.

The first issue stems from the famous warning penned 2 000 years ago by the Roman writer and satirist, Juvenal, in his sixth play, 'Quis custodiet ipsos custodes?' or 'Who shall watch the watchers themselves?'

The second issue stems from the accepted democratic principle that the prosecutorial and public interest discretion must be exercised by crown decision makers consistently and predictably in materially similar circumstances. It is:

'Be it monarch, president, politician or public official, what good is an oath of office if a breach does not invite appropriate punishment?'

Ironically, I understand your mission rides on the back of a local Tasmanian scandal dubbed 'shreddergate' by the media.

**CHAIR** - Not all of it but part of it. Of course, as you probably know, in relation to this committee, within Tasmania we have privilege with the committees so that everything you say will be privileged. Outside, though, there is no privilege.

**Mr LINDBERG** - I understand that, Mr Chairman. I am fully aware of that.

While, undoubtedly of potential seriousness, it is, might I respectfully suggest, a second cousin to the Heiner affair which has for a long time carried, here in Queensland and throughout Australia and the world, the same title, 'shreddergate', first penned by University of Queensland Associate Professor, Bruce Grundy, in the School of Journalism around 1994 when he started to write articles about this much-evolved scandal.

Mr Chairman, who shall watch the watchers is the eternal question. It is one of the most important questions all free men and women, the governed, must ask and they must receive satisfactory answers from the governors before any law enforcement structure is entrenched in a system of government. The complexities of modern society have caused many governments to embrace the idea of introducing so-called integrity tribunals as a solution to keeping the arteries of government open and accountable.

The unresolved Heiner affair, however, demonstrates that this solution has Orwellian overtones in that the so-called integrity tribunals can become so fearsome and so capable of intimidating elected officials that they stand for integrity's exact opposite. They can become laws unto themselves. It may matter little to them that the law obliges them to be held to account by politicians through all-party parliamentary oversight committees on behalf of the people. They may, in fact, blight democracy and may, in matters of potential high-level political wrongdoing, such as the Heiner affair, cause parliamentary oversight committees to become crippled internally by the majority government members acting in singular concern for the political survival of a government instead of respecting their duty to uphold the principle of government by the rule of law.

With their decision-making capacity to order a review which could lead to criminal charges being laid, these criminal justice parliamentary oversight committees prima facie breach the doctrine of the separation of powers. They have the capacity to obstruct the administration of criminal justice for an affected citizen or the public interest because their criminal justice parliamentary decisions are non-justiciable due to Article 9 of the Bill of Rights of 1689.

In my opinion, this contagion of the administration of criminal justice through the introduction of integrity tribunals held accountable only by politicians requires very careful and deep consideration in the 21st century.

Mr Chairman, the duty of public officials to refer to integrity tribunals all suspected official misconduct which comes to their attention during the performance of their duties carries significant legal ramifications which have not been fully comprehended yet.

The Heiner affair has made apparent some of these ramifications, including even the decision-making role of the head of State as a sworn decision maker pursuant to the reserve powers albeit in exceptional circumstances when obliged to consider an issue of alleged persistent illegality involving suspected official misconduct on the part of a

government. Even in 2008 the whole edifice of a stable government can be threatened if government by the rule of law is not respected or enforced without fear or favour by crown decision makers.

In the Heiner affair the prospect of charging an entire cabinet was plainly too horrendous to contemplate by crown decision makers involved. The law was abused and twisted to justify its clearance which then saw an entire system collapsing around a demonstrably flawed clearance just because an integrity tribunal declared what was always wrong to be right. It gave the naked emperor imaginary clothes of legality.

The Honourable James Spiegelman, the Chief Justice in New South Wales, speaking at ICAC and an Interpol Conference in Hong Kong in January 2003 made the following observation on the interconnectedness of modern governance and its potentially fatal Achilles heel. He said:

'Legal institutions are interdependent. In the area of criminal justice the police force, the prosecution, the judiciary have a symbiotic relationship in which the performance and functions of each depends to a substantial degree on the capacity and integrity of each of the others. The same kind of relationship exists in other areas of law, including the broad range of regulatory authorities and adjudicating bodies including tribunals. If the powers given to any participant in this process are abused by being exercised improperly, eg. to serve the interests of those who wield the power, the whole system is distorted, indeed perverted.'

In these few words Mr Chairman, Mr Spiegelman has captured the essence of the Heiner affair. The affair's systemic perversion of the law is comprehensively captured in the Rofe audit of the affair.

Mr Chairman, in 1990 I was sacked trying to protect my union member's rights to access the Heiner inquiry documents pursuant to law which the Queensland Government and my union knew to be evidence required in judicial proceedings. Both ministers of the Crown and appointed public servants wilfully destroyed those public records. It later transpired that the Queensland Government had known all along that those documents concerned the allegations of child abuse, including the still unresolved pack rape of a 14-year-old female indigenous child in May 1988. This sexual assault, by the way, falls under the category of criminal paedophilia.

I lodged my complaint with the CJC in 1990 and in January 1993 it found that there had been no official misconduct. Its finding is both flawed and fraudulent. At its core it was based on an utterly untenable interpretation of section 129 of the Criminal Code. The implications of the CJC's no official misconduct findings were that it was perfectly legal for the Crown or anyone to deliberately destroy all known or suspected evidence to prevent its use in anticipated and foreshadowed judicial proceedings just so long as those proceedings had not commenced. I objected then and have objected consistently since.

**CHAIR** - A fair objection, I would have thought.

**Mr LINDEBERG** - Well, Mr Chairman, in its so-called nth degree investigation, the CJC never interviewed any minister or chief of staff. It never interviewed the State Archivist,



the departmental CEO, relevant public officials, Crown Law, Mr Heiner or his witnesses, and the list goes on. Only my union member and I were interviewed. It was conducted by a contracted barrister, Mr Noel Nunan. Unbeknown to me at the time he was an ALP member, activist, a former work colleague of Premier Wayne Goss before Mr Goss entered politics. Mr Nunan was a member of the Queensland Association of Labor Lawyers as was the CJC official, Mr Michael Barnes, who recommended him for the review purposes. They were mates investigating a mate.

Both Mr Nunan and Mr Barnes have since been elevated to the bench as magistrates. Mr Barnes is our State Coroner. Some of the CJC-CMC barristers, officials who concurred with this unprecedented and absurd view of the law which prevented charges being laid and which utterly undermined the administration of justice and the right to a fair trial, now sit on the Queensland bench dispensing justice in the name of the Crown.

This committee is aware that a raft of retired eminent Supreme Court judges on the point of 129 independently advised in their August 2007 public statement of concern that section 129 was so clear in its wording and intent that its misinterpretation may have been deliberate so as to advantage executive government and certain civil servants. They called for a special prosecutor to be appointed to investigate the affair. This statement is affixed to my submission. The Beattie and Bligh governments refused. The nine volumes of the Rofe audit in the Heiner affair have found some 68 prima facie criminal offences capable of being laid. The audit took some two years to complete.

