

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT
MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON TUESDAY
7 OCTOBER 2008.**

Mr MICHAEL BLAKE, AUDITOR-GENERAL, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Welcome, Mike. If you will give us a general overview first, we will then ask you some questions.

Mr BLAKE - Thank you for giving me the opportunity to meet with you. I will quickly mention the submission that I made. It was focusing the findings of a report that I had prepared into the global value management matter that I looked into a couple of years ago. The only issue that I think was of relevance to this committee from that review was the need to declare conflicts of interest. As part of that process, I found that the register that is in the Parliament whereby members of parliament declare conflicts of interest was being complied with but I had a problem with how that register dealt with conflicts declared in relation to siblings of members of parliament. Currently the process in this State is for those declarations to be made on a voluntary basis, and I felt that that should perhaps be tightened up.

As part of looking into that, I researched a review referred to as the 'Bone Report' - I have a copy of it here, if you wish it. The Bone Report hedged that matter to some extent because it acknowledge the difficulty of dealing with members of family where you are declaring conflicts, particularly as it related to siblings. The issue there was, if a member of parliament's family or brother or sister ran a business, why should the fact that a person has become a member of parliament affect those people. I understand the difficulty but I think where a member of parliament is involved in making decisions that may affect those people or the business of those people then that sort of information should be declared in that register. I don't know what action has been taken as a result of that report. I will follow it up as part of my normal audit processes this coming year. I just wanted to highlight that. That is the only matter that I really drew attention to in my submission.

CHAIR - In other States, Mike, do you know what they're doing? Are all other States in a position where members of parliament have to declare their siblings' interests?

Mr BLAKE - That is a good question, Chair. In the report that I referred to I included as an appendix a summary of what happens in the other States. I will go through that as it relates to disclosures of personal conflict of a member. Victoria, South Australia, New South Wales, Queensland and the Commonwealth require that sort of disclosure. I don't have the detail of exactly what is disclosed. The information is in that report.

CHAIR - Any questions to Mike in relation to disclosure of interests?

Mr BLAKE - Can I mention something else, Mr Chairman, while I am here?

CHAIR - Yes, please.

Mr BLAKE - I did not put it in my submission, but something that has been of interest to me has been commented on in the media and in *Hansard* about whether or not my role enables me to investigate or look into the affairs of ministers. As a result, I sought advice on that matter from the Solicitor-General. I have brought eight copies of the advice with me for you. I have also provided you with a copy of my request to the Solicitor-General to see what question I was posing.

CHAIR - Thank you.

Mr BLAKE - That is for your benefit. I am happy to talk to that if you like.

CHAIR - Yes, please.

Mr BLAKE - The reason for that was that I wanted to get confirmation of my own understanding of my legislation in terms of what I can and cannot do. The Solicitor-General has confirmed my own understanding and I will perhaps just go through my own mandate. My mandate is to conduct financial audits. Those are the things that I have to do. My mandate also gives me discretionary power to conduct audits of efficiency, effectiveness and economy. It also enables me to carry out investigations. Again, that is also discretionary, but only in relation to matters that affect the accounts of the Treasurer or of any public body and where it may affect public money or public property. So the advice I was seeking was: how does that relate to a minister in this case?

My powers also enable me to seek information and seek documents. I can seek documents from any public servant. I cannot seek documents from a minister. I can, however, require any person to come and see me to talk about an audit that I might be doing. The definition of 'person' is important there. The Solicitor-General has advised me that a person can include a minister, as long as I direct my request to that minister to come and see me in his personal capacity, not in his capacity as a minister or as a member of the Crown or as an officer of any kind. It has to be directed to him in his personal capacity.

CHAIR - What would happen if the person came back to you and said, 'Do you wish to see me as an individual or do you wish to see me as a minister?' I would imagine that your reply would be, 'I am seeing you as an individual as opposed to a minister'.

Mr BLAKE - Yes.

CHAIR - If he or she stated, 'I am a minister', would you then still be able to speak with that person?

Mr BLAKE - The advice from the Solicitor-General is yes. Can I also qualify that by saying that in discussing something with a minister I can then only do so as it relates to my mandate. So I can only talk to that minister in relation to the mandate I have and that is, in this case, the investigative powers which are in relation to the accounts of the Treasurer or a public body or in relation to public expenditure. If the minister may have done something that was inappropriate but did not involve the expenditure of money, I then could not inquire into that minister. Is that clear? That is the advice that I have.

CHAIR - Yes it does, thank you.

Mr McKIM - Mike, when there was a lot of debate in the Parliament and the public arena about whether or not Tasmania should have an independent investigative body, the Government consistently stated that those of us who were arguing for such a body were insulting existing frameworks, including you. Do you feel insulted by people arguing that Tasmania should have an independent investigative body?

Mr BLAKE - No, I am not insulted at all. I think that is why I wanted to look into what my powers were and make sure that you understood those from where I stand. I do not feel insulted at all.

Mr McKIM - Thank you. Just to be clear, in relation to the work you have done to clarify your powers - and I am not sure if you can answer this but I will ask you anyway - are you aware that your powers are significantly limited in comparison to existing independent investigative authorities in other jurisdictions in Australia?

Mr BLAKE - I am not aware. It is part of the writing of the audit bill, which you have not seen yet, but it is coming, I gather. I did benchmark my Auditor-General's mandate across Australia and I did get the Australian Council of Auditors-General to look at the draft bill and they did not come back saying that my powers were lower than theirs. You have not seen that yet, but the only additional power that I can recall that is in the bill that is not currently in my mandate is clarity around whether I can what I call 'follow the dollar'. That is, can I audit an entity that is receiving public funds but is not a public body. So if company X receives funds through the outsourcing process that seems to be quite common these days, I can then go and audit the activities of that company should I choose to do so and if it is a matter I want to investigate under my discretionary powers. I am not sure whether that answers your question but it has broadened or made clear the mandate I have.

Mr McKIM - You have answered that in comparison to the powers of other Auditors-General around Australia. Are you aware of the powers that exist within the ICAC, for example, or the CRC? Are you in a position to be able to answer in relation to your powers compared to those powers?

Mr BLAKE - I cannot comment. I have not investigated their powers.

Mr MARTIN - With the powers to investigate a company receiving funds, you do not have those powers at the moment but they will be in the new bill?

Mr BLAKE - I believe I do have those powers now but it is not exactly explicit. I have not sought advice about it. A 'person' is defined as any person and if a person is a company or a director of a private company that is not a public servant then that captures that definition of a person, and if the person is involved in public expenditure, receiving funds from the State, I believe I do have those powers. I have not tried to use them so far but I believe I have them.

Mr MARTIN - I would be amazed if the Auditor-General did not have those powers.

Mr BLAKE - It is not commonly the case, Terry. It varies around Australia but certainly as audit mandates have been brought up to date, if you like, that has been made more explicit.

Mr MARTIN - The new bill, where is that up to?

Mr BLAKE - As far as I am aware it will come to the Parliament in the spring session, so in the next six weeks.

Mr McKIM - Along with a whole bunch of other ones, Terry, I would suggest.

Mr BLAKE - It has got to the point where I have said I am happy with what is there. My colleagues around Australia think it is okay, so that is just an informal process, I think.

Mr MARTIN - When did you sign off on it?

Mr BLAKE - I suppose about a month ago.

Perhaps I could just also answer that comment in relation to the work that I did with the Tasmanian Compliance Corporation. People suggested to me from other fields that I had no authority to go and talk to the TCC because there was no public expenditure involved in that particular case. I did that audit as an efficiency audit rather than as an investigation of public money audit. I was therefore able to do the work based on what Workplace Standards were doing and their effectiveness in managing that particular arrangement. I do not think I actually had the powers in that case to talk to the directors of the company but they were happy to talk to me, so I did.

Mr McKIM - So you did not have the power to compel them?

Mr BLAKE - Because there was no public expenditure involved but I sought to see them and they were happy to talk to me and provide their side of the situation.

CHAIR - Mike, do you feel hampered at all in your duties as the Auditor-General compared to any other States? In other words, is there any area in which you believe you are hamstrung and you believe you should not be hamstrung?

Mr BLAKE - The audit bill will solve any deficiencies that are there but even without those changes to things such as my power to investigate a private company I believe that I have not been restricted so far. If I have wanted to do something I have done it.

Mr MARTIN - In the global value management audit, did you, for example, have the power to investigate the councils involved - Brighton Council, Sorell Council?

Mr BLAKE - Yes.

Mr MARTIN - And you were able to trace the entire dealings?

Mr BLAKE - I will not say I traced the entire dealings. I found the expenditure that they incurred and I inquired of those officers, including the general manager in some cases, as

to why or how they incurred those expenditures. So, yes, I audit councils in this State and I regard them under the same mandate as I have for anybody else.

Mr MARTIN - Are you able to interview people in the Premier's office?

Mr BLAKE - I interviewed the Premier in that process. I did not interview the Premier's advisers but I certainly interviewed the Premier. With respect to the advice I have given you about my capacity to talk to ministers, I suspect similar advice would apply to ministers' advisers, although I have not specifically asked that question.

CHAIR - Mike, if I came to you and said Tasmania needs an integrity commission or ethics commission, whatever you want to call it, how do you believe it should be made up? If you are unable to answer any of those questions, please let me know.

Mr BLAKE - It is a hard one, Chairman. I did not put a submission in around it, and that was deliberate, because I have not researched what the powers of those different ICACs or ethics committees are and I have not researched the powers of the Ombudsman, for example, to see what he or she cannot do. But if I look at what has happened in Western Australia, for example, where a senior public servant in the health sector recently got into trouble and various things happened around a former premier of that State, if you are expecting me to have the coercive powers that an ICAC might have, and that is to interrogate people's phone calls and e-mails and the rest of it, then I am not sure that I have the skills to do that and I am not sure that I have the skills in my office to do that. So I would be reluctant to take on that sort of role. Should I be doing it? Perhaps my powers enable me to do it but I do not have the skills and I do not have the coercive capability, I think, currently to do it. Should I have it? I do not want to answer that. Should somebody else in the State have it? I am not sure. I need to research it before I give an answer.

CHAIR - It is not really a fit, is it, with your role at present and any A-G's role around Australia?

Mr BLAKE - I would argue that it has a fit. We are auditors, accounting-type people. Some auditors-general around Australia have an economic background. One was a lawyer. The one who was a lawyer was pushing for a separate ICAC in that particular State.

CHAIR - A separate ICAC in that State?

Mr BLAKE - A separate ICAC, that is right. I am not sure that it is a fit for me to be doing that sort of work.

Mr HALL - If I can just clarify that, Jim. So there are no other A-Gs in other States that you are aware of that have more powers than you have at present to do this investigatory type of work?

Mr BLAKE - Not that I am aware of.

Mr HALL - They are all very similar?

Mr BLAKE - Academics have done various researches around Australia of the different powers of the different jurisdictions and whilst there are differences, some of those are being ironed out now. Primarily those differences relate to the way the auditor gets appointed and how the auditor gets funded rather than what the powers are.

Mr BEST - You mentioned that your mandate is financial audit. Did you say process and policy?

Mr BLAKE - The work that I have to do every year is financial auditing. I have to audit the Treasurer's annual financial report and I have to audit the financial statements of agencies in the State. That is the work that I have to do. The discretionary work powers that I have are around my capacity to conduct performance audits, which are audits of efficiency, effectiveness and economy, and to conduct investigations.

Mr BEST - Which are accounts of Treasury or something different?

Mr BLAKE - The wording of the act is in the notice I have given you but it is generally around the investigations into the Treasurer's reports, the financial reports of all public bodies and then expenditure of public money or management of public property. I do not have the strict mandate to do compliance audits but I do do compliance audits and I see that as part of my performance audit mandate because I think that compliance is an important component of what I am looking into.

Mr BEST - What do you see your expertise as then? Do you see it as starting to broaden out a bit further with other recent investigations that you have undertaken which were not compliance but they were more about process?

Mr BLAKE - I see compliance and process as similar. Process is a factor of compliance, if you like. So if I do compliance audits I am looking to see how well processes and systems are enabling an entity to comply with laws and regulations. I think the two things are the same.

But your question about skills and so on is a good one because my performance audit mandate gets me looking into a very wide range of things such as hospitals, magistrates courts and so on. I do not necessarily have to have the skills in how to run a hospital or to conduct a surgery but I make sure that I have the skills on my team that can enable me to assess how others are managing those functions.

Mr BEST - The detail of it?

Mr BLAKE - That is right.

Mr BEST - How would you see those skills then fitting within the context of integrity or an integrity commission? I suppose I am resubmitting the question that was asked before but I am just thinking about the skills that you have and how you fit into that area that is an area of definite expertise. Do you think that you have a role there to be brought in and to look at aspects of things?

Mr BLAKE - There is no doubt that there would be a role for me to play in an ethics-type body. Whether I become the commissioner in that sort of body, I am not sure that that is

appropriate. An auditor brings an inquiring mind with a skills set for looking into the way financial resources and other things are recorded and reported. That can be quite easily translated, I think, into the way that an organisation operates in an efficient or an effective manner. I am not sure that I would have the skills, though, that a policeman might have.

Mr BEST - No, that is understandable.

Mr BLAKE - I think it would be asking a lot.

Mr BEST - Yes, but you could be looking at things that fit within your skill and expertise. What powers would you need expanded upon to undertake that role and function of investigating within your area of skill and expertise?

Mr BLAKE - I am not sure it is so much a skill thing. It is not a person resource. It is the resources and the capacity to do things as I think the ICACs are doing, such as phone tapping; the capacity to research and interrogate computer systems. I do that as part of my audit loop but it is not to the extent that that would require. I believe that the skills set would have to be significantly enhanced in IT and communication skills in terms of looking into what I think the police would do as a day-to-day job.

Mr BEST - So you want to do some of that work?

Mr BLAKE - I do not want to do that sort of work.

Mr BEST - You do not want to?

Mr BLAKE - I do not want to do that sort of work. You were asking me what skill sets are required.

Mr BEST - No, sorry. What I meant was, given that you have just explained your skill and expertise, what powers would you need to be able to continue to undertake that role, say, as a part of an integrity commission? Essentially it seems to me you would be able to do that tomorrow.

Mr BLAKE - I can do some of that now.

Mr ROCKLIFF - Mr Blake, my question is related to the resourcing of your department. Do you feel as though your department is adequately resourced at present? If there was some sort of ethics or integrity commission set up, would that require more resources to be put towards your line of work?

Mr BLAKE - I will answer the second part first. If some sort of ethics role were added to my role I would want to see what the terms of reference of that were and then make a judgment as to what the impact of that would be. It is hard to know until I know how the mandate would change. As far as my current resources are concerned, they are adequate. I did put a case together to the Treasurer last year for some extra resources because what I am finding is that the level of requests for me to conduct audits has gone up many-fold since I have been here. I am meeting with the Treasury officials about this very matter this week in response to the Premier's 10-point plan but I had done the work a year ago.

What we found was that in the three or four years leading up to my start here we were looking at about six requests to conduct investigations in a four-year period. That has grown to more than 30 - close to 40 - investigations in the four years since then. I am starting with that workload.

Mr ROCKLIFF - So you have not yet heard from Treasury on your request?

Mr BLAKE - I am meeting with them this week to go over the case I made last year in response to the Premier's announcement. I am hoping to get a better hearing this time. At the moment I have coped with that workload but it has tended to put back some of the work that I already had on my program. So some work that I would have completed in a more timely way just got delayed as I have done some extra work.

Mr MARTIN - Mike, going back to the Global Value management audit, which was the investigation into the complaints made against the then Premier's brother's company and the appointment of various contracts, from memory at the time of your investigation, your findings were seen as clearing the Premier of any wrongdoing. Can you run through exactly what your audit in that case involved, the process you went through?

Mr BLAKE - Terry, I would have to re-read the report to give you an exact answer but my recollection of what we did was that we took the seven or eight allegations that were made, went to the entities involved and trawled through their systems over three or four years to try to find if any payments had been made by those various different organisations - councils and predominantly the Department of Infrastructure - to identify payments that had been made. Once we had identified the payments that had been paid and we knew we had a complete sample we then interrogated the processes used by those entities to approve incurring that expenditure, then to approve that expenditure and to inquire how they went about that. We also looked into whether there was any persuasion, or any reason provided to the minister why they should select that company rather than another company. We also looked at the policies that they had around procurement - did they go to tender, what was the process followed in total for those sorts of expenditures? We found the processes were okay. We did not find any evidence that the Premier had persuaded those organisations to appoint his brother's company in those cases.

Mr MARTIN - You had full access to the financial records and computer files?

Mr BLAKE - We did. The important thing there was to identify what costs had been incurred in relation to payments to that company over quite a lengthy period in some cases because we went back a number of years. We believe we found all of the expenditures and we found that those expenditures were properly incurred.

Mr MARTIN - You interviewed all the relevant people involved in the decisions?

Mr BLAKE - We interviewed all of the relevant people within the organisations - the councils concerned. I interviewed the representatives of the company to see what the situation was from their point of view and I spoke to the Premier.

Mr MARTIN - Is there anything more you could have done if you had had greater powers? If there was an ICAC investigating the same complaints -

Mr BLAKE - I would have to take that on notice. I cannot think of anything. I looked at it from an auditor's point of view rather than a policeman's point of view, but I suspect a policeman would have gone through a similar process.

CHAIR - Mike, there has been some talk that if there was an independent body set up, there should be a parliamentary standing committee set up as well - again you can call it a number of different names. Do you believe that is appropriate? I believe Public Accounts gets on very well with the A-G's department, do you believe it appropriate that there should be, if there is a department set up, a committee as well set up in Parliament? For instance, if the body stated, 'I don't believe there's anything involved in this', after they have sent it to the DPP, 'I don't believe it's criminal', it then goes back to this committee of parliament to do what they will with it. It might be a name and shame situation, I do not know, but that is the type of committee that has been mooted here.

Mr BLAKE - I cannot see any harm in that. Using the PAC analogy with my office, I can say that that works well because we have gone out of our way to ensure that it does work well and there is not a crossing of boundaries. If the PAC decides it wants to investigate something I stand aside and if I decide I want to investigate something, as I have recently with the request from the Greens in relation to some surveys that have been done and I have decided to look into that matter, the PAC is probably going to step aside. I find that that is a good process.

I think again the mandate is important, your legislation is clear. If you are going to have an ethics committee of the parliament what is its mandate and what is the ethics commissioner's mandate? You would have to make sure there is no blurring of boundaries because I would hate to be in a position where I was not sure if I was doing or the committee was doing something. If the boundaries are clear, the mandates are clear and the legislation is clear, I do not see why it could not work.

Mr McKIM - Mike, could I just confirm that you have decided to inquire into the expenditure by the Department of Premier and Cabinet in relation to surveys that were conducted and the results of which were allegedly provided to cabinet ministers?

Mr BLAKE - Yes, I have. I did not come here planning to make that statement and I have not even informed the government department involved. We have gone through a process of risk assessment in our office, which we do with all of these requests that we get, and we decided that we wanted to look at that matter but not only that matter. I want to broaden it because I do not see the point of looking at that matter is isolation but if I include other advertising, if you like, as part of the process then it makes it a viable project. I have not scoped the terms of reference yet but the answer is yes.

Mr McKIM - Could you just talk the committee through the process that you go through internally in your office. Does a prima facie case have to be established in your mind before you decide to conduct an investigation? Where is the bar that you have set in relation to a determination to investigate a matter?

Mr BLAKE - That is a good question. What I have done is establish a process whereby I can make an informed judgment. That process has involved a protocol that I have developed. If I get a request from any member of parliament or any member of the public, it requires me to sit down with my two direct reports. We go through the request

that we have received and look at it from a risk-management point of view in two respects: what is the risk of doing the project and what is the risk of not doing the project. If we don't do the project, what is in the public interest in that case? Is it in the public interest for me to investigate the matter that has been referred or not? At the end of the day it is my call because that is the mandate; the mandate is a discretionary one. I look at what public resources I am going to spend in doing the project, whether I have the skills to do that project. If I don't have the skills, can I get them? If I need to do the project and I don't have the skills, where am I going to find those skills? Are they immediately available? All of that discussion is done internally before we write back to the person saying, 'We're going to look at this' or 'We are not.' The process before that is to say, 'Thank you for your letter. We're going to look into it.' Having looked into it, we write back saying, 'No, we're not going to investigate the matter'. We try to write that in such a way as to make clear that we are not seeking a further submission, because often that happens and we end up in lengthy correspondence trying to justify why I made a decision and it can become quite tortuous. If I make a decision to investigate, I tend not to write back. I simply develop and scope the project. That then becomes a matter in my reports where I provide details of all projects that I am currently working on.

Mr McKIM - Can I ask whether the fact that the results of these surveys had allegedly only been provided to cabinet ministers - that is, members of parliament representing the Labor Party - and not to all other members of parliament, influenced your decision?

Mr BLAKE - I don't want to say what influenced the decision. It was more a case of 'What are these surveys all about? Why are they done?' Surveys are a common tool these days to find out information about how well an agency is performing. I use them myself. It was more a case of 'Why were the surveys being conducted? Are they for the benefit of the community as a whole or are they for the benefit of the party?' That is the matter I would like to look into, as well as broadening the scope to look at advertising more generally.

Mr McKIM - So one of the things you will look at is whether the surveys were conducted in the interests of the community or of one particular political party?

Mr BLAKE - That's right. It is difficult sometimes to draw the boundary around that and to see what the answer to that question is, but that is one of the matters that I want to look into.

Mr BEST - As part of your investigations into the issue of advertising, has some of that come out of the recent investigations with the Public Accounts Committee?

Mr BLAKE - No.

Mr BEST - None whatsoever?

Mr BLAKE - No, it is not connected. Auditors-General have looked at advertising by governments in a number of jurisdictions. I have not so far chosen to do so, but here is the opportunity to do that.

Mr BEST - The Public Accounts Committee, as I understand, talked about some of the process with the Department of Premier and Cabinet. You don't think that is relevant?

Mr BLAKE - No. I think the main finding, from our point of view, of the recent report that the PAC looked into was the lack of guidance for particular parties and how they spend their money. I concur with that finding. It is one that I had reached beforehand and the Chair and I spoke about that. One of the recommendations of the PAC was that the Auditor-General should provide guidance in that area. I believe that guidance would be worth giving. I am not sure that it should be my office that does it, but I am happy to do it. I think the guidance should go beyond just the incurring of expenditure but also the requirement of political parties to acquit their expenditure and to report in some way on how they spent that money, so the guidance would cover both.

Mr MARTIN - Have you been asked to provide that guidance by the Government?

Mr BLAKE - The Chair and I have been trying to get together for a while to finalise how I go about that.

CHAIR - We will do it this week, hopefully, Mike.

Mr McKIM - Mike, I have asked these questions of all the witnesses who have come before the committee. If you feel they're outside your area of expertise, feel free not to answer them and just indicate that that is the case. Part of our terms of reference is to review existing mechanisms currently available to support ethical and open government in Tasmanian so it is quite a wide term of reference. In that context, the first question I would ask you is, do you think ethical and open government in Tasmania would be improved by State-based donations disclosure laws, whereby political parties and members of parliament were required to disclose any donations that they received via the State-based donations disclosure laws which Tasmania does not currently have?

Mr BLAKE - I believe political donations should be disclosed but does that mean every single dollar or is there a cut-off somewhere? There probably should be some cut-off, but I believe there should be disclosure.

Mr McKIM - Secondly, in the same context, do you think that ethical and open government in Tasmania would be improved by the introduction of laws which say that people who advertise politically during election campaigns must disclose their identity and the source of their funds?

Mr BLAKE - Can you say that again, please?

Mr McKIM - Yes, do you think ethical and open government in Tasmania would be improved by the introduction of laws requiring people who advertised politically during election campaigns to disclose who they are and the source of their funds?

Mr BLAKE - If those people are not the public sector - in other words, if a private individual chose to advertise for some political reason - I am not sure how we could require that to be disclosed. I would have to think that through. If it is the Government doing the advertising, then that is something that I could look into and I think that should be covered and I think there are already policies that deal with those things in this State. So I could give a view about what should happen in the public sector. I am not sure I could give a view about what private individuals should be doing.

Mr McKIM - Okay, thanks.

Mr HALL - Mike, we have had some evidence given to us in the past that perhaps there has been politicisation of the public sector and that that has been happening in a lot of governments around Australia over time, and that senior bureaucrats are being placed on a contract. They may give a 'Yes, Minister'-type of response to ministers. The question is whether the public service should be giving apolitical advice to the Government rather than being in a situation perhaps where they feel that they have to tell the Government what they want to hear. Is that something you have thought about?

Mr BLAKE - It is and it is something that I have discussed in my submission to the inquiry that has been looking at public-appointed heads of agencies. The notes that I provided to that inquiry, based on the information that I had researched in another jurisdiction, looked into the effect of five-year contracts or contracts for heads of agencies and, I suppose, noted that it could have the effect of what you have just outlined but that they had not, I think, identified any evidence of that.

Maybe I could answer that in my own case. I am on a five-year contract and I have four or five months to go. Does that mean I am going to stop giving the advice I think I should be giving? No, I am going to report the way I think I should report.

Mr HALL - I was not referring to you.

Mr BLAKE - No, I understand that. But if I take my situation and I translate that to head of agency, I believe they should go political they should give fearless advice. Are they doing so? I cannot comment. Or because they are on a contract, does it mean they tend not to? I cannot comment. In my case, certainly not.

CHAIR - It would seem, Mike, that these contracts are a fairly common procedure now, not only within Tasmania but also in other States of Australia as well.

Mr BLAKE - Yes. It has become a very common practice. I believe that a five-year contract is a good idea. However, it should be associated with a clear performance agreement with the head of agency and the head of agency should be held to account for that performance. I do not believe that that should in any way, though, reduce the amount of fearless advice they should be giving.

CHAIR - I am right in saying, am I not, that the number of actual reports that Public Accounts have put out since your tenure has increased quite dramatically from previously?

Mr BLAKE - So the actual -

CHAIR - Number of reports?

Mr BLAKE - The Tasmania Together benchmark is four reports a year. When I came to the office it was sitting at around six or seven, tending upwards and I have maintained it at eight. I think eight is enough for the resources that I have. I think eight is enough for

you as members of parliament to absorb and it is more than the average around the other jurisdictions in Australia.

Mr HALL - You work too hard, Mike.

Mr BLAKE - Thank you.

CHAIR - Any other questions to the Auditor-General?

Mr BLAKE - Could I add one more comment?

CHAIR - I was going to say that if you wanted to sum up, please do so.

Mr BLAKE - I have noticed the Ombudsman's submission and his reference to an integrity-type body. Coincidentally, and not because I have read his submission, I initiated an informal meeting of those people in this State. I did so in the Northern Territory when I was there. So I have initiated a meeting of the Ombudsman, myself, the Public Service Standards Commission and the Anti-Discrimination Commissioner whereby we all meet quarterly just to chew the fat, to discuss issues as we find them. I found that worked well in the Northern Territory because it was a really good process where we could understand each other's role better and understand issues that we all face. I decided to raise it here because the Ombudsman suggested it and I supported him. In Western Australia it is a formal arrangement, here I am just proposing an informal arrangement.

CHAIR - And the benefits of it in Western Australia are what?

Mr BLAKE - I cannot comment. When I used to work in Western Australia there was an informal grouping as I have described and I suppose I picked it up and took it with me to the Northern Territory and now here. I have not asked the Auditor-General there as to what the benefits of the formalisation of that have been other than that they are a forum whereby integrity-type matters can be referred to and they make, as I understand it, public announcements about those sorts of things. What happens to it after that I really do not know.

CHAIR - Thank you. Thanks for coming along and thank you for giving your advice fearlessly.

THE WITNESS WITHDREW.

Mr ALLAN GARCIA, CHIEF EXECUTIVE OFFICER, LOCAL GOVERNMENT ASSOCIATION OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

Mr GARCIA - Our submission was brief, as you read, and I think the main interest in putting a submission in was merely for completeness. I do not think there was any particular concern and certainly from a local government perspective we applauded the review. We will look at the outcomes with interest.

Our main consideration was that we wanted to make the committee aware that within local government there is a range of tools, I suppose, legislative measures, formal and informal processes, which govern the conduct of councillors in particular, but certainly officials of local government. In terms of any other coverage that was being contemplated in relation to State Government we just wanted to be sure that people were aware of what happened in local government already and that there was not going to be an overlay.

It is also interesting to note that in other jurisdictions where there are organisations such as ICACs and the like a number of those roles that are currently within local government legislation for things such as offences for misuse of office and improper use of information and disclosure of information have been taken out of local government acts and dealt with in those bodies. Those types of issues are currently offences under the Local Government Act which are dealt with by the court system rather than an independent authority. I suppose it was more an issue today of indicating that I do not think local government would necessarily be unhappy about being covered by such a body but, in the event it was considered that it should flow that far, that there should be a dialogue and an understanding of what it would mean beyond what is already in place to deal with those conduct issues. That is pretty much all I had to say.

Mr ROCKLIFF - Can you think of any recent times, Allan, where some conduct issues were investigated under the existing mechanisms?

Mr GARCIA - A significant number of items have come to the fore - lots of little issues. The processes around codes of conduct allow member-to-member concerns to be expressed. So we could be at this table and I may act in a certain way that you do not like and you have a right to take me off to a panel to talk about whether or not I was appropriate in my behaviour. I think there has been a number of smaller altercations that have been dealt with civilly through a process of mediation through a panel and there has not been any significant outcry from those exercises. We have not had a Wollongong City Council-type outcome. It has more been about people being offended by the way particular behaviour has occurred, or remarks that have been made, and pretty much in the same way that in Parliament you have a Speaker who makes a judgment, the Chair can make some level of judgment. To the extent that the mayor is not able to resolve it at the table, if the person feels aggrieved by actions either at the table or away from the table then those processes are followed through.

I have been party to some of the issues that have arisen through our standards panel that we have at the association, but nothing of a significant nature, I would suggest,

Mr ROCKLIFF - So no pecuniary interest issues?

Mr GARCIA - No. There are interest provisions within the legislation. In the context of the Local Government Act it is up to you as an individual to declare your interests. There is a relative weakness there. It is not up to another party to declare your interest on your behalf so there is a weakness within the legislation to that extent.

Mr HALL - For anybody who has been in local government, pecuniary interests or conflict of interest can be quite a difficult and grey area for a lot of people. Sometimes advice is taken from the general manager and sometimes members get their own separate legal advice, as you know. If something like an ICAC or some sort of commission were set up and there were some overarching legislation to flow through to local government, would you see that organisation perhaps providing advice to members or to councils?