Mr Chairman, in coming to Queensland, you may not be judging apples with apples because we, unique among all Australian States, are a unicameral system of government and Tasmania is bicameral. Your electoral system differs from ours. Your Hare-Clark system tends to elect more independent MPs who cannot be disciplined in debating on party political lines. Premier Beattie has declared that the CJC-CMC functions as an equivalent to an elected upper House. That, of course, is patently absurd.

In terms of the contempt shown towards the oversight committee by these integrity tribunals, the Parliamentary Criminal and Justice Committee Report No. 25 is required reading for the committee, I suggest, along with the Queensland *Hansard* of 15 June 1995 at pages 12617 and 12621.

Mr Chairman, there is too much to say so I must conclude. In February 2008, my lawyers, Ryan and Bosscher, lodged legal documents with the PCMC seeking a review of the CJC-CMC's handling of my allegations. In addition to our 55-page application for review, the Rofe audit and the August 2007 judge's statement of concern were also provided. Matters of the utmost gravity faced the PCMC. As of today, some nine months later, we still do not know what steps the committee has taken, if any. It is a mystery. To use Sir Winston Churchill's words, 'It's a riddle wrapped up in a mystery inside an enigma'.

In the opinion of senior counsel, the issues are very simple if the rule of law is to prevail. On the evidence supplied, there only needs to be found the low threshold of a suspicion of official misconduct to lead to the establishment of a full and an open inquiry to get to the truth. Such an inquiry, however, would not only rock Queensland to its foundations but the nation itself because it is known that the Prime Minister Rudd and Her Excellency

Governor-General, Quentin Bryce, are adversely named in the audit. Amongst other things, six serving Queensland judicial officers are adversely named.

The International Community of Archives have long declared this matter to be one of the great shredding scandals of the twentieth century and the Australian Prudential Regulation Authority - APRA - has more recently declared this matter, along with Enron and HIH, to be a high-profile corruption scandal.

Mr Chairman, in 2004 a Queensland citizen was charged and found guilty for the same shredding conduct done in 1995-96. Equality before the law has been undemocratically trashed to advantage the governors over the governed in Queensland. Oaths of office have become quite meaningless in the face of this affair.

In my respectful view, because something is extremely rotten in this State, it would be most unwise for the Tasmanian Parliament to adopt Queensland's so-called post-Fitzgerald model of governance as it now stands. It would be far wiser to wait and see how this matter is finally resolved before the deep south of Australia looks to the deep north for guidance on how to handle allegations of corruption in high places in government. Thank you very much.

**Mr McKIM** - Who should watch the watchers?

**Mr LINDEBERG** - I think, notwithstanding that there has been an extraordinary gap of nine months from the time we lodged our documents with the PCMC to now, and we don't know what they are doing, it may be premature to say that a parliamentary committee cannot watch the watcher. I believe, as I've said in my submission, that what is occurring in Queensland is really a litmus test as to whether or not these integrity tribunals can, in fact, be held to account by politicians. So in that sense, I may say it is an open question, but I think it is also an open question as to whether or not it's a wise thing that we have integrity tribunals because of the impact that article 9 of the Bill of Rights has in terms of making matters non-justiciable because it brings politicians - law-makers - into a process of decision-making in respect of breaches of the law, which should be done by the Executive.

**Mr McKIM** - But is that an argument against a CMC, a CJC or an ICAC-style organisation, or is it an argument purely against political oversight?

**Mr LINDEBERG** - Again, notwithstanding what I said about the PCMC, they may, from my perspective and the perspective of many people, say that this matter needs to be reviewed and, dare I say, justice may be done.

But I noticed that Mr Needham made comment about the police and that within the framework of the checks and balances on what goes on in government you have all these different agencies, but the police were missed out, and what Mr Needham said was that it can be daunting for the police to investigate ministers of the Crown, but one might ask why. If it's a breach of the criminal law, and we are all equal before the law, why should it be daunting? I suppose I could put it in another way. By introducing integrity tribunals, you may in fact be undermining the standing of the police in the community, and implying that they are incapable of handling their politicians. I come with the view

that no-one is above the law and if a politician breaches the Criminal Code then that person should face the police.

Might I say - and forgive me, I am here to answer questions, but it is relevant in this matter - that I took this matter to the CJC and had, what I believed, to be nonsense put down my throat because I suggested there was a criminal cover-up going on.

**Mr WILKINSON** - You took it to the police?

**Mr LINDEBERG** - Then I took it to the police because I believed it was a straight-up-and-down breach of the Criminal Code. The police have interviewed me three times and then referred my file back to the officers of the CJC, against whom I was making the allegations. What I am saying is that the deference was unacceptable because it was a breach of the Criminal Code and the police, in my view and in the view of counsel, had the ability to handle the matter as a straight-up-and-down breach of section 129 of the Criminal Code or conspiracy to pervert the course of justice.

**Mr McKIM** - I specifically raised as an example the type of thing that you have just told us when members of the Parliamentary Crime and Misconduct Committee were before this committee this morning. I asked them what someone who had allegations against the CMC would do. They suggested that the appropriate thing is to write to the parliamentary committee or contact the parliamentary committee and if they formed the view that there was a matter deserving of an investigation they could refer it to the parliamentary commissioner who has the powers and the capacity to investigate the CMC. Are you telling us that you have actually contacted the committee but there has been a period of time elapse and you are still waiting for a substantive response from them?

**Mr LINDEBERG** - That is what I am saying. Might I say that the current parliamentary commissioner has stood aside because he acted as counsel at a previous time when I became before another commission of inquiry looking into corruption inside trade unions when I was a former trade union official, and he has rightly stood aside. The view of counsel is that the material that was placed before the PCMC required an interim investigation to be conducted, and we have suggested it should be done by an interstate QC or retired judicial officer because we are suggesting that this issue has totally corrupted Queensland, and he or she need only find a suspicion of official misconduct - and bear in mind the Rofe audit does not go to just a suspicion; it goes to prima facie criminal offences which then ought to warrant a public inquiry into this. Apart from achieving justice for myself, hopefully, this must be about public confidence in our institutions.

**CHAIR** - Can I ask about article 9 you mentioned - any proceedings of parliament being impeached in a court of law - that is the article we are speaking about? Are you saying that you believe that it could have been mentioned in the parliamentary process in order to stop it from getting to court action?

**Mr LINDEBERG** - No, I am not saying that. If I am following you correctly I do not think I am saying that. What I am saying to you is that the process set up by legislation is that I can make a complaint to the PCMC, they can make a report on my findings, engage a barrister who is part of a process of the parliament and hand down a report which I have

to live with because it is non-justiciable because it is covered by article 9. It may have within it matters which, if they were done by a commission of inquiry I could challenge legally, but I cannot challenge that, and that has been settled in court in a case in Queensland here which I think was *Le Grand v. CJC Commissioner Julie Dick*, at the time. Article 9 protects it.

As you have seen in my submission - and I assume you have read it - one of the recommendations I have made, and it is a grave thing to suggest, is that the deliberations of a PCMC which is looking into matters of criminal justice as opposed to the Public Accounts Committee, perhaps it ought to be justiciable to ensure that the politicians making these deliberations are doing so honestly, impartially and in the public interest and are not acting out of party political benefit. I am aware that that does impinge upon our supreme institution, and I am very loath to say that, but what has happened is that because of these integrity tribunals with the oversight committees coming from politicians the clash has occurred.