Mr GARCIA - Quite possibly so. This has been an issue through the recent reviews of the Local Government Act. There are schools of thought that say there should be a register of interests and there should be a capacity for someone to question someone's interests by virtue of having some form of register. There is deemed to be an inherent weakness in the individual making such a declaration, either through lack of knowledge or just choosing not to. Also, there are some weaknesses in terms of leaving a meeting in that regard as well. I think there are probably two schools of thought, Greg. Some would applaud some overlay and others would say, 'Hang on, there's enough there and it really should be left to the individual to make that judgment'. I do not know in recent times whether we have had a significant issue around those conflicts but I have to say that at the margins there have been a number of concerns expressed about whether or not someone had made an appropriate declaration. So there are some issues around that conflict factor.

Mr HALL - Whilst under the Local Government Act obviously most councils have a code of conduct, often the criticism comes from members of the public, not perhaps against the elected member per se but against a member of staff or an officer of the council. Do you think there is enough provision there? Some people say they are unaccountable, they do as they like and all that sort of thing. Do you have any comment to make on that?

Mr GARCIA - They are probably about as unaccountable as a public servant in State government, I would suggest. There is not a code of conduct for council employees per se in the same way that there is not a code of conduct for State government employees as such.

Mr HALL - The obvious question is then, do you think that for senior management in councils and in the public sector there should be a code of conduct?

Mr GARCIA - It depends. You can have as many codes as you like; it really comes down to what you do with a code of conduct to the extent that someone does the wrong thing. If there was a code of conduct I do not expect that it would trouble too many within local government and I am sure that it would not trouble too many within the State sector because 99.9 per cent of the people are doing the right thing all the time so I do not think that it would be onerous. I am sure that people other than I would have views on that but from an individual's perspective that has worked in both, I would have no problem.

Mr HALL - As you know, local government being close to the bone, particularly with planning issues and that sort of thing, you get the people who get very angsty and very upset about decisions made by a manager of technical services or a planning officer. They make a lot of complaints but they tend to hit a brick wall all the time.

Mr GARCIA - Absolutely. It is an emotional time. People want to do what they want to do, believing they have the right to do what they want to do and not understanding what is a very complex environment and one would expect in most case they probably do not understand the technicalities. There is an onus obviously on the persons making the decision to be able to provide advice in such a way that the people do understand, even if it is wrong. But you know and I know that unfortunately that communication is not always as good as you would hope it could be.

CHAIR - Allan, obviously planning is a real issue. Somebody may want to develop a spot in a certain area, apply pressure on a member of council to vote in a certain way and that person may vote in a certain way. What do you do at council now if that occurs? It has happened in other places in Australia, not Tasmania.

Mr GARCIA - The saving provision within the legislation is ideally that the council must take expert advice in relation to these matters, so discarding Greg's situation at the moment, let us assume that we have not gotten to the officer and we have not gotten to the councillor as the developer. Then the expert advice being provided by the technical expertise at the council officer level is suggesting to the council that a particular development is in accord or otherwise with provisions of the planning scheme. There may be conditions by virtue of that planning scheme that are proposed to be placed on that development to make it better or more amenable or whatever, and that is put to the council. Let us make an assumption that the officer has indicated that this is a development that should not go ahead for various reasons, let us assume that the developer has had a discussion with a majority of the councillors who have determined that this is something that they want to support. On that basis the councillors are required to indicate the reasons they have gone against the advice provided by the officers, gone against the expert advice.

CHAIR - Is that a written process?

Mr GARCIA - It is a written process. But it is not to say that they have made the right decision or the wrong decision. It allows the applicant in the first instance to then say, 'Hang on, I've put forward an application' - he's going to be happy so he is probably not going to go anywhere. But a third party may say, 'I'm not happy with this because clearly the council has seemingly done the wrong thing'. On the basis of the advice being provided by the expert, in this case the council officers, there is the opportunity to take that to another place - an appeals process. I am not saying there are pure safeguards but, if there were no third-party appeals process, you would say that there would be much more risk of some notion of corruption, perhaps.

CHAIR - I hear what you say in relation to a way of solving it in the end by taking it to the appeals process, but we have somebody in the middle who has obviously done the wrong thing if they have taken money, property or whatever it may be. How are they going to

be dealt with? I am saying that without really, as you say, a conflict-of-interest form needing to be filled in by members of the council.

Mr GARCIA - Effectively you're talking about a misuse of office and if it is a misuse of office it is an offence under the Local Government Act. It is effectively fraud, a criminal offence. The issue becomes, as in any other case, the question of proof. In the event that that was raised and could be proven, it would be dealt with through the court process. There is a mechanism there. If it is corruption and someone is suggesting that somebody has taken either money or some other form of reward for making that decision and that is demonstrated to be the case, that is a chargeable offence under the Local Government Act.

CHAIR - It might not be criminal, it might fall short of criminality. Let's say you find out that he is the best friend of the applicant and they have just been overseas together, they have been knocking about together for the last four months - not criminal, just mates. What I am endeavouring to ask is, what happens when it doesn't amount to criminality but obviously amounts to behaviour which is questionable?

Mr GARCIA - There are provisions under the code of conduct but they probably may not go as far as someone who is seeking some form of retribution for that type of matey behaviour. There are discovery mechanisms under that code-of-conduct activity. Whether or not they get into the full detail, whether the investigative powers are there in all those types of tools you might otherwise want to explore, I am not as confident about it as, say, an ICAC-type process would be able to uncover.

Mr MARTIN - I was a bit surprised about the media coverage - and I stress, only with the media coverage - of the Tasman Council example, where there were claims that they made the decision to dismiss the manager without any expert advice. That surely couldn't happen, could it?

Mr GARCIA - The difficulty is who gives the expert advice. The general manager is not there. I will explain it, as I understand what might have happened at Tasman Council. My understanding is that there were concerns expressed about the behaviour, the actions, the conduct - whatever it was - of the general manager. A proposition was there to take action against the general manager, whatever that action might have been. Certainly an approach was made to the association in respect of what should occur. A group of councillors made that representation and they were referred to the TCCI, in the context of being a body that provides us with industrial advice. We believed that it was appropriate that they should seek advice from that sort of place. They did that. The TCCI, after a period of uncovering what the concerns were, further referred them to a legal firm where they got additional advice in relation to the contract as to a process for termination and the like. Advice was provided, it was not provided through the officers as such, but advice was sought by the council in a different way and in a difficult way because, when we are talking about your key officer being dealt with, it is a very difficult circumstance to ask others who are officers within the council who have loyalties and there are issues of confidentiality here. It is very difficult, I expect, for the mayor and others in that circumstance to go through that process.

Mr MARTIN - But they did all that. Do you know whether that advice was provided to all the councillors in accordance with the provisions of the act prior to the meeting?

Mr GARCIA - My understanding is that there was a closed meeting. I am not aware of what actions took place other than what you have read in the media, as I have read in the media.

Mr MARTIN - Who would investigate the media concerns?

Mr GARCIA - In the event that there was a complaint made by a party, I expect if it was a minority council who feels aggrieved by the process, the appropriate mechanism is through the Director of Local Government who administers the act.

Mr MARTIN - My only other question in relation to codes of ethics -

Mr GARCIA - Codes of conduct?

Mr MARTIN - Codes of conduct, sorry. They do not really have any teeth do they?

Mr GARCIA - They have some teeth, Terry. Whether they are big, sabre tooth tiger teeth, I am not sure. I think probably a majority of councillors have always behaved in a certain way and the code of conduct reflects the types of behaviour they have, which is gentlemanly and the way you would expect normal people to behave. There are others who probably do not need a code of conduct because they have always behaved in a particular way and that is appropriate. The reality is that I think they are a mechanism that probably reflects what has occurred for a long time and in some councils where there have been issues, it provides a mechanism to get those out, but they are not strong though. They are not as strong as mechanisms that are present in other jurisdictions.

Mr MARTIN - Do you think we need stronger mechanisms to deal with the extraordinary cases that crop up every so often?

Mr GARCIA - I think it depends on what the extraordinary case is, Terry. There are provisions there that allow for investigation through the minister or by the minister in the event that there is a particularly outstanding issue. So, in the event that it goes well beyond a code of conduct issue, there are mechanisms in the current legislation that will allow for that. Bearing in mind, what the code of conduct is, it is pretty much like any code of conduct amongst colleagues. It is a volunteerism to say we agree to behave in a certain way, we agree to do the right thing normally. If you do not do that, then what the legislation, the Local Government Act, does is to allow for certain other impacts to occur, such as intervention by the minister or a board of inquiry.

Mr ROCKLIFF - In terms of enforcing the code of conduct or ensuring that individual aldermen or councillors are well aware of the code of conduct and that legislative responsibility, is that really up to the individual council themselves to ensure that, say, a new member elected to council becomes aware of what their responsibilities are? Or it is an overarching responsibility that your organisation has or instructs?

Mr GARCIA - No, it is not ours. As a matter of becoming a councillor you sign to be a councillor and on taking office you take on a range of responsibilities. One of those is to act in accordance with the legislation of which the code of conduct is part. Each individual council goes through a process of induction where I expect the code of

conduct is high on an agenda for new councillors - that this is what is expected, there is the code of conduct, read that and obey it. They will talk about the processes in the event that there was some form of incursion of that code of conduct. There is an internal council process or, in the event that you feel that you cannot have your matter dealt with at council, it gets referred to the association and we have a panel of experts that we bring together to deal with that matter.

Mr ROCKLIFF - Is that induction consistent across all councils in terms of its rigour?

Mr GARCIA - I would say not. I would say that some councils do their induction extraordinarily well. I would say that other councils do not do as good a job as others. We overlay that with some work that we do through elected member workshops where, hopefully, we are providing them with details about fundamentals, such as meeting procedures, finances in councils, the planning process and being part of a planning authority, and asset management, given that 60 to 70 per cent of your income is literally spent back on assets - those types of issues. We try to provide an overarching process, but it is not compulsory. This is the problem: it is not compulsory. The councillors who probably need our help most are perhaps not the ones who come to us.

Mr ROCKLIFF - Further to that, obviously you have cited in your submission some mainland examples where an ethics-type body or an investigative body has encompassed some local governments. Would you imagine that if a similar body were set up in Tasmania that encompassed State and local government it might have to be compulsory or have a more consistent rigour across all councils in Tasmania?

Mr GARCIA - When you see a Wollongong happen it is hard to argue against anything, isn't it? I think that is the problem we all face. If that is your pilot or your beacon then it is tough to ask, 'Shouldn't local government be included in any sort of process like this?'. One would hope that Wollongong is extraordinary. Maybe it is, maybe it is not; I do not know. New South Wales seems to be a more difficult area than others. That probably has a whole lot to do with the number of zeros on the end of developments. It is a big effort. To the extent that things were mandated for councillors or councils to have to do in terms of induction or codes of conduct or even coming under the scrutiny of a body like this, I think, at the end of the day, what we are talking about is the public interest and the community interest. Councillors and councils may not necessarily want this but at the end of the day if it is protecting the right of the community and the rights of individuals then I do not think necessarily people will be overly fussed by this type of mechanism. That said, in Tasmania major problems, major difficulties, major criminal investigations in local governments have simply not been there, but that is not to say that next week something dramatic could not occur. But it simply has not been there, I would have to say, in the same way as we have had exposure in State Government over the last few years.

Mr HALL - Jeremy basically asked the question I was going to ask, Chair. From my experience the process is good, the councils who do it do their induction programs well. Perhaps it should apply to State MPs as well. Perhaps it should be done here, too. In our case that does not seem to happen. To go back to what Jeremy was talking about, if there were some sort of commission or whatever set up in this State - and you did say that the LGAT too would like to be involved in that in the first place - do you see any pitfalls in that? I refer particularly to the WA and Queensland commissions where

people have been dragged through the mud and had their names besmirched and it has really been trial by media in fact. That has caused great stress and duress to those particular individuals. At the end of the day they have been exonerated in a couple of examples. There is the danger, I suppose, of it happening in this State too, particularly in a small State like Tasmania.

Mr GARCIA - Absolutely. I think the more public processes that we have seen at a State level in recent times probably are a fair example of that type of thing. I think you are right. There have been some extraordinary circumstances where people, ultimately found not to have done the right thing, find themselves in a situation where they no longer have a career, their public lives are shot, their private lives are not in much better shape. At the end of the day, if I took this to a general meeting of council and said, 'Would you like the Tasmania ICAC to have coverage over local government?' I expect the overwhelming response will be, 'No, thank you very much. We are doing all right as we are'. I would make that point again, that we are doing all right as we are at the moment. There has been no evidence of significant failure within local government but there is always innuendo. There is always finger pointing and the like. There are provisions to actually explore those cases where they are highlighted, but in my decade in local government that has not been the case.

Mr BEST - I had a constituent inquiry going back a couple of years about some processes of a local government. That was referred to the Ombudsman and they investigated and I think the officer apologised to the constituent because the Ombudsman found in the favour of the complainant. There is a fair bit of scrutiny available in that regard. There was a question put to you about staff members and their codes of conduct and that sort of thing and they are not immune from investigation.

Mr GARCIA - Absolutely not, Brenton. If we think about who can investigate, if I, as an individual, want to make a complaint, every council has to have a complaints process. I have to have the opportunity to complain, I have to be able to find that on a web site and I need a process that I can go through, so I have that opportunity. I can go to the Ombudsman. From time to time the Auditor-General decides to either have a general look or a particular look. We have the Office of Local Government with the Director of Local Government investigating any and everything under the Local Government Act. We have the codes of conduct, as I say, that relate to elected members. We have the opportunity for the minister in the event that he has a particular concern to send in a board of inquiry to make an investigation either of a council or arguably of an officer if that was the case. So there is significant scrutiny.

Coupled with that, let us not forget places such as the Industrial Commission, and officers have taken matters that are borderline to the commission. The other bodies that have been involved in local government in recent times include the Anti-Discrimination Commission, so all those apply to local government as well. Again, we are probably getting a little bit off ethics but all those bodies exist and actually go through councils like a dose of salts now.

Mr BEST - The Ombudsman can investigate staff but it is probably a different scenario with the issue of councillors and that sort of thing. That is probably a separate area that has not been really looked at, I suppose.

Mr GARCIA - From an external perspective, yes.

Mr BEST - The Chair gave an example of the mate who goes on a holiday or something.

CHAIR - I was just thinking of an example - and it is the same with members of parliament making decisions - that was not criminal but one could argue whether it was proper or not.

Mr GARCIA - Western Australia is the classic example. A lot of mateship seems to happen over in Western Australia. While you cannot actually lock it into an issue of corruption there seems to be a trail of friendship, though we should not just pick on Western Australia. It is a difficult one because the problem relies on evidence at the end of the day. What was the favour or the gratuity given? At best what you should be doing, on the basis of friendship if it were you or I in that situation, is discount yourself from the debate and the decision. That is what we would expect people to do within councils. In fact in council there are a whole raft - and I expect it is the same in State Parliament - of places when you should opt to move out of the room. Does everyone do it at the right time? Does everyone even do it? The answer is, not in all cases and that is where the grey area is.

Mr MARTIN - There would be more grey in State Government than in local government, in my experience.

Mr GARCIA - I would not know about that. In local government a number of issues arise around not having a register of interests, but then it is asked - and I know it has happened in other places - why should the public have to know all that information, but that is disclosure, I suppose.

CHAIR - Thanks very much for coming along and showing an interest in answering the questions in the way that you have.

THE WITNESS WITHDREW.

Mr BRUCE SCOTT, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Bruce, as you are probably aware part of your evidence has not been accepted as open evidence but evidence that should be heard in camera.