What I am saying to this committee is that what is before the PCMC is really an extraordinary litmus test, as never before. When you bring into play the idea that justice delayed is justice denied, and know that this matter has been going on for nine months with an extraordinary history to it, you would think I would at least know who was going to review the matter, but I do not. There is also the matter of apprehended bias. That is an important issue. Again, if I can refer to a comment made by Mr Needham, you asked a question about police investigating police and whether or not they knew them and he said they would take them off et cetera.

The person who was selected to do this job, upon which the whole edifice of this corruption is based - and I did not know this at the time - was an ALP member and activist. As a barrister, he ought to have refused to take on the job, and when I raised the issue later on before the Senate, I was accused of being McCarthyist. They said that if they had taken it away from him it might have breached the Anti-discrimination Act. It should never have been given to him in the first place and, of course, the report is a total fraud, and that is what they have held onto for this long period of time. It has been totally discredited now, and that is what the PCMC is considering. I know it is terrible, but corruption is terrible in government, and when it becomes unaddressed it eats away like a cancer. Of course, in some cases, I suppose people rely on individuals going away, but I have not.

Again, may I say, gentlemen, the fact that we have a letter from eminent judges calling for this matter to be investigated and who have made the public comment that the law may have been knowingly misinterpreted to advantage the Executive, is a matter, might I suggest, of the utmost gravity. Yet I have to sit here and I have no confidence in the CMC. I cannot go to the CMC because, as I have been advised by Senior Counsel Mr Callinan in the past, they are a player. The CMC are quite happy to make announcements that it has all been investigated. It has not been.

**Mr McKIM** - What do you hope the parliamentary committee does?

**Mr LINDEBERG** - I hope that they do their duty. I am not here to cast aspersions on the members of the committee; I hope they are honourable and do the right thing. But the point is that it is about government by the rule of law and senior counsels and these

judges are suggesting that the matter needs to be properly investigated. In this case, somebody over the top needs to come in, like a special prosecutor, to investigate the lot.

I am not going to name them here, but there are six serving judges in Queensland who have had their finger in this pie who could find not one scintilla of suspected official misconduct in this and yet, when a Baptist minister does the same conduct, he is charged, found guilty, had his sentence appealed by the Government because of the seriousness of the crime to the Court of Appeal, again found guilty, but luckily escaped imprisonment. But when you have those sorts of double standards being exposed here, how can people have confidence in government? That is where I am coming from, apart from the fact that I am seeking justice.

**CHAIR** - Excuse my ignorance, but I was not really conversant with the Heiner affair until you spoke about it a short time ago and I just briefly heard the words 'Heiner affair' without knowing exactly what it was about. But do you know of any other matters that have been before the CMC that you believe have not been dealt with properly?

**Mr LINDEBERG** - With respect, I cannot say that. I think, with great respect, I prefer to speak authoritatively on this matter. Might I just give another example in terms of the great difficulty that one faces in this, because the question really comes down to what our system of government is about. Is it about serving the governors or the governed, the people? Obviously, I suggest it is the latter.

As members of parliament, you swear oaths of office before you take up your position. You have debates and, of course, a lot of you gentlemen are independents, but there are members of the Labor and Liberal parties who vote generally on party political lines. In the past, this particular matter has been voted on on the Floor of the Parliament a number of times and been divided on party political lines. All except one member of the PCMC have voted on this issue. In other words they have already given an indication of their predisposition as to where they stand on the thing, which again corrupts the whole process because justice should not only be done but be seen to be done and you must avoid apprehensions of bias.

In the past I have had a PCMC member stand up on the Floor and call this a loony-tune conspiracy. Then he goes into the committee where one is supposed to expect to go for a fair deal. How do you measure that against, on the one hand, respected judges and the former chief justice of the High Court, Sir Harry Gibbs, saying there is a prime facie breach of the criminal law here and you have this matter lectured upon in universities throughout the world and now you have APRA publicly describing this issue as a high-profile scandal, and yet here in Queensland everything is okay.

**CHAIR** - You are not saying, though that there should be a body to look at these matters, are you? Or are you saying, because of the experience that you have had, that there should not be a body? I don't think you could go to the latter.

**Mr LINDEBERG** - I must say, with great respect, I am not sure, because the course of justice is still going on. What would people think if it turns out that what this audit says is correct and that there has been this total collapse of our system -

**CHAIR** - But you are saying it is the system within one State.

**Mr LINDEBERG** - Exactly, I take your point on that, but I still believe in the principle of having an oversight committee going to politicians. It is not the be-all and end-all of the Heiner affair, it also impacts upon the function of the head of State because of the obligation to refer suspected official misconduct and what happens if they do not do the right thing -

**CHAIR** - I hear what you say in relation to your issue. I understand your concerns from what you tell me, but does that mean everybody should throw their hands in the air and say there shouldn't be an oversight body? Or are you saying that there should be an oversight body but how should that be made up and how is it to be governed and that that should be looked at closely?

**Mr LINDEBERG** - I watch these things quite closely. For instance, I watch what is happening in Western Australia, I have watched a little bit closely ICAC for instance. I won't abuse the privilege but in terms of certain -

**CHAIR** - There is no privilege here, as you know.

**Mr LINDEBERG** - I do not want to throw names around roughly or things like that but -

**CHAIR** - We cannot protect you with privilege.

**Mr LINDEBERG** - No. I am here to tell you the truth. Right?

**CHAIR** - Yes.

**Mr LINDEBERG** - Other places may be functioning okay, the point being it may be that the Heiner affair is a worst-case scenario, but systems should be set up for worst-case scenarios. How these other places would function I do not know. One of the problems I have understood from your questioning here of Mr Needham and others, no doubt, is that you have a small population and how much do you keep loading up to see who watches the watchers and where does it stop.

Before now we have managed to function with just the police and courts. Now, with modern governance it seems to be that we have gone for these integrity tribunals.

**CHAIR** - The Fitzgerald Inquiry would say the police work wasn't working and that is, as you know, why the Fitzgerald was set up.

**Mr LINDEBERG** - No, I appreciate that, but who is to say that it would not have worked again if the police who did the wrong thing were punished, as they should have been for failing to do their duty? Or that further police would not come in and realise that if they didn't do their duty they would cop a similar lot to the police commissioner? Instead of that they brought in this integrity tribunal that has dominated everything in terms of how things are done here in Queensland.

**CHAIR** - The answer to that could be - and I am just debating it with you - that a lot of it is perception and what the community could have thought if there were not this body coming in over the top. How were they to be confident that the police were able to

properly enforce the law because they had seen what happened with the Fitzgerald inquiry? I think what you are saying is why not say 'Step aside and we'll put some new people in' but the perception issue might be that the public might say, 'We don't have confidence in that; we need another body'.