Mr SCOTT - I understand that.

CHAIR - That being the case, when you get to that stage please let us know and we will ask that the room be vacated. It is under section 203 of the Legislative Council Standing Orders. If you give the evidence in camera you cannot go outside and state what you have just said in camera because it is in contravention of that section. Do you understand that?

Mr SCOTT - I understand all that and I realise some of the issues that I have raised are difficult. What I will say is that the first two case studies I have presented are effectively proven; they are not a matter of documentation. The third one I would really regard still as a work in progress. These particular case studies have taken an enormous amount of time - I would hate to think how many hours, but thousands of hours - and they are not situations that unique to me. The second case study affected an entirely different community down at Kettering. It is just that we had the hindsight of my 11 years of experience dealing with my own case to give me the four years' worth of experience to get a better result for those people.

CHAIR - Do you wish to give any evidence without actually relating to those matters? If you do so in open sitting then please do, but when you get to that stage where you are going to refer to those matters that we have just spoken about then please let me know and we will have the evidence in camera.

Mr SCOTT - That is no drama. I have five or six pages so if my head cold gets the better of me I can hand it out and pass it around. I can read from this without touching on any of the specifics of some of the key points that I wanted to make.

CHAIR - Okay, that is fine.

Mr SCOTT - I have read Mr Crawford's transcript and very early on in it there is a particular theme that he has raised which is in fact in a number of the literatures, and in the formal tertiary education. I have done one of the units in it. Mr Crawford said that perceptions are, as much as anything else, important in politics. It does not really matter whether somebody has done the right thing or the wrong thing; if the vast majority of the people think it is the wrong thing then it is irrelevant because it has not been demonstrated that the right procedures have been adopted.

I submitted to the review of the Local Government Act when it was done some years ago and basically the concerns of people in the community who made representations to the review of that act were ignored. The groups that were taken notice of, and I will quite specific, were the Local Government Association, the Department of Premier and Cabinet's Local Government Vision, the DPAC Local Government Review Board, the Local Government Managers Association, and various local government administrations.

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They had the primary input into the review of that act. Very little of what went into the review of that act, from my understanding, came from the lay people, so it was a heavily biased review. The act that we have now was virtually lifted from South Australia and sort of plopped into Tasmania.

One of the representations that I and others made concerned the formal complaints dispute resolution process. That was adopted into the current local government regime amid a great deal of kicking and screaming by local governments. When I say this I am talking about the administrative arms of local government. It was not by the council or those elected and it certainly was not by the community and I would like to make that point because I think that says a lot about the culture which is currently operating in some local governments. I am not at all saying that it is across the board because I do not know, I have only done the research in my local hamlet.

Each of the case studies is quite specific and it reaches a point where I would really need to be quite specific about exactly what happened. My own case study I think is quite serious. In fact the administrative arm of local government attempted to set up the Director of the Local Government Review Board and ultimately that was told to me by the Director of the Local Government Review Board, which was part of what resulted in the culmination of a solution at my end. In the second case study there are two issues. There is the difficulty that the people had that were in Kettering.

CHAIR - Do you believe that you are getting into that area now that -

Mr SCOTT - Yes. We will leave that bit. All of the case studies have one consistent theme: it involves the actions of the staff; it is nothing to do with the elected people. The elected people in the vast majority were sympathetic to the issues that were raised but it was the administrative arm of the local government that created all the problems. So when the code of conduct discussion came up at the review of the Local Government Act we pressed heavily that there be some form of redress or some mechanisms in the system that dealt with the bad behaviour of council staff and take the focus off the behaviour of the elected representatives because we thought that there was more than enough recourse available within the current system. But based on our experiences, or my experience and the experience of others, when dealing with the administrative arm you have nowhere to go.

Just coming in on the back end of Mr Garcia's discussion, the Ombudsman in my case was stifled, it was stifled in the case down at Kettering; we could not get any access through the Department of Justice. We looked at the ACCC, we looked at various local electives, I went to the then Premier, Jim Bacon, and he told me that it was best for local government if it could reach its own determination. In other words, the State Government did not want to be seen to have a role in issues involving State government. Basically I was told that I should toddle off back down and deal with the local government administration and see if we could reach a resolution.

CHAIR - So what you are really saying is that if this body is set up, the body should not only look at elected people but should also be able to investigate the people who are employed by local government and councils?

Mr SCOTT - I think it is imperative where anybody is involved with a system where there is a monopoly. For example, I have to pay a council rate and I have to pay Federal and State taxes. All parts of a system where I do not have a choice about what I have to do should be subject to scrutiny. The vast amount of discussions surrounding an ICAC style of body concerns the cost of it. I think that is pretty well irrelevant when you look at the cost of governance processes if you draw the comparisons with things such as HIH. The cost in governance to the taxpayer for those sorts of events would far outweigh the costs of governance in the public instrumentalities in the public sector. That is my view.

Mr BEST - If there were such a body as you would like to see, in your case - and I am not trying to be smart - do you think you have the evidence to support it? Do you believe that you really have conclusive evidence that you could have brought forward if there were such a body in existence and that someone could investigate and say, 'Yes, that road was maintained and should be maintained'?

Mr SCOTT - Yes. There is a vast majority of evidence. It is not just hearsay or anything like that. I reiterate that with my own case study it took 11 years to get it resolved and it was only resolved with Jim Bacon's direct intervention because it looked like bringing a State servant, effectively, crashing down in flames, and it would have. The intervention by Jim Bacon was sensible, but it should not have reached that point.

Mr HALL - Bruce, we have talked about local government elected members, codes of conduct and all that sort of thing. If a commission were set up and could investigate officers of different councils, should those officers of different councils have codes of conduct and ethical procedures? If so, how far down the food chain should you go? Should it just remain at a managerial-type level or should it go down further?

Mr SCOTT - My view is that the only way to deal with it at a local government level - and it was deliberately ignored during the review process - is to beef up the legislation so that if people start playing up on the administrative side of it, there is some guts behind the legislation to deal with it. With some of the things that have been going on, if I did that in my capacity as a State public servant I would probably be sacked, as a minimum, and could even be doing a trip over the river. It is pretty serious stuff.

Mr HALL - Is it also not true, I suppose to test that a bit, that under the current Local Government Act the general manager has control over all staff and therefore if you, as a disaffected ratepayer, went to the general manager and said, 'Your manager of technical services or planner has been out of order' then he should take action against that person?

Mr SCOTT - In all three case studies that I have tabled the general manager was well and truly aware of all the events. He was given ample opportunity to resolve them and chose not to. I don't know what the motivation of the general manager was in adopting that view. We never found that out. All we did find out was what went on.

Mr BEST - In that opening remark about the Ombudsman, I think you mentioned that you thought he was stifled. Where do you think the Ombudsman is deficient in that regard, to be able to come in and sort this out and for you to prove that the road was maintained by the council?

Mr SCOTT - It didn't matter what evidence we tabled or what we put in front of the council, they simply said, 'Well, if you don't like it, take us to court'. That is obscene when you are armed with documentation. What I would have to do is get a bag load of money, get some lawyers and march down to the Supreme Court to have them physically belted over the head. I don't think that is a situation that any member of the public should be put in. It is not too flash.

Mr BEST - You mentioned that you couldn't get it investigated. Obviously you're saying that was the last resort, that you would have to go to court. What needed to change for the Ombudsman to -

Mr SCOTT - The Ombudsman would need significantly more powers. I think what would have to happen is that the representations that were made by the council staff should in one form or another be taken into evidence, whether they be sworn statements or something similar so that when the bad behaviour is uncovered people can go back and say, 'Hang on a second. You've said this and that's not what happened at all'.

Regarding the three case studies that I have presented, I have heard of a lot more that are very similar, where people have been misled. I have heard of one case study involving a lady that I met with two councillors in Taroom, where she claimed she was bullied and harassed. I felt a bit sorry for her because she was nearly 90. This stuff goes on all the time, and it is because they can get away with it. I think on my two case studies, the two involving the roads, I was dead lucky.

Mr BEST - So if there were records of evidence that were gathered that might help make it a bit more transparent and open?

Mr SCOTT - But there is no penalty. If somebody plays up in the local government administrative area, there are no provisions in the act for them to be fined. There is no other weight to the act. In my State Service Act there are big chunks of it that say that I have to be honest and be fair and do all the right things or I am out, and that is the contract of employment that I enter into as a State servant. But there is none of that in the Local Government Act. So, if someone wants to try something on, probably the very worst they can get is an ear bashing by the general manager and maybe they might decide to leave. But I asked that question for 11 years and there was absolutely no sign from the person and persons that they were going to leave. It was a case of my getting them if they thought I was good enough.

We raised the matter about involving clout in the legislation at the review of the Local Government Act and the response to that was that there are more than an adequate number of other recourses available to deal with these things when they go wrong. My experience is that unless I had Jim Bacon come to bat for my team, I had had it.

CHAIR - Bruce, we cannot refer to those situations that you are talking about because of what I said originally but even if you were able to complain to a local government body, did you feel that there would be a perception of them not being as independent as, let us say, a separate body which was totally independent of government?

Mr SCOTT - I think it has to be a separate body. Particular events that warrant a further look at or an inquiry - to have something totally contained to local government or, let us

say, Consumer Affairs or Justice or something like that, in this day and age is probably unlikely. The possibility is that if it is a major issue it will even go across more jurisdictional areas rather than fewer. That would be my view.

CHAIR - Thank you.

Mr BEST - Finally, on that, it is interesting to get your view given that you have had a lot of experience with what has happened.

Mr SCOTT - Too much.

Mr BEST - How would you weight it in the sense of this conduct? Essentially, your issue was a section of road. I am not sure what the cost was to renovate it.

CHAIR - We cannot refer to any of the issues.

Mr BEST - Sorry, just discount that question. In your mind, do you think that there is a figure of \$1 000, for example, for the value of something? Otherwise, do you think people can complain willy-nilly about each other?

Mr SCOTT - I do not believe it is possible to put a figure on the vast majority of these things simply because issues of ethics, to my way of thinking, go to issues of personal value not to personal wealth. It is inappropriate for somebody to have to go through the 11 years that I went through - and others, I would have to say because we have a whole group of us. I just happened to be the one up front with a mouth. Another group of people are down at Kettering. They went through four or five years of angst and there were some potential risks to them associated with that, if there was, say, a bushfire which has been pretty well known occurrence for that area since 1967. It is the hardship that it places on people who did not elect to be in those positions to start with. They ended up in them by the actions of others and, to my way of thinking, those people who purport those activities ought not be allowed to operate in those organisations; it is as blunt as that. If I had carried on as some did in my experience, I would expect to be sacked. It is a simple as that.

Mr McKIM - Bruce, you have obviously spent a lot of time, as you have told the committee today, working on these issues. Is it your contention that if this committee were to recommend the establishment of some kind of an independent investigative body in Tasmania what you went through would have been potentially easier, shorter and could have been resolved in a way that caused less angst for you and the people that you are working with?

Mr SCOTT - From a theoretical perspective, I would have to say that would be 100 per cent accurate. The reason I say that is that, given all the resources, the authorities, the audit and all the rest of it that was there when I went through my events, we got nowhere, so anything that is additional to help cut through this sort of crap has to be worth its weight in gold simply because it is not there now.

Mr McKIM - Is it your contention that if we were to recommend some kind of an independent investigative authority in Tasmania the jurisdiction of that authority should include local government?

Mr SCOTT - Without a shadow of a doubt. Local government is closer to the community in delivering core services such as water, sewerage, road maintenance and all that than perhaps the State Government that tends to be a little more distanced from it through its agencies, albeit there is Education and Health and all the rest of it. But on a community level it is your local government that is responsible for the stuff that you walk on, that collects your rubbish, that provides your sewerage - there is a lot of money involved in it. It is more infantile in terms of how it is structured and how it is organised than the State Government is and it is less resourced by a strong public service, which is an important point.

CHAIR - Bruce, we have your case studies here and, as you know, that is in camera. We are looking at those, though, and as a result of those that is part of the evidence we use in relation to coming to a conclusion. Did you wish to just briefly sum up?

Mr SCOTT - Looking at things very much at a local level and at a macro level and different reforms that have gone around the countryside, I do not believe the State Government has an alternative. It has to do something simply because from where I come from, and if we just take the local government issues, I have absolutely no confidence whatsoever in the integrity of any further dealings with those organisations. If that were to accelerate a little more in the community and it was to start including, say, some facets of State government, then I think the State Government is going to have a problem on its hands. I do not think the Government has a choice, it has to put something in and it has to be across jurisdictions.

CHAIR - Why do you not believe that the Ombudsman was able to assist?

Mr SCOTT - In my dealings with the Ombudsman they wrote several letters to the council and they basically said, 'No, we deny that, no we never did' and that is all the Ombudsman was able to get back from the council and so the Ombudsman basically said, 'We can't do any more'.

CHAIR - The Ombudsman had the powers to look into it but said they could not do any more and so you are saying it was not an appropriate body or that they needed to look into it and to take more into account what you said?

Mr SCOTT - Initially we were putting evidence together. As you would imagine, over an 11-year period you gradually end up with more and more documentation the further you get through it but the Ombudsman was frustrated at a very early period simply by a straight-out denial and at that point the Ombudsman's Office said that in the absence of anything else to hand they could go no further. No-one was brought in and no sworn statements were taken or anything like that from any of the council staff, it was simply a letterhead response and that was the position I reached myself. I shared the frustration with the Ombudsman.

CHAIR - Okay. Thank you very much for giving up your time and thanks for giving the evidence. As you probably know, the time for reporting has been extended -

Mr SCOTT - I was pleased to see that.

CHAIR - so we will be reporting either before or on that date, but thanks for your interest.

Mr SCOTT - That is fine, thank you very much.

THE WITNESS WITHDREW.

**Mr RANDOLPH WIERENGA, PRESIDENT, POLICE ASSOCIATION OF TASMANIA,
WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

CHAIR (Mr Wilkinson) - Randolph, thanks for coming along. I will hand over to you to speak to your submission.

Mr WIERENGA - Thank you for giving me the opportunity to make a representation to the committee. What I propose to do is to go briefly through my submission and highlight the more pertinent areas and then subject myself to rigorous cross-examination.

The Police Association represents 1 250 members of the Tasmanian police service, which is about 99.5 per cent of all members of Tasmania Police. We are affiliated with the Police Federation of Australia, Unions Tasmania and the ACTU. The association contends that Tasmanian police are held in high regard and this is because of a high standard of ethical conduct and a rigorous investigative and sanctions regime. Police officers are covered by the National Police Code of Ethics, which states that police officers have a duty to their country and to their police service to serve the community by protecting life and property, preserving the peace and detecting and apprehending offenders. Police officers should carry out their duties with integrity and honesty and should at all times make every effort to respect the rights of all people in the community regardless of colour, social status and religion, enforcing the law justly without fear, favour, malice or ill will. It is incumbent upon all police officers to keep confidential matters of such a nature that they may learn in their official capacity, unless revelation is necessary for the administration of justice. By their conduct and performance police officers should give high priority to enhancing the reputation of their profession. Police officers should practise self-discipline and restraint and should strive to improve their knowledge of the law and contemporary police practice applicable to their community. In pursuit of their responsibilities police will resort to the use of force only when strictly necessary and to the extent required for the performance of their duty. Police officers should be aware of these ethics and should accept the desirability of them as an integral part of their personal and professional life. That is the code of ethics.