**Mr LINDBERG** - Mr Chairman, all that is true. It is a little premature to ask me whether it is right to have integrity tribunals because this is unfinished business. It is at a point now where something is going to happen. If the committee says, 'There's nothing in this, go away', it then only leaves me with perhaps an option of going to court. I need to be a multi-billionaire to take on the entire system. It should not be that way. As an example, back in 2004, and you may not be aware of it but I think it is in my submission, the House of Representatives Committee on Legal and Constitutional Affairs looked into my matter under the heading of 'Crime in the Community' and the committee resolved that the entire Cabinet should be charged, there should be a special prosecutor appointed and a particular document should be made public.

The Leader of the Opposition, of his own volition, wrote to the Police Commissioner - and this is against the background, may I say, and I think it is in my submission, of the charging of the Baptist minister. I do not know whether you are fully aware of what I am saying but if you are not, please let me know. They charged him under section 129, which the CJC said did not apply. He shredded the document six years before the court proceedings commenced and was found guilty, and they used section 129 of the Criminal Code to charge him. That report went to the Police Commissioner who said they might have to review the Heiner matter but as Lindeberg's file was with the CJC, refer it to the CJC. In fact the file was really with the police department but the matter of sending it to the police was a straight-up-and-down breach of section 129 of the Criminal Code and it was quite clear that all these bodies were caught up as players.

In terms of whether this is to ensure clean government, to ensure public confidence in government and so forth -

**CHAIR** - It is to ensure everything, isn't it?

**Mr LINDBERG** - It is to ensure government by the rule of law, isn't it?

**CHAIR** - Yes, and to give the people, whom we are here to protect, the confidence that we are doing all in our power to ensure that the law is being upheld. I do not think we can do any more than that.

**Mr LINDBERG** - No, I hear what you say, and this may be a particular Queensland problem because, as I said, I do not believe you are comparing apples with apples because we do not have an upper House. You gentlemen are here, you are independent members, you are not disciplined by party-political things and in some sense it may be suggested that you do not care who governs Tasmania as long as they do it properly and that is why I am not a member of any political party. I will tell you straight, I was a member of the Labor Party but I am not a member of any political party. If I have a commitment in this it is to my children, to ensure that what I leave them is a system in which they can have confidence. So it may be a peculiar Queensland problem, but it is a problem out of which answers may come for you at a particular time, living in a small

community. Queensland is small in some senses but you are even smaller, and everybody knows each other.

I have read some of your stuff about the appointment of mates to jobs, cronyism and all that type of thing; that is all in this entire Heiner mix. How do you ensure open and clean government?

**CHAIR** - The argument there would be that because it is a fairly small place and if you have been around it for long enough most people have knowledge of the person who has the job or are aware of somebody who has, and therefore there is this question as to whether that person was appointed to that position because of their capabilities or because of jobs for the mates.

**Mr LINDEBERG** - The other ingredient in how we can keep government straight is the media. What is sometimes said here in Queensland is that we need an upper House, we need courageous independents, people of integrity who see something wrong and are prepared to stand up and say it and who perhaps have the capacity to set up committees with the capacity to summons people to give evidence and hopefully the media will come along and cover the thing and so forth. We do not have those ingredients.

In respect of this particular matter, and I am happy to provide these as exhibits for the committee. I am not sure whether you are aware of this issue, which has been covered by Piers Akerman in Sydney. On the other side of it, I have had to put up with adverse commentary from the *Australian* newspaper on this matter. I am supposed to be obsessed about the Heiner affair because I have pursued it. I have not let go. Notwithstanding I lost my job, I think the principles are important in this affair. On the one hand APRA are prepared to put it up, you have universities prepared to talk about it, but we are all wrong. Perhaps it is the politics of the thing and I want to get politics out of it.

**CHAIR** - I hear what you are saying.

**Mr LINDEBERG** - But you cannot take politics out of politicians, most probably.

**CHAIR** - I hear what you say. As you are aware, we cannot prosecute New South Wales -

**Mr LINDEBERG** - No, I understand that.

**CHAIR** - But what we can do though is listen to the matter that has come before us. It is certainly a question of who governs the government; I accept that. My personal belief is that there still needs to be a body for people to come to and that body has to have the faith in its people if it is going to work for those people to come to it.

**Mr LINDEBERG** - Can I just make a couple of points in conclusion if we are winding up. I made a number of other recommendations in my submission - for instance, people who are members of political parties ought not to be put into positions of high office in these integrity tribunals. I think that is a matter of worth that you should consider. As I said in my submission, if it is good enough to do it for the Electoral Commission, the Electoral Act, and I am not sure what Tasmania is like but I would suspect it is the same, I believe



it ought to be the case in here so that you can as far as you possibly can get politics out of it, at least in terms of the public perception.

I believe also that serious consideration ought to be given to supporting public servants in terms of blowing the whistle. There ought to be additional rights put into their contracts of employment, they ought to be guaranteed a corruption-free workplace and if they have to blow the whistle to bring the Government back to obeying the law there ought to be an avenue where they can sue the Government at the Government's expense. Might I respectfully seek to have the Rofe audit tabled, to be made a public exhibit, so that both you and the public may see the seriousness of this particular issue? I have given it to you in an electronic form because it is a very big audit. It is nine volumes, but I would respectfully ask that the committee take it into public evidence and make it a public document.

**CHAIR** - As Shane was just saying, because we are a subcommittee of the select committee we can certainly take it back and put that before the full committee and then decide whether it should or should not be taken into evidence. We can do that.

**Mr LINDBERG** - I would appreciate that. I know that until that is done it will be treated with the utmost confidentiality but I do believe that in terms of what I have said here today you need to see the evidence to back it up. All the evidence has been gathered together in electronic form, not just the submissions but the supporting documentation.

**CHAIR** - I understand what you are saying.

**Mr LINDBERG** - The other thing, might I suggest that you have to be careful of in establishing these commissions, is what might happen if it turns out that somebody has engaged in cover-ups, in abusing their office; what happens to them when they become judges? That's a question which has been raised by the Federal Committee on the Australian Commission for Law Enforcement Integrity. Who then investigates them and so forth?

**CHAIR** - Thank you for giving us of your time and experience.

**DISCUSSION CONCLUDED.**

DISCUSSION WITH Dr A. J. BROWN, SENIOR LECTURER, GRIFFITH LAW SCHOOL, GRIFFITH UNIVERSITY.

**CHAIR** - Dr Brown, thank you very much for coming to this committee.

**Dr BROWN** - I just want to check that the paper that I gave in South Australia at the meeting of the Public Accounts Committee executives has actually found its way to the committee.

**CHAIR** - Yes.

**Dr BROWN** - That paper, about the Federal Integrity Commission, has as its background a lot of discussion about the State regimes, figuring out what works and what doesn't, what the frameworks are and continuing to contrast the Federal situation with the Victorian situation.