Police officers' conduct is also ruled by the police manual. In that manual there are more than 130 specific orders which must be complied with and 900-plus pages of instructions. Police officers are also subject to the code of conduct, which is enshrined in the police service legislation. I will go briefly through that. A police officer must behave honestly and with integrity in the course of his or her duties in the police service. A police officer must comply with all orders in the police manual and any lawful direction or lawful order given by a senior officer. A police officer must maintain appropriate confidentiality about any dealing made and information gained in the course of his or her duties in the police service. A police officer must disclose and take reasonable steps to avoid any conflict of interest in connection with his or her duties in the police service. A police officer must use the resources of the police service in a proper manner. A police officer in connection with his or her duties in the police service must not knowingly provide false or misleading information, omit to provide any matter, knowing that without that matter the information is misleading. A police officer must not make improper use of information gained in the course of his or her duties in the police service or the duties, status, powers of authority of the police officer in order to gain or seek to gain a gift,

benefit or advantage for the police officer or for any other person. A police officer must not access any information to which the police officer is not entitled to have access. A police officer must not destroy, damage, alter or erase any official document, record or entry without the approval of the commissioner. A police officer must not at any time conduct himself or herself or act in a manner that is likely to be prejudicial to the police service or to bring discredit on the police service. A police officer must not victimise or discriminate against another police officer because that other police officer has reported a breach of the provision of the code of conduct. A police officer must comply with any other prescribed conduct requirement.

You can see from the code of conduct that it is quite rigorous, and it applies to all police officers in Tasmania. Not only is there the code of conduct but also there are quite a number of actions that the commissioner can take if breaches are investigated and found to have occurred. The sanctions that the commissioner can impose range from reprimanding the police officer; imposing a fine not exceeding 20 penalty units, and that is subject to an appeal if the commissioner imposes a fine; direct that the remuneration of the police officer be reduced within the range of the remuneration applicable to the police officer, and that is subject to review if the commissioner so chooses to impose that penalty; reassign the duties of the police officer, and that is not subject to review; or transfer the police officer. That is not subject to review and the association contends that that should be because transferring imposes a very harsh financial penalty on people. He can also place a police officer on a period of probation, demote a police officer and if the police officer is an officer, at least recommend to the Governor that they be demoted. He can also dismiss a police officer, which is subject to review, and recommend to the Governor that an officer of the police be dismissed.

In investigating breaches of the code of conduct or any other allegation, the commissioner can do a number of things. He can conduct integrity tests. In conducting integrity tests the commissioner can commit or sanction the commission of unlawful acts - that is, he can basically break the law to ensure that the police are upholding the law. This is a new section brought into the Police Service Act when the Police Service Act was upgraded in 2003. The breaking of the law has to be authorised by a magistrate. However, the commissioner can do it. He can also require all police officers to provide financial statements, be tested for alcohol and drugs through the provision of breath, saliva or urine and blood samples.

It can be seen that through the Police Service Act 2003 there are very high standards placed on our police officers here in Tasmania.

CHAIR - Did you say that within the rules the commissioner can break the law or a police officer can break the law, the commissioner being both? Can it be a commissioner or his delegate?

Mr WIERENGO - It used to be a commissioner delegating the power to break the law. I do not think the commissioner would be part of the investigation.

CHAIR - No doubt the Police Association would have had a look at that when it was coming before the Parliament or just before it came before the Parliament.

Mr WIERENGA - We certainly had a view in relation to it. Unfortunately, the Police Service Act was introduced in what I would say was quite a contrived manner and the whole manner in which it was dealt with by the Government was obviously subject to a lot of debate within the police service. We had a lot of concerns about the new powers that were brought in under this act, powers that we could see no justification for. However, the justification provided at the time was that it was a contemporary police act and that some of these powers existed in other police acts that were current at the time.

CHAIR - And do they?

Mr WIERENGA - Some of them do but this is probably the most broad-sweeping act in the country.

CHAIR - Thank you.

Mr WIERENGA - Not only, as I said, are police officers subject to that rigorous testing and sanctions within the Police Service Act, police officers when questioned generally do not have a right to silence as most people do. If senior officers are compelled to ask questions then police officers must answer them. That is stated in the police manual but it is also as a result of a High Court decision where the police officers basically have had the right to silence taken away from them when questioned by senior officers. So you can see from that that in terms of any proposed independent body or ethics commission police officers really do not have anything to fear. We already go through it and we are subject to it.

In relation to the right to silence, if police officers generally refuse to answer questions they will be subject to disciplinary procedures and I suggest that probably the higher end of the sanction regime would be imposed if they refused to answer questions from their senior officers and that would probably be dismissal.

As part of my submission I pointed out what we believe is a weakness in the act in relation to the commissioner and that is that, in our view, the commissioner is not strictly independent from the minister, as you will see by section 7 in the act which points out that the commissioner is under the direction of the minister and is responsible for 'the efficient, effective and economic management and superintendence of the police force.' But we argue that the minister has more control over the commissioner than that because regarding the code of conduct that I previously referred to and the investigation methods, the commissioner is subject to that but it is the minister who must enforce that code of conduct and it is the minister who must conduct any investigations of allegations against the commissioner. I have to say that this submission was prepared prior to the current situation that our commissioner finds himself in and I do not intend to comment on that.

Mr MARTIN - What you are saying here is contrary to what the former Premier argued some time ago.

Mr WIERENGA - It is a matter of interpretation but, quite clearly, section 7 of the act says that the commissioner is responsible to the minister. He may interpret it one way but I certainly interpret it differently.

Mr McKIM - It actually says that he operates under the direction of the minister, does it not? Just on that, if I might, obviously we know that that is also the opinion of the DPP - in other words, he agrees with your interpretation. The Attorney-General has said that the Solicitor-General actually has a different view. Are you aware of the Solicitor-General's view on this or what his arguments might be?

Mr WIERENGA - No, I am not aware of the Solicitor-General's view on this. Has it been made public?

Mr McKIM - Not to my knowledge.

Mr WIERENGA - I am not a lawyer either but I have done a bit of work with statutes in my time. The other thing that clearly leads to my opinion that the commissioner and the minister are not as independent as people would think is that the minister appoints the commissioner on a five-year contract, although the appointment is obviously made by Cabinet at the end of the day. There is always a close working relationship between the minister and the commissioner. I do not for one second think that that is nefarious. At the end of the day Tasmania Police are part of the Government and are there to carry out the policy requirements of government. That relationship exists and to contend that the two can exist in completely independent frameworks is something I don't think really works.

The current arrangements in relation to investigation of allegations against politicians are themselves ad hoc. You have seen, over a number of investigations now, where there has been scrutiny about how they have been conducted and who has been conducting them. That ad hoc arrangement still exists. Tasmania Police are the only body within the State who have the power to conduct investigations. I note that in one recent inquiry the officers reported to the DPP. There is no statutory requirement for that and that was just an in-house arrangement. The association's view is that this is unsatisfactory and that there should be some separate body to investigate these allegations.

CHAIR - Where would they get the investigative ability to do it?

Mr WIERENGA - It is a question that has arisen around the country. Generally they are drawn from police because police are the trained investigators. They know how to ask the questions and that has occurred right around the country. When all these investigative bodies have been formed some will draw investigating police from other States and not from their own jurisdiction, as in New South Wales, but some will draw from their own jurisdiction. It just depends on what you eventually decide on. It is my view that any body you may create in Tasmania would not require full-time investigators. I do not think that there is the scope for that.

CHAIR - So therefore, what would you do?

Mr WIERENGA - You would then have to draw on investigators from Tasmania Police or from another jurisdiction. If you were going to draw on investigators from Tasmania Police then you need to make sure that the resourcing is there for them. There are issues in relation to drawing investigators from your home body. These investigators generally have to go back into the police service and in a small State that does cause problems.

CHAIR - This is for investigations into whom?

Mr WIERENGA - Public officials.

Mr MARTIN - Basically we have heard over the last couple of years, including the response from government, that we do not need an ICAC-type body because we have the police, the Auditor-General and other bodies capable of carrying out investigations. The Police Association is saying it is not good enough?

Mr WIERENGA - We do not think it is good enough. We would prefer an ICAC-style body where the powers and functions were clear and everyone knew their roles and functions. Investigations are set up at the moment such that sometimes the commissioner will act on them, and sometimes he will not. It is not clear whom he calls on to investigate, it is not clear to whom they report. As I pointed out, what if the commissioner himself is subject to an investigation. What goes on then?

Mr MARTIN - In that case, what do you think should happen?

Mr WIERENGA - I think that there should be an independent body that looks at these allegations. Mind you I have my views about this independent body. If you are going to have one then you are going to have to resource it properly and you are going to have to give it powers that you may not be comfortable with. The other thing that should really be done is that there should be a threshold test for complaints. We have an ongoing issue with the Police department concerning a threshold test for complaints. Our view is that any allegations should be made in statutory declaration form. That is in relation to complaints against police, because it is very easy to make allegations and you can ruin people's reputations, and it is very hard to regain your reputation once these allegations have been made, particularly if they have been aired in public.

Mr MARTIN - So are you saying that allegations against the commissioner should not have been investigated by Tasmania Police?

Mr WIERENGA - That is our preferred view but under the current framework that cannot happen; it has to be investigated by police.

Mr MARTIN - There is no-one else to do it at the moment?

Mr WIERENGA - There is nowhere else to go.

Mr MARTIN - Would it be fair to say that you have concerns that some of the recent investigations have been deficient?

Mr WIERENGA - I do not have enough knowledge of those investigations to comment.

Mr MARTIN - I meant because of the lack of powers, not because of the quality of police work.

Mr WIERENGA - No, I do not know.

Mr ROCKLIFF - Randolph, you mentioned resourcing and that the body, if it was set up, would need to be well resourced. In your very good submission you have made some effort in comparing the functions and powers of different bodies around the country. Is there any body around the country would be applicable to Tasmania?

Mr WIERENGA - I have not really given that any thought. One I would not like would be the Victorian model, which only investigates police. My fear in this whole debate is that what comes out of this process is another body that investigates police but does not investigate any other public official. As to the preference for a style of body, no, I think that is for further discussion.

Mr McKIM - Randolph, you have at least alluded in your submission to possible reputation harm that is done to Tasmania Police from being perceived as being too close to government or being a part of the Government. Is it your contention that if this committee were to recommend an independent investigative authority of some kind in Tasmania that it actually, almost as a corollary, would improve the reputation of Tasmanian Police because it would be seen to be one step further removed from government and be accountable through the investigative process?

Mr WIERENGA - I am not sure that it would improve but it would certainly stop the assertion that we are part of government and that the outcomes are predetermined because we are too close to government. There are a lot of variables that impact on the approval or not of Tasmania Police.

CHAIR - At present the police, through their inquiry body, carry out a pretty exhaustive investigation if a police officer comes under a complaint. Say somebody alleges that they have been hit unlawfully. They go through a fairly extensive process to see whether that person is telling the truth or not. Can you just touch on that?

Mr WIERENGA - The complaints are usually dealt with by way of customer service complaints, and for more serious allegations an investigation is conducted by Internal Investigations. It is my experience that those investigations are more thorough than a complaint from a normal citizen in relation to another citizen. No stone is left unturned in relation to those claims. It is also my belief that police officers are much more likely to be prosecuted as a result of those complaints compared with the same standard of complaints applied to normal citizens. We have a number of police officers who have been proceeded against where I believe that the case was arguable and it probably would not have proceeded if it were someone else. We have had a number of police officers who have had victories in the court system because, it is my belief, that the threshold test for police officers has been lower than for other people.

CHAIR - And those have led to comments also, haven't they, from the bench to really say there is just no evidence?

Mr WIERENGA - There have been a few cases, yes, where the bench has made comments basically that these cases should never have been brought before them.

Mr MARTIN - Without going into detail can you just explain the nature of some of these charges?

Mr WIERENGA - The ones that I am referring to are usually complaints of assault by police officers. They usually tend to arise out of the use of excessive force. It seems to be the safe option that we will just prosecute this police officer. A number of cases have ended up before the courts. A fair few of the cases have had adverse comment made about the reason or the necessity for the prosecution in the first place.

CHAIR - The situation is, you say, that you would not like to see, as far as the Police Association is concerned, a body just set up to investigate the police. Are you saying that if there is a body, the body is to investigate public officials across the board as opposed to just the police?

Mr WIERENGA - Yes.

Mr MARTIN - But including the police?

Mr WIERENGA - That is a matter to be sorted out at the end of the day. Internal Investigations do do a fairly thorough job. In other jurisdictions Internal Investigations continue to exist and tend to look at lower-level matters. The more serious matters are referred to the anti-corruption bodies. That is possibly a model that you could look at here. We have an issue in relation to some decisions that are made by the Commissioner that do not proceed to court where he uses the balance of probabilities to determine the guilt or otherwise of people and they do not end up in the court system. Unless there is one of those sanctions that is applied that is subject to review, there is no review of the Commissioner's decision. We have an ongoing issue with that. We have been in discussion with Government in relation to that.

Mr McKIM - Is this in relation to allegations of criminal conduct?

Mr WIERENGA - It could be allegations in relation to a breach of the code of conduct. It could be allegations in relation to breaches of the manual.

Mr McKIM - Allegations against police officers.

Mr WIERENGA - Allegations against police officers where a finding of guilt will be made by the Commissioner but the matter will not proceed to court. The Commissioner will impose one of the sanctions that is available to him within the act that is not reviewable. That does cause us some concern.

Mr McKIM - Can I just ask, following on from Terry's question and just for clarity, are you or are you not arguing for the police to be exempt from any body that this committee might recommend?

Mr WIERENGA - We are not arguing for it to be exempt. The devil will be in the detail.

Mr McKIM - And you have said in your submission that you think that an independent investigative authority ought to have oversight over routine complaints in the public sector, including complaints against police officers?

Mr WIERENGA - If that is deemed to be necessary, yes.

Mr McKIM - Randolph, you have said that the Police Association supports the creation of an independent investigative authority, just as a generic term, and you have also said that, in your view, the authority should have the power to conduct hearings in public or in camera and to compel witnesses to attend. In your view, ought the authority also have the power to compel witnesses to give evidence because, of course, at the moment, when Tasmania Police are conducting investigations people can exercise and have exercised the right to silence, including in a very high profile investigation recently where a very high profile ex-public servant exercised her right to silence and refused to participate in an interview with Tasmania Police. What is your view or the association's view on whether any authority should have the power to compel witnesses to give evidence?

Mr WIERENGA - As I have said already, police officers do not have that right to silence. We are compelled to give evidence. If you are going to have an investigative body that cannot compel witnesses to speak, then I think you are limiting the powers of your investigative body. I think you will note that most of those investigating bodies have those independent bodies and other States have the power to compel witnesses to speak and if they do not, adverse findings can be made in relation to that.

Mr McKIM - Including contempt?

Mr WIERENGA - It depends on which body you are looking at.

Mr MARTIN - That was really what I was getting at in my previous question to you, whether some of the recent investigations had been proficient because of lack of power. I think Nick was referring to someone who refused to give evidence and which may have affected the outcome of the investigation where the charges relate.

Mr WIERENGA - It is very hard. I find it very hard to comment about specific cases because I would like to know everything about them before I comment on them. But generally speaking, there is no point in having an investigative body that cannot compel witnesses.

Mr MARTIN - Randolph, you have touched on this before, but in your conclusion you say that the Police Association believes that the current ad hoc model of investigation is not satisfactory and places the police service in a difficult position. Can you expand a little bit on the difficult position?