I know comparatively little about Tasmania. I would probably create something new that I would call the Tasmanian Public Accountability Commission, which would be a first for the country because there is no such body with that sort of name. The name is actually pretty important. The temptation is always to set up something that's an anticorruption commission or a corruption and crime commission or a crime and misconduct commission. They all have negative connotations. They are all reactions to a perceived problem. In fact they do very good work which is very proactive and which is all about building accountability and corruption resistance. I think Tasmania is in a position where it can potentially set something of a new benchmark in saying that we actually want to be positive about this. With something like a Tasmanian Public Accountability Commission, given the particular circumstances of a reasonably small State and a small public sector, I would create it with three or four divisions. I would make the existing Ombudsman's office one of those divisions. I would make the Ombudsman a member of the commission - a commissioner with their own statutory powers and responsibilities but part of that commission. I would create a new division of the commission which was a corruption/serious misconduct division that would have investigative powers and resources, some of which would be identical to the Ombudsman's anyway and some of which might have a few more bells and whistles and sharp points. Then I would have at least one other division which was the accountability building division, if you like, the proactive, positive, standard-setting, educational and research division, all the things that Jeff Malpas in particular was stressing.

When you know that you have some broad reform issues to deal with, some standards-lifting to deal with and some strengthening of public sector standards to deal with, then why just bolster the existing institutional framework with more reactive capacity when you know that part of what is needed is that positive, proactive capacity? I think you would probably find that that division was the one that had the most work to do most of the time, going out and doing a mixture of research and intelligence gathering but also the proactive stuff at the same time. So it would be the division that ran research, which identified where corruption risks were or other misconduct risks and then addressed those proactively by working its way around the whole public sector, around agencies, looking at the risk management arrangements and putting out positive messages about good public sector management and standards - all that educational side.

At the same time, I would have a small unit within that same commission that had a slightly different role as the clearing house role for public interest disclosures under the Public Interest Disclosures Act, which I believe is also up for review in Tasmania. The reason that is a slightly separate role is from the way in which the integrity frameworks work in all jurisdictions. For normal Ombudsman complaints from members of the public you do not operate with a system of mandatory notification from the public sector, so complaints are enough and you do not rely on all the departments to report to the Ombudsman whenever they are dealing with their own complaints. You just expect them to have a good complaint handling system.

With corruption and more serious misconduct of the kind that the misconduct or anticorruption division would be dealing with, the standard arrangement now is that in Queensland - Queensland led the way on this - and WA and New South Wales you do need something like a mandatory notification system. There is no point in that investigative unit only getting involved weeks or months or years after the event when an organisation has been handling some misconduct problem or some allegation internally and handling it badly. So the big lesson of all the previous commissions and inquiries is to operate that system with a mandatory notification system so that as soon as an agency itself identifies that it is dealing with a serious misconduct issue or a corruption issue, though it may well end up dealing with it, it is meant to report immediately to the Public Accountability Commission so that some sensible decisions can be made about how that should best be investigated and managed.

The same is true of public interest disclosures from public servants right across the board, irrespective of whether it is misconduct or defective administration or some other serious breach or financial irregularity or whatever. All the separate research we have been doing through the Whistling While They Work project has told us that you need to set that up so that there is a mandatory notification system for public interest disclosures from public servants. Irrespective of the content, the problems that can befall the way in which agencies handle many of those cases are a bit more like serious misconduct even if it is not serious misconduct. It raises all sorts of similar issues.

So that would be my broad blueprint for Tasmania if I were in your shoes. Part of the politics is that there probably is some advantage in the Parliament and the Government being seen to do something new and different, not just putting more resources into an existing institution, which may not convince the public that anything much has changed. If it is done well it should, but that is beside the point. So I would take the opportunity to demonstrate this is a serious revamp and a new institutional arrangement. I would not make the same mistakes that other jurisdictions have made. They can afford to make them because they are large jurisdictions with a large public sector so you can afford to have a lot of agencies. In each case the workload of those agencies is usually big enough such that they can achieve critical mass and not just become an irrelevant pimple on the back-end of the public sector somewhere.

Once you get down to the scale of Tasmanian government operations then you are comparable to somewhere like Brisbane City or a jurisdiction where governance does not lend itself to setting up multiple independent statutory authorities for everything. You should think seriously about whether that is a wise move. That would be my opening gambit.

**Mr HALL** - Given your model, would you have the parliamentary oversight committee?

**Dr BROWN** - Yes.

**Mr HALL** - You would see that as an absolute necessity?

**Dr BROWN** - Absolutely. I would look to make sure you do not duplicate in terms of your parliamentary committees. That duplication also occurs across agencies. If you ask about it tomorrow in Sydney you will find that the committee on the ICAC trips over the committee on the Ombudsman; they are all tripping over one another in the same way as their integrity agencies trip over one another. The Commonwealth also has that problem. With each new major statutory authority they have created a new oversight committee.

**Mr HALL** - The ethics and privileges committee here in Queensland seems to be pretty proactive. They meet twice a month and have quite a few referrals whereas in Tassie I do not know if anyone can remember when our privileges committee last met, so obviously there is somewhat of a more proactive role there.

**Dr BROWN** - I would have thought so, yes. In your situation you might well revamp the committee structure so that some of these roles could be shared with that committee. An ethics and privileges committee is obviously a committee that relates to the conduct of the Parliament and parliamentarians primarily, whereas here you are talking about an oversight committee. Inevitably you are going to end up with the same sorts of individuals going onto the same sorts of committees.

**Mr HALL** - Local government should be part of the mix as well?

**Dr BROWN** - Within the jurisdiction of a commission?

**Mr HALL** - Yes.

**Dr BROWN** - Absolutely.

**Mr MARTIN** - You are obviously familiar with a lot of issues in Tasmania over the last two years.

**Dr BROWN** - I would say somewhat familiar.

**Mr MARTIN** - Some of the issues relate to public perception that there is something wrong that needs to be investigated and that it calls for an ICAC. We have been given the task to investigate whether we should or shouldn't have one and if so what kind. What are the issues? The Government, for example, indicates that a line should be drawn in the sand and that the committee should start afresh and not look back retrospectively.

**Dr BROWN** - Any new commission?

**Mr MARTIN** - Yes.

**Dr BROWN** - Yes.

**Mr MARTIN** - What's your view on that?

**Dr BROWN** - I would say that the committee should be bold and ask how that serves the public interest. I would just use a normal statute of limitations approach. If it is something that's no longer worth trying to investigate or prosecute as an offence then I wouldn't bother trying to but, otherwise, I would leave the commission to sort out its own workload, basically.

In any kind of situation where there is any real level of corruption risk or any areas of corruption weakness, let alone any ongoing corruption, then there is a reasonably good chance that some of it has a history and even investigating some of what might currently pop up, effectively may require going back and looking at some of that history.

So I would leave it to the commission to determine its own workload, and where it needs to go back and if it needs to report on past matters in order to sort out current issues, let the commission do that - that would be my suggestion.

**Mr MARTIN** - A slight spin on that is that a couple of academics in Tasmania have said, 'Let's draw a line in the sand' as far as whatever new body we may or may not recommend is concerned, 'by having a commission of inquiry set up immediately to investigate the issues that have been raised and then the new body could start afresh'.

**Dr BROWN** - I think it depends what the specific allegations are that are giving rise to the sense that there needs to be a commission of inquiry.

I was quite conscious when I was in Hobart in August that the issue at that time was the potential or suspected misconduct of the police commissioner and part of the problem is that I don't actually know where this is at or how it's been resolved or if it has been resolved.