Mr WIERENGA - I think it has an impact, as I said, on the perception of the police service within the Tasmanian public in that the expectations of the public in relation to the police service are fairly high. I guess when investigations or things are on the nose and police are tied too closely to the Government in relation to those investigations that impacts on the public's perception of the police service. So, it is really a matter of how the public perceives the police and whether the police are truly independent of government or not.

Mr MARTIN - In another section you talk about the potential conflict of interest issues in investigating political corruption under the regime of police accountability to the Minister of Police. That is implying that the police could be heaviest by the Government.

Mr WIERENGA - It is a hypothetical situation but I think we are all realists here aren't we?

Mr MARTIN - Would you know of any examples of where this happened?

Mr WIERENGA - No. I merely pointed it out as a hypothetical, that it is possible. As I put in my submission, you only have to look at the history of police services within Australia to see that it can occur. Queensland springs to mind.

Mr McKIM - Randolph, you have said in your submission that the authority which the PAT supports should be resourced with qualified and experienced personnel and sufficient physical and financial resources to permit thorough investigations, surveillance, evidence preparation and litigation. Is it your view that the authority ought to have powers to litigate or do you think it should parcel up an investigation and flick it to the DPP for his or her assessment on whether legal action should follow?

Mr WIERENGA - The litigation process just does not stop after the investigation. There is the preparation of filing and there is ongoing discussion about the strength of the case. Whether that is done with the DPP or not is a moot point and not once that I had given much thought to but considering that the DPP is obviously a public official as well, if the investigation was in relation to the DPP it might prove difficult. It is actually not one that I had given much thought to and I am not sure what occurs in other jurisdictions. I think that most of the other jurisdictions can lay charges themselves. The DPP is the only authority here in Tasmania at the moment.

Mr McKIM - Randolph, obviously Tasmania does not have an independent investigative authority at the moment and I think you have agreed that the police service is not independent for the reasons you identified earlier. As a result of that there was a circumstance recently where some of your members, police officers, were required to investigate your commissioner. Did that place those officers in a difficult position and do you think it was something that was proper for both the officers involved and, for that matter, for the commissioner?

Mr WIERENGA - I would have to say that it was less than satisfactory but I really could not say any more than that considering the current circumstances.

Mr McKIM - Just to be clear - and I am certainly not trying to press you for any more information, but you have said that it was less than satisfactory - does that apply to the officers involved and to the commissioner in terms of due process?

Mr WIERENGA - Without speaking on their behalf I think so, that that is quite clear.

CHAIR - One of the issues in relation to that, too, as you have already stated in relation to powers, nobody else had the powers to do what needed to be done in Tasmania without giving special powers and therefore opening up what was already being tried to be investigated with dancing shoes as opposed to running boots.

Mr McKIM - In fact that whole situation was actually quite a strong argument for an independent investigative authority, was it not?

Mr WIERENGA - Some would argue that.

Mr MARTIN - Was the association arguing that?

Mr WIERENGA - Our submission is quite clear that there should be an independent authority.

CHAIR - If an independent authority is set up, it does not immediately erase the internal investigation area because there might be areas in that area that still need to be continued with. For example, if there was an investigation, and if the investigation came back with 'the actions of this officer were not criminal, they were not illegal but they fell short of the way we believe a police officer should act' then one could argue that then goes back to Internal Investigations to see what should happen or to make recommendations.

Mr WIERENGA - I have to agree with you that that is probably a better model. An independent body should really be aiming at high levels and I do not think a police officer doing the wrong thing but not breaching any criminal law is at the higher level and you do not need the sledgehammer to crack the nut, so to speak. That is the model that basically works in most of the other jurisdictions as far as I am aware. They all still have their own internal investigation units in some form or another and the independent bodies that exist are at the higher level and specifically look at criminal matters and issues of corruption.

CHAIR - In relation to Parliament as well, in order for Parliament to still play a role, especially if members of parliament or staff are being investigated, one could argue - and this is a statement - that there should be a body like a standing committee within Parliament, called an ethics committee, and again, if something came back short of criminality it goes to this body and the body decides what to do with it, whether it is a name and shame or whatever it might be.

Mr WIERENGA - Yes, I do not disagree with you but in terms of having any ethics body, it has to have power to name and shame or it has to have power to do what you expect it to do in relation to the unethical behaviour of the parliamentarian. I think to have ethics and a code of conduct you have to have enforcement as well and so there would need to be that part of it as well.

Mr MARTIN - One of the issues that is being debated in evidence we have received is if a new body is set up, whether it should have retrospective powers. Do you have an opinion on that?

Mr WIERENGA - That is a very difficult one because there may be some serious allegations out there that occurred some time ago that have not been addressed - I am only hypothesising here - so to draw a line in the sand and say we are only going to investigate stuff from now on poses as many questions as answers. I do not think you can do it but, having said that, I did talk earlier about having a threshold test in relation to complaints. I referred to the fact that you should have complaints made on statutory declarations and any body that comes into existence once again should only be looking at serious matters, whether you defined that as a crime or an indictable offence punishable by two or more years in prison or something like that, so that the body does not get bogged down in looking at frivolous matters and matters that it should not be looking at.

CHAIR - Some have argued also, Randolph, that to know if there is any skulduggery happening within Tasmania or has been there should be a royal commission presently to

look at all the issues outstanding and that is your basis. What do you say to that? Or some might argue that if you do that you are taking your eyes off the ball because you would be getting people to look too far back into history and we should be looking from now to make sure it does not happen again - if it has happened in the first place.

Mr WIERENGA - I have heard the arguments. A royal commission into what, I am not quite sure, could be, without wanting to insult you, Mr Wilkinson, a lawyer's feast.

Mr MARTIN - You cannot insult him.

Laughter.

Mr WIERENGA - I think the time has come to look at how we can deal with the matters into the future and it is the association's contention that an independent authority of some form is the best way to go.

CHAIR - Sure. Would you be arguing also that unless there is something to investigate, really you are just going on a fishing expedition and throwing the line in the water and seeing if you catch anything? You might not be doing anything at all. It has to be the allegation first or the accusation before investigations can be continued. Is that a fair statement?

Mr WIERENGA - I think that is a fair statement, yes.

CHAIR - Randolph, thanks for coming along and giving us your time and also for preparing the very good report that is before us.

Mr WIERENGA - Thank you.

THE WITNESS WITHDREW.

Mr WILL HODGMAN, LEADER OF THE OPPOSITION IN THE TASMANIAN HOUSE OF ASSEMBLY, WAS CALLED AND EXAMINED.

Mr WILL HODGMAN - Thank you for the opportunity to appear. I have a genuine interest in issues concerning ethics and governance and as the Leader of the Opposition I have a considerable interest in the contemporary debate on such issues. I studied ethics as an elective part of my Bachelor of Laws, and principles of public administration as well, and have taken the opportunity in my parliamentary career, indeed recently, to look closely at some of the systems in place in other jurisdictions to improve standards of governance to ensure a higher level of performance and a high standard of administrative functioning, not just by members of parliament but also the State Service.

Earlier this year, as part of a parliamentary study trip, I visited the United Kingdom's committee for standards in public life and met with the secretary to get an understanding of that body and how its forms and processes might be adopted here as part of the ongoing debate in Tasmania. I am not suggesting - in fact our submission says that we are not suggesting - that it or indeed any other authority could easily and appropriately be transplanted into Tasmania. No doubt there are elements of these bodies that exist around the world that could be adopted here. I will submit a letter which details a selection of web sites that relate to a few that we have been looking at closely.

CHAIR - Have you looked at the one in Ottawa?

Mr WILL HODGMAN - Yes, Rene Hidding has looked at Canada. I had a look at the systems in the UK and made a personal visit there. I would not submit to the committee that we would necessarily need to adopt something similar to that which exists in other Australian jurisdictions and which comes with a considerable cost in terms of recurrent funding and resourcing and in some instances has considerable investigative powers. I do not think it is beyond us as a State to adopt something that is appropriate and commensurate with our needs and that will deliver positive outcomes.

Our submission, which I will not read through, provides some background information from our perspective and concludes with the need for a suitable, established and resourced authority capable of undertaking investigation into allegations of corruption or maladministration in the public sector. It would also be an authority which performs an educative role for members of parliament, the State Service and the general public. These are two of the principles or features of such an authority that we believe should be adopted in this State. I will not presume to prescribe a particular model; that is something for the committee to determine, but those principles that I have just outlined are central. Our submission, at pages 4 and 5, also outlines other features that might be appropriate and other powers for such a body.

The background obviously is well known to members of the committee as to why we are here today. Another reason I am pleased to be before the committee is that it is something we sought to have established as far back as November 2006. We moved a motion in the House of Assembly to establish such a committee to start looking at these issues and to establish an appropriate body in Tasmania. So almost two years on we are pleased to be at this point. There is no doubt in our view, partisan politics aside, there has been a considerable decline in public confidence in recent years over systems of

governance and standards in this State, which is borne out in public opinion polls. It is the expressed view of commentators, those with an interest in politics and also academics. Even the new Premier recently conceded that his Government has created a mess and he is now seeking to fix it up. There is no doubt that public confidence has been eroded. What we consider important is not just restoring that, which would be a very important by-product, but also implementing structural reform to ensure that public confidence is restored through better processing, better systems and better culture in government.

Tasmanians must have the confidence that where there are issues that may be the subject of considerable and heated public debate, often through the media, there is a way to resolve them satisfactorily and with a degree of independence and authority so that we can all move on and not have the sort of ongoing stench that continues, sadly, to exist in this State. In our view there is no doubt that, after 10 years in government, a culture can descend whereby there is a degree of complacency about these things - the importance of transparency, accountability, probity and ethics. Unfortunately it can become commonplace. There is no doubt that for a shake-up where some structural reform is implemented, in addition to what the Premier has announced that his Government intends to do, we consider the establishment of an appropriate authority is absolutely essential. We treat very seriously the need to address the public ill that currently exists and the cynicism and scepticism of many people in our community - and it is well-founded, sadly.

Whilst an investigative body should be empowered to look into cases of alleged corruption, there is a lot more to this than that, including any behaviour that might be potentially of a criminal nature. A large part of our submission is that we need to deal with that culture and practice of poor administration or, on the flip side, improving standards of governance and improving outcomes when it comes to the public service, including parliamentarians. This is as much about the performance of ministers and State servants, how they discharge their functions, how they treat and respond to important criteria in their workplace such as the doctrine of ministerial responsibility and accountability, and important principles such as transparency, probity and due process, and willingness by government to be more open with the public as far as is possible, though obviously respecting confidences and sensitivities surrounding commercial operations et cetera. There is certainly scope for a greater degree of transparency when it comes to the Government revealing its dealings and its operations. We have pursued vigorously an agenda of improved governance. At the forefront of the Government's own operations is, or should be, its own code of conduct. Sadly in recent years we have seen various breaches of it, which lead to poor outcomes and a culture that, in our view, is not adequate in this State. It also highlights the fact that the way ministers and indeed all members of parliament conduct themselves is very important. Even if, as the code says, no crime has been committed that does not mean ministers are discharging themselves in an appropriate way.

CHAIR - Some might say that if a body is set up then that body will investigate. They might return with a recommendation that there is criminal activity. Therefore it goes to the police for charging. However, if they say it falls short of that, where does it go?

Mr WILL HODGMAN - Therein lies the problem - nowhere.

CHAIR - Where should it go?

Mr WILL HODGMAN - To an appropriately structured body that can deal with allegations of corruption in a general sense - maladministration is perhaps a better way of defining it. You can point to recent illustrations where certain elements of a case or conduct have resulted in criminal proceedings. Those matters are dealt with but that does not mean that there have not been other serious breaches in terms of governance and ministerial responsibility. Standards should not be defined simply by whether or not there has been some form of criminal activity. That is exactly what the ministerial code of conduct says.

CHAIR - Let us say there is this body that investigates. It says, 'No criminality. Yes, there is immorality in what has happened, and misconduct'. Should it then go to a parliamentary standing committee on ethics to name and shame? What else could you do?

Mr WILL HODGMAN - No, we think it should go to an independent authority that is removed from government and indeed the Parliament but responsible to the Parliament and that would report publicly to investigate outstanding allegations that are screened and assessed to have some validity.

CHAIR - But they are vetted and they have validity. What I am looking for is what happens there. It is certainly a name and shame, you can report it. What else can you do, if anything at all?

Mr WILL HODGMAN - The matter can be resolved and determined one way or the other so that the community, the members of parliament and any interested parties, including those individuals who are being accused of a particular thing, can have the matter determined and we can move on. The current situation is that unless something is determined by a superior authority, whether it be a court as in two recent examples or some other authority, matters can be left hanging and unresolved. The Parliament is, unfortunately, for various reasons, incapable of resolving outstanding issues that involve cases of maladministration or a minister's refusal to provide information, poor practice, ministers refusing to answer questions. All those things cannot be resolved in any authority.

CHAIR - They might be resolved by this investigative body that originally looks into it. They might say, yes, they have fallen foul of all those things. Are we saying that that body then gives a report that is open for everybody to see? Parliament could do what they want with it, the Press could do what they want with it because that would probably be as far as it could go - isn't that so?

Mr WILL HODGMAN - At an extreme end there may be sufficient information to warrant charges and a prosecution and perhaps some form of criminal trial. Whilst you may not be able to compel certain activities, I believe it will lead to a higher degree of responsiveness from government if they are subject to an independent investigation. It is too easy for governments to say this is a political witch-hunt, we know why the Opposition and other members of parliament are taking this on; this is not a kangaroo court, we should put it to one side, draw a line in the sand, sweep it under the carpet and move on.

Mr MARTIN - Moving back instead of forwards?

Mr WILL HODGMAN - Yes, that is right. That does not resolve the issue in any way at all. So the current situation is totally inadequate.

CHAIR - Should there be a report like the AG's report? A report that is written, made public and that sets out the recommendations about the misconduct or misdemeanour. It is then open for anybody to do what they will with it. Is that a way out?

Mr WILL HODGMAN - Statutory independence, yes, that is exactly right. That is the key part of our submission, that statutory independence and transparent reporting by an authority, similar to the Auditor-General. You do not get too many people taking issue with what the Auditor-General says and matters are generally resolved one way or the other and we, as a community, can move on. In the current environment, no such authority exists to resolve cases of poor administration or poor process. We have criminal courts to deal with charges of corruption and other criminal activity. That is fine but we do not have anything to deal with cases where there is very poor process, maladministration or serious allegations made but not tested, which may not be criminal conduct but worthy of consideration. You only have to think of things such as allegations of members of the RPDC being leaned on by government, or of more recent examples where questions about issues have not been answered honestly or accurately in Parliament. There is nothing to arbitrarily resolve that unacceptable behaviour - nothing that removes it from partisan politics but allows some finality.

We believe that there is a need to clear the air currently with existing and outstanding issues and that is why we proposed a commission of inquiry to allow that to happen and, into the future, the establishment of a body that can look at issues like ethics and probity. Good governance and process is going to allow these matters to be resolved outside the cut and thrust of the Parliament but in a way that also presents some finality and some statutory independence.

Mr MARTIN - In the event that there is a decision not to have a commission of inquiry to look at the past but an ICAC-type body is set up, should it have retrospective powers?

Mr WILL HODGMAN - I think by its nature any investigative body needs to. It would be most unfortunate to establish a body that was incapable of dealing with a new allegation of corruption or maladministration that might have arisen a year, two years, five years or 10 years ago -

CHAIR - Especially if it is ongoing.