**Mr McKIM** - He has been charged and he stood aside, and they are now awaiting a trial.

**Dr BROWN** - Right. That is a bit of lucky outcome in some circumstances because the issue at the time was -

**Mr MARTIN** - It's got worse.

*Laughter.*

**Dr BROWN** - Yes. The issue at the time was, 'Well, who investigates this?', and, at the time, basically it was a situation where, effectively, there were detectives more junior than the commissioner who were being asked to determine whether the commissioner had committed a criminal offence. That is a perfect example of where, for the public to have confidence in the process, it is not a desirable arrangement, no matter how good those detectives are and how good they are at -

**Mr MARTIN** - They are still in a difficult position.

**Dr BROWN** - Yes. So there is every reason that the average member of the public should doubt whether that sort of arrangement could ever be effective.

**Mr MARTIN** - I suppose, to fill you in, the issues have been that one deputy premier resigned because of investigations into the signing of a contract regarding a former Labor minister the day before the State election; there was the 'shreddergate' affair - the appointment of a magistrate; the appointment of the Solicitor-General; the pulp mill approval process; the Police commissioner issue - and there are probably one or two others. All of these issues have given the perception that there is something wrong.

**Dr BROWN** - Yes. One of the interesting things about that is that they are issues that may have some common causes or underlying systemic connections or background to do with where the legal culture of Tasmania is at and the parliamentary culture.

**Mr MARTIN** - The possibility to interconnect.

**Dr BROWN** - They might be more interconnected but it is a different situation to the situations that have given rise to royal commissions, say, here in Queensland or in New South Wales where you have clearly got a whole organisation or large parts of an organisation. You have some major systemic, quite complicated, nitty-gritty corruption issues that have obviously really taken hold of an organisation or more than one organisation within the public sector and arguably you need to throw a lot of resources at it to trawl through all of that because there's a lot of individual cases. So the situation in Tassie is a bit different to that; there may be a number of things that may have some level of connection. But I just look at it from a practical point of view, having worked in integrity investigations and in government and politics, and in researching all of this. Are you talking about one commission of inquiry or are you in fact talking about three commissions of inquiry to unravel this?

How would that commission of inquiry go about doing its work in a way that would be different from or better than just setting up an organisation which could then pursue those matters and prioritise them? When it comes down to it, some of those things may have been big-ticket, front-page-of-the-paper issues, and they may have led to parliamentary resignations and they may be quite significant, but at the end of the day, whether it's a royal commission or whether it's the head of a new accountability commission of some sort, it sits down and looks at what the evidence actually is to kick off that inquiry; does a couple of interviews to determine what the parameters of this inquiry really are. Then there may be a basis for saying reasonably early in the piece, 'These are the things that were dealt with in the public domain. This has all been well trawled through. These are the things which have not been in the public domain which actually require some investigation, let's go on an investigate those' and so on.

I think you are in a situation where, taking a horses-for-courses approach, it does not automatically follow that some big inquiry is actually going to be a cost-effective use of public resources as opposed to setting up a new organisation to get on with it. It's fascinating that in Victoria there was a lot of debate over whether there should be a royal commission into Victoria Police and the decision of the Government, the Ombudsman and everybody has been, 'No, let's just get on, set up the new office of police integrity, let's put in a new commissioner of police, let's just change our whole approach to rooting out these police corruption allegations'. That is what they have been systematically doing, without having a big bloodbath sort of wig fest of a royal commission. The indications are so far that that's been reasonably effective. Of course we may be proved

wrong - I may be proved wrong, they may be proved wrong - at the end of the day but it's interesting that they decided to not follow that standard knee-jerk path of let's set up a royal commission. It may well at the end of the day have been a more effective way of rooting it out, but having said all of that, if there are still specific things like the - was Jack Johnston the name of the commissioner?

**CHAIR** - Yes.

**Dr BROWN** - If there are still things like that where the public reasonably couldn't have confidence or there's too much time between now and when this commission is going to be operational, that it would be lost, that it should be being used to investigate something, then those are the situations where you would look at setting up something in the interim.

**CHAIR** - The police commissioner has been charged, so it's awaiting trial.

**Dr BROWN** - Yes, so it's got a process and it's got some independence. When everyone was asking the question, 'How do we sort this out? It's not satisfactory to have a couple of detectives trying to investigate the commissioner', my solution at that time, had I been God, would have been to ask the Ombudsman to appoint a special investigator under the Ombudsman Act and to possibly bring in someone from outside the jurisdiction to be -

**Mr McKIM** - I suggested that, Dr Brown, and I was ignored by the Government.

**Dr BROWN** - I wasn't even aware of that. But it just goes to show that there are things you can do within your existing framework that may well be able to work quite effectively that don't require some massive new response. It's just a matter of looking at it and saying, 'We do have an institution that is in a statutory position to provide some independence and some public confidence'. It may not have the capacity to do a complex review of this, in which case it may well need to rent somebody in from another jurisdiction, but basically it could be a special investigator appointed under the Ombudsman Act for whom the Ombudsman takes responsibility and works with to oversight a criminal investigation of that matter. It could well be the same excellent detectives who do it, but they're just pulled out of the police and put across in a new office working with that special investigator under the auspices of the Ombudsman, and it probably could have been set up in about three hours. That would be the way that I would see those sorts of issues at the moment.

**Mr HALL** - Your model is pretty tight, small, suitable for the State. I think there are four divisions. You said that you would set new benchmarks. Do you think with a model like that, albeit a small State, that what has happened in other States where people have been dragged through the mire by the media might be able to be contained?

**Dr BROWN** - Well, not necessarily. Oh, in terms of security?

**Mr HALL** - Yes.

**Dr BROWN** - That just depends on how professionally it is run.

**Mr HALL** - Do you see that as a concern?

**Dr BROWN** - It is just one of those risks that have to be managed and that is where the parliamentary oversight is really an important factor. At the end of the day any organisation like that, just like any ombudsman or whoever, has to remember that they are actually accountable to the people through the Parliament. Having an effective oversight committee arrangement is just a healthy way of making sure that is the case so that no agency should think that it is a law unto itself. That is a real risk with some of these agencies.

**Mr MARTIN** - There is the argument thrown up by senior government people in WA and New South Wales - the Greiner situation - and examples given as to why we should not have that committee because people are found guilty before the -

**Dr BROWN** - Guilty is probably technically not the right word.

**Mr MARTIN** - What is your interpretation?

**Dr BROWN** - For a start I just do not think that Tasmania should compare itself to New South Wales and I do not think that most other States should try to emulate too much of what New South Wales does most of the time.

In New South Wales the role of the ICAC was a big shock to a whole lot of systems. That whole experience caused a lot of adjustment to both the ICAC figuring out what its role was and the Parliament figuring out how it should handle itself and also handle its relationship with the agencies.

Similar things happened here in Queensland in terms of teething issues with the CJC and accountability issues and controversies with the CJC. That has now all settled down and the role of the Parliamentary Crime and Misconduct Committee, as it is now, was very fundamental in that. In Western Australia they have obviously had some teething problems with the new Corruption and Crime Commission which I think also is settling down.

I think there are some issues about how you manage the jurisdiction of any anticorruption body in relation to parliamentarians. That is part of the problem. There are quite a lot of people who work for the ICAC or around the integrity system in New South Wales who will tell you - I am sure that Commissioner Cripps will not tell you this - that the ICAC could do its job more easily if it did not have politicians within its jurisdiction.

In Queensland it is a unique situation. Partly because of the lack of an upper House, the role that the CMC plays in overseeing politicians is very important because there is just that one less extra opportunity for a vehicle for exposing what the Government might be up to. So a powerful CMC actually helps fill that gap. There are issues about how you build a jurisdiction to investigate politicians into the framework in a way that does not compromise the ability of the organisation to have the powers that it needs to investigate the rest of the public sector. But it is a problem about handling the legislature and the executive at the same time. It is much cleaner if you can have a body that just handles the executive and then another mechanism that is there for the legislature.



I think some of those sorts of issues that you raise possibly should be prompting the committee to think about it in those terms: how the life of this agency is going to be most effective and efficiently run. My suggestion on that score would be that every jurisdiction that has a parliament needs some other mechanism that relates back to the ethics and privileges committee for dealing with breaches of the code of conduct by parliamentarians, for example, who aren't ministers. If they are ministers, they are part of the executive and they should just come under the jurisdiction of the public accountability commission. An effective way to organise it may well be that for any parliamentarians who are not part of the executive you have a slightly different arrangement where you have a mechanism whereby the ethics and privileges committee or another parliamentarian or somebody can initiate an inquiry, that they can make a complaint; that there is some other mechanism for if there should be an investigation into a politician. It gets triggered by some other way than it simply being the same as an arrangement whereby that commission is investigating parts of the executive.

**Mr McKIM** - What's the rationale for that? Is it a workload issue? I don't understand why they should be treated differently to a minister, for example, or anyone else.

**Dr BROWN** - I suppose it more like a separation-of-powers issue, if you like. There are two issues: one is a separation-of-powers issues that -

**Mr McKIM** - Because there's an oversight committee?

**Dr BROWN** - Because there is an oversight committee, but also because the roles and responsibilities of the average parliamentarian, as a parliamentarian, are quite different to the responsibilities of people who are basically working for government, for the executive, from ministers down. If you are talking about an action that has been taken by a minister in their ministerial capacity as a member of the Government, as opposed to in their parliamentary capacity as a local member, for example -

**Mr McKIM** - Sorry, I might be being dense but I don't understand.

**Dr BROWN** - I guess there are situations where politicians will do things as part of the political process and if they did them as a public servant, then you would say that there was a conflict of interest. But politics has all kinds of inbuilt conflicts of interest so often you could be looking at a parliamentarian basically saying, 'You do this for me and help me get elected and when I'm elected we will do this'.

**Mr McKIM** - And why shouldn't that be investigated by some kind of independent investigative authority such as a public accountability commission?

**Dr BROWN** - I am not saying that it shouldn't be, I am just saying that quite often quite a lot of those sorts of matters that might legitimately be matters of public interest - what was the political quid pro quo as part of the whole electoral political process - are things that should be able to be aired politically in Parliament or whatever and the public should be able to take them into account. They are just part of the political process. Because somebody has promised to do something in their capacity as a parliamentarian in return for receiving x support or whatever, you wouldn't automatically say that it was corrupt or inappropriate.

I guess what I'm saying is that the job of an accountability commission, an integrity commission or an anticorruption commission is not assisted by being able to be swamped with complaints about that kind of conduct, and appropriately so. That kind of conduct, if undertaken by a public servant with less degree of public scrutiny, may well be totally corrupt. That is the difference between the role of the executive and public servants, heads of departments or even ministers at times, selling their discretion, as opposed to a politician who is just going about normal politics.

**CHAIR** - I suppose an example would be if you were on the left of the Labor Party and you said, 'If I get in, I'll be prosecuting your arguments', so the left put all their force behind this person to get into Parliament because she is on the left and they expect that that person prosecutes their arguments forever and a day whilst they are in parliament. That is the type of thing, I suppose, you are talking about, isn't it?

**Dr BROWN** - Any of those types of normal political behaviours, for want of a better word, can become corrupt and I think that you need to have a mechanism. If there is a legitimate suspicion that they have become corrupt and more resources are needed to investigate them, then it could be desirable that there is a trigger for any minister or the Government or the Speaker or somebody to actually be able to refer that to the Public Accountability Commission to investigate and report on, for example, back to the Parliament. I think it is just a matter of differentiating and acknowledging that the roles of parliamentarians in their normal parliamentary business is not the same as an executive member of the Government.

A comparable situation - you got to talk to Bob Needham today about the CMC?

**CHAIR** - Yes.

**Dr BROWN** - One of the biggest problems they have every time local government elections come around - did he talk about local government elections?

**CHAIR** - No.

**Dr BROWN** - One of the biggest problems they have is that councillors will start lining up to make complaints about misconduct or corruption against other candidates and councillors months out. There was a risk for a while that it was going to become just a really normal part of the electoral cycle, so now what the commission and the Local Government Association of Queensland do about two or three months out from every local government election is do a big communication campaign right across the councils that basically says, 'We're not interested in these sorts of complaints. We don't want them and anybody who makes a complaint vexatiously or scurrilously or whatever of that kind, councillor on councillor, just be aware of the risk that we may be looking at you for having wasted all our resources', and that has been very effective at dampening that down. Obviously nobody imagined that people would start doing that when they first set up the jurisdictions of the CMC but that is the type of dynamic that you can get. If you just think about that in the way in which you design things you may be able to come up with a better arrangement than some of the other jurisdictions have come up with along the way.

**Mr McKIM** - We have heard that the majority of investigators at the CMC are actually seconded from the police service here in Queensland. With Tasmania being quite a reasonable jurisdiction in the Australian context, what is your view on the appropriateness of that for a model for any organisation that this committee may recommend in terms of procedural fairness and also perception?

**Dr BROWN** - I think that basically reflects the fact that it is police agencies who have the strongest investigative capacity and expertise in the country and in fact, if you go looking at internal investigation resources right across the public sector in big agencies, you will usually find that there are ex-police doing those sorts of jobs.

**Mr McKIM** - Secondment is different from being an ex-policeman.

**Dr BROWN** - Yes, that is very true. I just think that it is probably something of a necessity, even if there are elements of risk to it and it is probably something that everybody may just have to live with, but there needs to be enough resources given to the commission to ensure that it has its own strong internal integrity arrangements and systems as well and can run its own checks on who those people are and can apply some strong standards to ensuring that it is not seconding people who have been compromised. The Australian Crime Commission had a problem with seconding State police officers with dodgy histories at one point.

**Mr McKIM** - Should any organisation have its own investigative personnel?

**Dr BROWN** - Yes, absolutely, and the CMC does. The CMC have a lot of investigators that are involved in the police jurisdiction that are seconded from police but you have to remember that most of the police services, and I am sure even Tasmania Police is the same, have their own really strong internal investigation and security affairs capacity. All you are doing is creating a situation where, in fact, you are creating an institution that is one step removed again.