Mr WILL HODGMAN - Yes. An investigative body by its nature has to have retrospective powers to look back at conduct and make a determination. There are currently very serious issues that remain unresolved and, frankly, I do not believe that they can be or will be in the parliamentary process. I think most of us would really rather be debating other issues, when push comes to shove. They still do need to be resolved not only to restore public confidence and trust but also to ensure that the Government adopts a better system of process to avoid things continuing into the future, distracting government and resulting in most unfortunate circumstances where we have ministers resigning for not

doing the right thing. They pay that penalty, yes, I accept that, but with that comes a lot of collateral issues that need to be resolved and it is not, in my view, adequate for the Government of the day, whatever colour, to say, 'This is a political witch-hunt and we should just move on once the dust has settled and the political heat has gone out of something' because the Tasmanian public do not buy that or accept it.

CHAIR - Going on from Terry's questions, there may not be, some might argue, a need for an inquiry as to what has gone on if there was a complaint that was made to this body and it believed that it would be left to the body to see whether or not they deemed the complaint to be worthy of an investigation. That would be the other way around it; otherwise you would have to set up this public inquiry into past wrongs and then where is the line going to be drawn? In other words, if you then had a complaint and made that complaint to this new body, and the body investigated it and believed it had legs, it would be then up to the body to decide whether or not to proceed.

Mr WILL HODGMAN - That is right, and issues can be dealt with contemporaneously, which is what happens in other jurisdictions; as issues arise they are dealt with. I think a good illustration of where you could get some very sound practical result and deliver some benefit to the Tasmanian community was the most unfortunate situation where Ken Bacon, as then minister, sat in this very room and refused to answer questions in relation to his portfolio and subsequently stated that he had been instructed not to. That is an example of very poor ministerial responsibility and accountability and poor performance.

An authority of the type we propose that has an educative function and capacity as well would be able to advise not only that member but the Parliament generally and indeed the community that that sort of thing just is not on and something needs to change, there needs to be some sort of remedial action to address that. Again, politicians on the opposite side of the table making that point are viewed with some degree of scepticism because of our political self-interest. I accept that, but if you have an ethics commissioner, for want of a better word, who steps in and says, 'No, that's not right, that has to change, we can't have that. It's not in the interests of the Tasmanian public' then that is a very positive outcome. There is no doubt all of us as members of parliament and public servants could well benefit from an educative function by a body of this type as much as its investigative capacity.

Mr HALL - Will, I was just interested in your comments there in regard to what you found in the UK and the Commissioner of Parliamentary Standards. Do they just have this Commissioner of Parliamentary Standards or in fact do they have an ICAC as well?

Mr WILL HODGMAN - They have a selection of different bodies that deal with various issues. The one I met with has a function that is in fact not investigative but it is more about looking at contemporary issues, as I have just outlined.

Mr HALL - Sorry, is this the commission of parliamentary standards you are talking about?

Mr WILL HODGMAN - Yes. So it is more about providing advice.

Mr HALL - You do not think that would be useful in the context of the Tasmanian Parliament?

Mr WILL HODGMAN - Very much so and it is part of our submission.

Mr HALL - You say that you believe the expense of a stand-alone parliamentary commission is not justified in this State, but the functions could be carried out by -

Mr WILL HODGMAN - Yes. I cannot recall how much it costs but it was a considerable amount of money and it is an authority that comprises a number of staff. One of its primary functions - just so that you are aware and, again, I will refer to a web site so that you can look at it yourself - is to continually monitor the ethical environment and respond to issues of concern which may arise. That is one of its principal functions - to deal with issues and cases as I have just outlined, such as the Bacon example. I believe that is a very important educative role. It does play a role in informing members of parliament, State servants and the community about issues such as ethics, probity and transparency in government. But it does not undertake, generally, investigative functions. That is left to another body.

I am not proposing we transplant all these different bodies as exist in the United Kingdom. I was just interested in the role that this particular one plays in telling people or better equipping them to discharge their functions as ministers or members of the State Service.

Mr HALL - We have had evidence to suggest that an educative role is important for members of parliament and senior public servants. Some local government councils do that quite well in terms of codes of conduct. Would you agree that is something that should be instituted in this place? I am not sure of the mechanism, but it is something which would be very handy to have done.

Mr WILL HODGMAN - Yes, very much so and in other jurisdictions, members of parliament can seek advice on a highly confidential basis. They can obtain advice as to issues on conflicts of interest, what their functions and responsibilities might be as ministers or, indeed, as any other member of the parliament and what their obligations might be to constituents. To have access to an ethics commissioner or something similarly called, to provide that to members of parliament, State servants and members of the public, would be advantageous. And that is not just in the current political environment here in Tasmania, but moving ahead and allowing members of the community to properly engage in their democratic systems and processes that this place engages in. I think that is a very important thing.

Mr HALL - I am just trying to figure out the mechanics of how that would work. You are saying that we should have an ICAC, but to have something else like this as well - I think the expense of a stand-alone commissioner might be too great.

Mr WILL HODGMAN - I would suggest a merging of the two roles into one. That is what I said in my opening - something that has the power and capacity to investigate specific allegations and resolve them but, similarly, can play an educative role and be an access point to members of parliament or the State Service to seek advice as is and when required. That would be perfectly feasible.

The point I am making about the United Kingdom model is that to just pick that up and plonk it in Tasmania would be excessive, I believe. It is a significantly structured

authority with a very high budget that would well exceed what we could afford here in Tasmania and probably what we need. But it is important that, in my view, any authority we establish does offer that educative function. It would be silly not to provide that as well I think because I would like to think it would spend more of its time discharging that function and less investigating allegations of corruption or maladministration.

Mr HALL - If I could follow up on another tack: you talked about the public sector there and the principles for public servants so there is a capacity, obviously, to get into codes of conduct for senior public servants. Have you a view on that at all?

Mr WILL HODGMAN - Yes. I make no disparaging comment about members of the State Service - there is no doubt they are probably subject to higher standards or levels of education than members of parliament if the truth be told - but there is no doubt that State servants would benefit in cases where there are issues that could be advanced appropriately by a body of this type. I think it is more likely the case that it will need to be members of parliament who, in the public sense, require that assistance. But it should be available to State servants - not as a dispute resolution process, because those things already exist under existing State Service Commission regimes. But, again, I point to the TCC affair where one particular public servant ultimately gave evidence to the effect that he was very concerned about what he was being asked to do. I do not know what he did in that circumstance but this is a body that he could have gone to and said, 'I am concerned about this. I do not believe that it is ethical or right. I am conflicted because I have a boss, a minister, who is asking me to do something but I do not think it is right. Can you give me some confidential advice on that?'. That might have averted a terrible mess. I think that would be a positive function.

Mr HALL - Do you think that because some of the heads of departments are on contracts there is some politicisation? Do you think they are giving the appropriate minister the advice they want to hear? Could that be an issue?

Mr WILL HODGMAN - It could be for them individually if they feel conflicted or it could be that a body of this type is the appropriate forum in which to have something where there are serious allegations tested. I think that in the cut and thrust of politics from time to time you will often get accusations about that sort of thing occurring. But if there was a serious incident that made it a more pressing issue to resolve, then that is perhaps not beyond the realm of this.

There is a lot of stuff concerning the State Service and the illustration that I gave you a moment ago I think is a very good one where this sort of thing could assist public servants who feel conflicted and need somewhere to go but, importantly, members of the public should also have access when they feel that there has been a breakdown in process. Effectively they can get a ruling, some sort of objective judgment outside the political realm.

CHAIR - Will, I know Jeremy tried to help you by putting the clock forward two hours rather than just one but I still think we have plenty of time for questions.

Laughter.

Mr HALL - He is going to say that he was put up to it next!

Mr BEST - I am interested in a couple of things. First of all, this issue of 'clearing up things'. Do you feel that if this body is formed and somebody puts in a complaint, that is it - the complaint will be investigated and that whilst that is happening do you think that needs to be debated, or do you think that if a complaint is made that is it? You cannot avoid people discussing things, but do you think it is appropriate that the matter would continue to be debated in the public arena? If something is referred to an integrity commission and they are investigating it should it be like any other serious matter that, say, goes to the police. What are your views on that?

Mr WILL HODGMAN - I think an authority like this is more likely to resolve issues so that they are not the subject of ongoing debate. You would not want to prevent or prohibit members of parliament from using that forum to debate things but, as I said earlier, as with the Auditor-General generally, determinations by that office tend to resolve these issues and the public can have some degree of confidence that they have been determined objectively, removed from partisan politics and ostensibly the matters resolved. I think that is the ideal solution or outcome and I think that is something an authority of the type we propose would provide.

Mr BEST - Do you feel that there should be some threshold test for complaints? We heard earlier from the Police Association that at least a complaint should be put on a statutory declaration. I would like to hear your views on that.

Mr WILL HODGMAN - Yes, I think any mechanisms that can prevent vexatious or frivolous claims as exist in other jurisdictions would be advantageous and desirable and for an authority to have a capacity to effectively screen prior to commencing an investigation would not be uncommon with what occurs in other statutory offices. Similar processes to those that exist within the State Service or the Ombudsman's office, for example, I think could be applied here.

Mr BEST - In the example where a senior public servant might be feeling uncomfortable, they have expressed that discomfort - I imagine there may be some process here by which they can put in a complaint or lodge that they are uncomfortable - if they then go to the integrity commission because they feel they are being compromised, do you feel that, depending upon the nature of it, there should be a role then for the integrity commission to mediate?

Mr WILL HODGMAN - Yes.

Mr BEST - Either party?

Mr WILL HODGMAN - Yes, I would not discount that notion either. The educative role in the first instance, the capacity to advance it to resolution by some form of mediation or subsequent advice would be, I think, a very positive outcome. What we propose is not just about so-called cases of corruption, it is also about ethical issues and if they can be determined or resolved in a way that leaves any interested party happy then that is to be encouraged.

Mr BEST - We have heard from other witnesses about the potential roles and functions of an integrity commission that if they did find something that it would be then up to them to

refer it, that they would not necessarily be the prosecuting body. What do you think about that?

Mr WILL HODGMAN - Any powers to sanction, in my experience from what I have seen -

Mr BEST - Sorry, if it is an illegal -

Mr WILL HODGMAN - Yes. Obviously any allegation or any charge of illegality goes to the appropriate authority - the police or the DPP - and that can then be appropriately dealt with by them. What we propose does not in any way circumvent that process or indeed duplicate it or suggest any deficiency there although, just as an aside, our submission does refer to the circumstance surrounding police investigating police, which is another matter altogether. Those matters aside, I am not sure personally how an ethics commissioner can sanction a member of parliament, for example, to do or not do a particular thing but -

CHAIR - The chairman says name and shame and I think one of the other witnesses said it may be a loss of some sorts of privileges, whatever they might be.

CHAIR - Banned from the restaurant for two weeks or something!

Mr WILL HODGMAN - Yes. The determination by an authority might well be enough to circumvent any malicious intent by a complainant or if something is seen to be politically motivated, I would have thought a determination by an authority such as this that has the confidence of the public would not be viewed favourably.

Mr BEST - Do you think if someone persistently puts in malicious complaints that clearly have no substance there could be a role for those people to be counselled.

Mr WILL HODGMAN - Yes.

Mr BEST - The commissioner could come around and say -

Mr WILL HODGMAN - There is legislation relating to vexatious litigants that impinges on their rights in the court processes. There would be no reason you could not look at similar things for something like this to prevent vexatious litigants or applicants.

Mr BEST - Finally, we have had a position put that you would have potentially this integrity commission along the lines of your submission and then we probably might have a parallel process - maybe some sort of parliamentary committee - that would continue to monitor the effectiveness of the integrity commission, apprise of maybe some cases that might be happening somewhere else, things that hopefully do not happen here but what if it was to happen here - that sort of stuff? Would you be inclined to think that might be something worthwhile to explore, having a committee something like the PAC committee?

Mr WILL HODGMAN - Yes, we do have the Privileges Committee and other committees that probably have an interest in those sorts of issues. Are you talking more of a sort of ongoing professional development function?

Mr BEST - Yes, it might continually look at ways to make sure the role of the integrity commission, say, continues to be effective in emerging potential issues.

Mr McKIM - Like a watchdog on the committee?

Mr BEST - Yes, that sort of thing.

Mr WILL HODGMAN - Our submission proposes that the commission, or whatever it is called, report to Parliament - have its statutory independence but report to Parliament and a degree of interaction and interrelationship between the Parliament and the committee would be, again, perhaps desirable.

Mr MARTIN - I want to clarify your comments about local government elected members. In your submission you say that it is desirable for the ethics commission or a similar body to be available to advise local government on questions about ethics and accountability. I presume that you also mean they have the power to investigate allegations against local government?

Mr WILL HODGMAN - Yes. Our submission, I suppose, approached local government from the perspective of how an ethics commission might assist in resolving ethical issues.

Mr MARTIN - Should they be able to have the power to investigate?

Mr WILL HODGMAN - That is not something that we are proposing prescriptively in our submission but it might be something the committee could choose to explore. I am conscious personally of a number of instances where members of local government like a lot of us come to the job with varying skills and so on but perhaps not necessarily a full appreciation of their responsibilities or a full appreciation of how they can address issues like conflicts of interest or circumstances where they feel compromised. It would seem remiss of any body not to be able to advise people in local government positions as well, and to give them assistance in an educative capacity. Whether or not it should be extended to an investigative function, I make no positive comment at this point other than that is perhaps something that can be considered by the committee in line with whatever existing legislative regime there is to deal with local government disputes and issues that arise of which I am not familiar.

Mr HALL - Will, you are cognisant of the fact that some of the ICACs, particularly in Queensland, New South Wales and WA, are up around the high \$20 million towards \$30 million in recurrent costs. Does that concern you? You would see obviously that with a smaller State we would have to cut our cloth to suit what is affordable.

Mr WILL HODGMAN - That is precisely why I identified, in relation to the committee in the UK that I visited, that we do need to be conscious of the financial implication of establishing an authority. Obviously, as with the Ombudsman's office or any other investigative authority that exists, they operate under a prescribed budget. It would need to be adequate to allow them to discharge their functions but provided it is given the appropriate mechanisms to deal with priority issues or those issues that are the weightiest and deal with specific cases and more serious cases, then I do not believe it is beyond the

capacity of the State of Tasmania to establish a body that does meet our needs, is appropriately sized and not, I would hope, anywhere near that which we see happening other States where it is very expensive.

Mr HALL - The other potential downside that Mr Best alluded to, and you answered that, was the issue of vexatious appeals. Obviously you would need a mechanism to stamp very quickly on those sorts of vexatious issues being raised because what has happened in other States, as you are probably aware, is that I think particularly in Western Australia where the ICAC has been made up perhaps from ex-policemen, ex-military security and all that sort of thing, people - rightly or wrongly - have had a trial by media long before any determination or investigation is carried out. That has been to their great detriment. In fact, in two States now, I think in Queensland and Western Australia, there is now another person or persons who are oversighting the ICAC. I do not know whether you are aware of that. Particularly in Western Australia there is because of the issues they have had. So it can develop into a bit of monster, that is what I am saying, and it is unfortunate if that happens.

Mr WILL HODGMAN - It is but public interest, I believe, would also dictate that it is desirable to have any allegations of impropriety or maladministration or corruption resolved. It is, I believe, largely a result of our current systems being incapable of resolving these issues that has led to such a decline in public trust and a cynicism in Tasmania. Some might argue that in the absence of an ICAC these sorts of issues do get played out in our Parliament via the media or in other forums in any event which can, of course, be damaging to a reputation and that is most unfortunate where it is unfounded. But that does not mean, in my view, we should not explore ways to allow for these things to be resolved in a way that is independent from partisan politics and in a way that hopefully can provide Tasmanians with some confidence that there are increased checks and balances on the works of parliamentarians and public servants and there is a lifting of standards rather than an acceptance of mediocrity.