In any large agency you have all your normal operations, you have your internal security or internal audit or whatever and they may be extremely good, and they usually are very good, and then you have an independent agency. So really, you are talking about the relationship between that internal affairs area and the independent agency, and that relationship has to be tight anyway because even if you are not operating with seconded investigators in the independent agency, you will be operating in a situation where the independent integrity agency will probably want to be referring stuff back to the agency, whether it is the police or some other department in Tasmania, to do all sorts of internal investigations and it needs to have confidence that those people are doing it properly. So it is about the relationships all the way down line.

The operations of these agencies need to work so that when they want to put down a wall and quarantine themselves they can do that. They have to be able to do that and they have to operate so that they never compromise their ability to do that, but, in fact, on a day-to-day basis, the way that they do their businesses is through their relationships with the agencies, not by standing back as being some sacrosanct institute that never talks to anybody.

**Mr McKIM** - Thank you, that is very helpful. My final question, Dr Brown, is that we heard this morning in relation to a parliamentary committee in Queensland that if someone has an allegation they would like to make against the CMC here, they come to the parliamentary committee and that committee has the capacity, if it deems it appropriate, to refer that matter to the Parliamentary Commissioner who apparently has the powers then to second some people in from the police or wherever and investigate that allegation. So it seems to me that is a crucial - well, if that is how it works -

**Dr BROWN** - Yes, that's how it works. I am not disagreeing with you.

**Mr McKIM** - What is your view on that as an accountability mechanism and can you improve on it at all?

**Dr BROWN** - I think you need to understand the history of that arrangement, which was initiated in Queensland and has now been copied in New South Wales and Western Australia. It was initiated at a time when the Government changed back in Queensland to a government that was very critical of the establishment of the CJC in the first place and it was part of a number of things that that Government then did which were based on the presumption that the CJC, as it was then, basically needed to be nobbled or put back in its box or whatever. So there is a party-political dimension to the way in which that particular institutional arrangement came about that should not be ignored. In my view, there is an element of excessiveness to that arrangement which I do not think you would want to try to copy, myself. Basically you have to acknowledge that any parliamentary oversight committee needs to have the capacity to be able to do its oversight job well. That might justify some resources above and beyond the normal resources that would fall to most parliamentary committees.

**Mr McKIM** - To investigate?

**Dr BROWN** - I would have thought that if an investigation was needed it should be the committee itself that should be investigating.

**Mr McKIM** - The members of parliament - untrained?

**Dr BROWN** - Yes, doing an inquiry. The Parliament has incredibly strong powers to investigate things, and if, at the end of the day, the Parliament needed to set up a separate royal commission into problems with an integrity agency, it could do it. If the Parliament wanted to simply set up quite strong, powerful statutory review of the powers and roles of that integrity agency, it could do so.

**Mr McKIM** - So, your view is that the Parliamentary Commissioner is the excessive part of the arrangement, not the committee?

**Dr BROWN** - Yes, absolutely. I do not think it means that you do not need to acknowledge that the role of that oversight committee can become pretty complex. It would be interesting for you to ask the New South Wales people about this as well because they have decided to copy that arrangement, but they were not copying it under quite the same political conditions.

I would encourage you to think about it in terms of what additional resource is needed for the parliamentary committee to handle the types of sensitive matters that that body is handling in an effective and efficient way. It is setting up another commissioner with their own powers and whatever.

**Mr McKIM** - Well, you won't have to do the whole hall of mirrors scenario.

**Dr BROWN** - Yes, there's a limit. I am a great believer in the fact that it is a good thing to have people who can watch other people and have a whole web of accountability with people, so that if there is an issue or a complaint that needs to be made or an investigation undertaken and it cannot be undertaken over here then it can be triggered in some other way. But I think there is a point at which you have just have to acknowledge that something might have gone too far and I think that that Parliamentary Commissioner model is something you would want to be a little bit cautious about copying exactly.

**Mr McKIM** - Thanks.

**Mr HALL** - Just one quick question. It would seem that your local CMC is comprised of policemen on secondment to fulfil the staffing arrangements. In a small jurisdiction like Tasmania where obviously it may well be that recurrent finances are going to be looked at fairly carefully by the Treasurer down the track, do you think it is possible to have people, particularly say in the investigatory role, who could be just brought in to do a specific job and then sent back rather than having permanent staff placements? Would that be a factor at all?

**Dr BROWN** - Yes, I think we have already touched on that. I think you need to make sure that there is a permanent complement whose job is configured so that there is enough of them there to achieve and retain critical mass in terms of professional expertise. That may not necessarily be huge, but that is another reason for thinking about putting all these people together in one organisation -

**Mr HALL** - Yes, I understand that.

**Dr BROWN** - rather than a separate organisation. I do not have a view on exactly how many people you should have permanently in any of those particular divisions. What is the total staff of the Ombudsman's office?

**CHAIR** - Not many.

**Mr McKIM** - Not enough.

**CHAIR** - The Ombudsman's office is totally under-resourced.

**Dr BROWN** - Is it 10 people, or 15 people?

**CHAIR** - Total staff would be no more than 15.

**Dr BROWN** - Yes, well, I think it would be worthwhile your getting some information from the Ombudsman, looking at the case load and the number of staff.

**CHAIR** - I have, not within the committee but in personal contact with the Ombudsman, and it is very difficult for the Ombudsman because they just do not have the resources in that area to do the work they want to do and therefore they are crying out for more resources. It is bad when that happens because the whole office is denigrated because they say they are getting word back that they are not getting their decisions out in time, they are not doing their work, and that is reflecting on the Ombudsman, who cannot do any more than he is doing. That is the sad thing and that is why my view is the same. We should be endeavouring to do the ultimate.

**Dr BROWN** - I think it would be really interesting for you to think about maybe asking someone like the Brisbane City Council how many people they have in their complaint handling unit/division and how many people they have in their internal audit/fraud investigation areas, because there is an organisation which is obviously not operating on the same geographic scale but certainly on a population scale in terms of budget and things like that, and obviously it is not delivering the same range of services that the Government -

**Mr HALL** - You are starting to talk about different jurisdiction there - local government in terms of complaints is a somewhat different beast. A couple of us have come from that area.

**Dr BROWN** - In terms of organisational scale, there would be some similarity in terms of making those calculations and giving the government and the public some pointers as to what sized organisation is justified. The interesting thing about the Brisbane City Council is that it may not run hospitals but it certainly runs a lot of transport that State governments otherwise often run more than the average local government, so it is not your typical local government. It would be worth thinking about. There is clearly a lot of irrelevance in making some of your comparisons to State governments like Queensland or New South Wales just based on a whole combination of factors in terms of trying to guess the right sort of size and what is critical mass. That is why there maybe some lessons from WA, South Australia or the ACT or from Brisbane City Council.

**CHAIR** - Time is starting to get away. We could keep talking for another hour, I am positive of that, but thank you very much for coming along.

**Dr BROWN** - Not at all. I hope that has been of some assistance and I will look forward with great interest to the outcome of your deliberations.

**CHAIR** - We can get back to you if needs be by phone.

**Dr BROWN** - Absolutely. More than happy to help.

**DISCUSSION CONMCLUDED.**