CHAIR - I seems, Will, if I can summarise, what you have been saying is that, yes, there is a need for a body to be set up. That body should have its private, independent secretariat, is that correct?

Mr WILL HODGMAN - Yes.

CHAIR - How are you saying the commissioners should be employed? Should they be on a full-time basis, at first on a part-time basis with the ability to go from part-time to full-time, depending upon the work involved? I suppose, all of the above?

Mr WILL HODGMAN - I do not make any statement prescribing how it should be administratively structured or resourced other than in the first instance it should be on the basis that it meets our current and existing needs. Again, the issues of resourcing and budgeting are important here but we need to ensure that it is adequately resourced to undertake its functions and it needs to have the power to undertake a thorough investigation as well. We do not want to establish an authority that is simply incapable of properly resolving any issues.

CHAIR - It certainly has to have powers to enable the situation, let us say, that occurred recently with the police investigating the police. The only reason for that was that if you

had others in they would have to given special powers, people who were under investigation would have had to give those special powers so it would have been obvious that they were being investigated. Would you agree, whatever the body was, the body would have to have proper powers of investigation to do what was necessary, a bit like the crime commission, to have the powers to properly investigate matters?

Mr WILL HODGMAN - Yes, to compel witnesses and documents and to have the legislative force to do just that. I do think that is very important. On the issue of police investigating police, the question of probity associated with that issue still remains unresolved because you have conflicting views as to whether it is right for police to be investigating police or any other similar situation, and that remains unresolved. If this sort of circumstance arises again we will have the same problem.

CHAIR - Unless something comes into force.

Mr WILL HODGMAN - Yes. The concern surrounding that is not just mine; it is concern expressed by representatives of the police service, academics and commentators. Indeed, in other jurisdictions it is just not the way issues like that are resolved.

CHAIR - You have this body, there is a sifting process first to see whether the claim is an appropriate claim or not, and if it passes that sifting process through the secretariat it goes to the investigative body. I am trying to summarise what you are saying.

Mr WILL HODGMAN - Yes, I am with you. As I say, I am very careful not to prescribe a particular model.

CHAIR - The investigative body then carries out the investigation. If it is criminal it goes to the DPP for charging. If it is not criminal a report is prepared, like your Auditor-General's reports, stating what they did, what they found and their recommendations. Whether you have another standing committee within parliament as a watchdog you believe probably is a good idea but you are not as firm on that as the others. Is that a fair summary?

Mr WILL HODGMAN - Yes, and alongside that I think it is important to attach an educative capacity. I think that is very important and would be very useful.

CHAIR - In an educative capacity involving members of parliament in relation to induction processes and also like continuing professional education, which I think is important personally. Do you believe that is of value as well?

Mr WILL HODGMAN - Yes. Also, a capacity for members of the public to access the body would be useful, without swamping it with daily inquiries. In cases where there are serious matters involving an aggrieved member of the community this might be an appropriate authority to resolve those issues, where they feel there has been a wrongdoing or they have in some way been done a disservice by a member of parliament or the State Service.

CHAIR - The process, if it is set up, in some ways is not going to be a silver bullet for everybody because there are people who have already gone through a number of processes and have not got the outcome that they would like. They would still say, 'That

doesn't help us, therefore there needs to be another body', or 'The bodies are not working because they didn't agree with what I think should be the conclusion'. I suppose you would say that is life and there are some people that this is going to happen to.

Mr WILL HODGMAN - Yes, and, as I say, I am conscious of the fact that it is going to be hard for an authority or a commission to have too much power to wield in terms of sanction. Where, for example, you have a government that is persistently refusing not just to answer questions without notice properly but where they will not even provide information via questions on notice, freedom of information or other legitimate forms that members of parliament or the public have access to, they need to be called out for it in a way that is removed from partisan politics so that there is no allegation that it is only driven by political motivation but that it is not an adequate standard when it comes to good government and good process. I do not think that we have that in Tasmania, other than via the media. That is fine but it is a fairly inadequate way to deal with systematic problems and a culture that, sadly, under the current Government has become commonplace.

Mr MARTIN - On pages 8 and 9 are various issues that have confronted Tasmania over the last couple of years. In some cases it is about ministers being accused of doing the wrong thing and admitting in some cases to doing the wrong thing. If you had been Premier and this happened in your government, what sanction would you have taken against these ministers? Is there any situation where you would ever remove them from your government?

Mr WILL HODGMAN - As Premier, and with a code of conduct that has been, perhaps, improved - as I would like to think - I would enforce it.

Mr MARTIN - How far would you go to enforce it? Would you actually remove them from your party?

Mr WILL HODGMAN - Depending, hypothetically, on the circumstances, I do not know. What we have had in Tasmania are instances where repeated breaches of the ministerial code of conduct hardly raised an eyebrow under the previous Premier and the current one is still to be tested on it. It became a totally redundant, impotent document and one thing premiers or prime ministers can do is enforce their code of conduct, and so they should. But unfortunately the culture that I talk about has got to such unfortunate lows that the code of conduct has hardly been utilised in any form in the six years that I have been in parliament. We have had blatant examples of ministers flouting the provisions of the code, refusing to answer questions, being totally dismissive of the doctrine of ministerial responsibility. You only need to think of the situation involving Bryan Green. It has ultimately cost him his ministerial position but we had to drag the previous premier kicking and screaming to even get him reluctantly to ask that minister to step down. It was really only because it was getting to such a serious state of affairs that criminal charges were part of the mix.

Mr MARTIN - He did throw one person out of the party pretty quickly.

Laughter.

Mr WILL HODGMAN - Yes. I will not bore you with it now but we have our own plan to improve standards and restore public trust and confidence, and it is more than 10 points. As premier I will be enforcing a code of conduct and making sure it is adequately equipped to deal with issues in 2010.

CHAIR - Do you have those with you?

Mr WILL HODGMAN - I can provide it to the committee. I made a statement at our party conference this year about a whole range of issues concerning governance and accountability and a number of ways that we can practically enhance the community's engagement with our Parliament, requiring, for example, questions on notice to be answered within 60 days. It is unbelievable that we placed perfectly legitimate questions on the Notice Paper back in March this year and they remain unanswered - six months!

Mr MARTIN - Same in our Chamber.

Mr WILL HODGMAN - Prior to parliament being prorogued we had questions on the Notice Paper that had been there for two years. That is totally contemptuous of the processes of the parliament and transparency and accountability. By any objective analysis they were perfectly legitimate questions that could have been answered very swiftly but because of a culture that exists within this Government to almost resist those principles, we had the farcical situation where questions remain unanswered for years. In relation to more contemporary issues that involve allegations of corruption or maladministration or at the very least very poor process we had the unsavoury spectacle of the former Premier deliberately refusing to answer questions within his knowledge about matters surrounding the so-called shreddergate affair and, prior to that, the TCC scandal. The obvious retort from the Premier and the incumbent Government is to say, 'This is a political witch-hunt, you are only about scoring political points'. Whether or not it is true remains a moot point when the issues remain unresolved and public confidence is diminished. Whilst it might not be politically advantageous for whatever party is in government, I believe it is in the public interest to have an authority such as this as a circuit breaker.

Mr MARTIN - So in the shreddergate affair, for example, where the Deputy Premier admitted lying, if that was in your future Government what actually would you have chosen to have -

Mr WILL HODGMAN - Out.

Mr MARTIN - Out of the party?

Mr WILL HODGMAN - This is the interesting thing.

Mr MARTIN - Out of the Government?

Mr WILL HODGMAN - You are very fixated on people getting kicked out of parties, aren't you? I do not know if it is in my power to kick people out of the party but they would cease to be a minister immediately and we would not have the situation where, just by sheer relentless pursuit and pressure by the media, a Premier succumbs to the inevitable.

Mr MARTIN - Would you ever consider bringing the person back to the ministry?

Mr WILL HODGMAN - Again it is hypothetical but there are cases where ministers are chastised or sanctioned for breaching ministerial codes and they can come back at a later time, but depending on the weight of the offence and how they have performed or discharged their functions subsequently. But just on the most recent episode - and it came out of the inquiry by the DPP into the so-called shreddergate affair - notwithstanding the fact there were no criminal activities, apparently, there was a lot of stuff that went on which was most unsavoury, most unfortunate, is symptomatic of poor process and requires, I believe, resolution - for example, the allegation or the fact unchallenged that a member of the State Service played a pivotal role in directing who would be appointed a magistrate. By any assessment, that is an inappropriate intervention by a State servant on the facts as they were presented. We have the DPP saying that was unchallenged. It was not a criminal offence but to say that the case is now closed is fallacious and, in my view, does nothing to increase public confidence other than to say Minister Kons is not a criminal.

Mr MARTIN -Especially when you consider that the person involved refused to be interviewed by police.

Mr WILL HODGMAN - Yes, all those issues could be resolved, could be tested, could be challenged, and aggrieved parties or those who are alleged to have perpetrated a wrongdoing could have the right of reply and the matter could be resolved. Again, the ministerial code of conduct expressly says, notwithstanding whether a criminal or any criminal conduct has occurred, there is a lot below that that ministers need to be doing to just properly discharge their functions as ministers of the Crown. The so-called shreddergate case and the TCC scandal are classic illustrations of that. Neither Minister Green nor Minister Kons discharged his ministerial functions to an adequate standard. Notwithstanding one has gone through a criminal court trial process twice and the other one has been subject to some limited inquiry, there are plenty of questions that remain unanswered that go to the heart of governance, probity and accountability and transparency. If the current Government does not think those things to be important they are sadly mistaken because the public do.

CHAIR - Thank you for your coming along today. Thanks for giving your evidence as you have and answering the questions in the way that you did and also for your submission.

Mr WILL HODGMAN - Thank you. I appreciate it.

THE WITNESS WITHDREW.

Mr GREGORY JOSEPH BARNES, BARRISTER, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Greg, thanks for coming along. You are about to give us some evidence today in relation to the matter at issue. We have been allowing the person in your seat to open in the way they want and then we ask questions as we go along. I will throw it open to you.

Mr BARNES - I have expressed my views on this matter in a couple of columns, the latest being on Monday, in relation to this matter. Having changed my position on this, I am fundamentally opposed to the establishment of an anti-corruption commission. Anti-corruption commissions have been responsible for an extraordinary diminution in the rights of individuals and that applies whether it be in Singapore or Hong Kong, which are particularly toxic examples, or Queensland. As I said on Monday, you have only to look at the Queensland legislation, which now abolishes the right to silence, snuck through the Parliament in 2002.

My fear is that in Tasmania, as we have just seen in the matter of Mr Burch, allegations can be made against people, serious allegations, hearsay upon hearsay allegations, which in many cases are often false, often driven by ulterior motives on the part of those who make the allegation and which result in enormous harm being done to the individuals, who are then subject to investigation.

Mr Estcourt is a good friend of mine, I have been in his junior in a number of cases. In my view he has had to endure the most disgraceful public execution at the hands of some elements of the media and some politicians - I do not think anyone in this room - who have made accusations, aspersions and innuendoes about him and about his role or non-role, if you like, in relation to the Solicitor-General.

Let me also take another example on the other side of the ledger, which you might think is an unusual example, and that is the example of Brian Burke and Julian Grill. There is a good deal of case law - and Jim would be aware - in relation to the right to a fair trial. We saw recently a Queensland judge have the courage to throw out a matter in relation to an alleged paedophile, overturned by the conservative Court of Appeal in Queensland but now going to the High Court. We saw in the case involving none other than Derryn Hinch in the case of Glennon in 1992 in the High Court where the High Court clearly said that there are cases where the adverse publicity is of such a nature and of such magnitude that it is impossible for a person to get a fair trial and that there ought to be a permanent stay of proceedings.

In the case of Mr Burke and Mr Grill, because of the conduct of the West Australian Corruption and Crime Commission in publishing on its web site and giving to the media highly prejudicial materials, including transcripts of evidence which may never get before a court because their prejudicial value far outweighs their probative value, a potential jury must inevitably have drawn some views about the conduct of Mr Burke and Mr Grill.

It is a favourite tactic of police forces and anti-corruption investigators to leak material to the media. I have experienced this in the terrorism trial in which I appeared in Melbourne where there was continual leaking before and after the trial by the Federal police and the State police.

In the case of the Police Integrity Commission in Victoria it took the controversial step, again last year, of releasing to the public, for the purposes of their titillation, no doubt, and for the purposes of tarnishing and tainting the reputations of those they were investigating, selected extracts of conversations made between certain police officers. These may well be conversations that do not form part of the evidence in a trial. They may be ruled out on the basis, again, of the prejudice versus probity value, the so-called Christie test, but the damage has been done.

The second thing I would say is that we saw the other day the conduct of the Australian Crime Commission, which is a slightly different beast but not terribly different. For those of you who have appeared in front of it, it is star chamber, just like anticorruption commissions. You lose your right to silence. If defence counsels seek to curtail questioning, you, yourself can be charged for inhibiting and impeding the commission in the conduct of its hearing. We saw there a senior officer keeping diary notes on the minister responsible, Bob Debus. These Elliott Nesses who get in charge of these anticorruption commissions, make no mistake, have enormous powers and they abuse them.

Mr MARTIN - Isn't the problem with the people themselves, the individuals being appointed?

Mr BARNES - It is systemic. If you give people too much power, as we have seen with the anti-terror laws, it will be abused. I am not opposed to a lifting of ethical standards, although I have to laugh when I hear people like Tim Ellis say that he is concerned about certain appointments. I am not sure how Tim was appointed but I do not think there is any formal process for the appointment of a DPP. I think this committee let him get away with it. I do find it amusing when people like Tim Ellis come out and say, 'It is terrible the way these appointment were handled'. Let us have a look at his own appointment. I do not know how it was done, but let us have a look at it. Let us make sure that it was okay. There is a very good argument for having independent, transparent processes of appointment to the judiciary and to these key public offices.

I should say in relation to that, and I know this is an unpopular view in Tasmania, but I saw nothing particularly alarmist about the Cooper matter. I hate to tell you, but it happens every day of the week in other jurisdictions. The role of the judiciary and magistracy has been used by governments, Liberal and Labor, around Australia - and indeed in the United Kingdom and in the United States - to put in people who are owed political favours or alternatively to get them out of the way if they are becoming a political problem. This is not unique and the appointment process of those people is equally slippery. This is not a uniquely Tasmanian problem.

Mr MARTIN - Does that make it right, though?

Mr BARNES - That does not, but it was blown up here as though this was something extraordinary. It happens every day of the week. We just do not have as many appointments to hand out.

Mr MARTIN - It does not make it right, though.

Mr BARNES - It does not make it right, but we do not have as many appointment to hand out. So let us put things in context and perspective.

The last thing I would say is that you cannot head down this path without a charter or a bill of rights. If you are going to hand enormous powers, inquisitorial powers, to some form of body you have to, on the other hand, balance it with what Nick wants to do, and that is a charter of rights. If, for example, there were a charter in existence in Queensland, the Queensland Government would not have been able to get away with passing and amendment to its Crime and Misconduct Act which allowed for the abolition of the right to silence.

One of the reasons why Canada has not headed down the anticorruption commission path - in some sense they have not and in some sense have - is that they have taken a very different view. They have to be very careful that these powers are not unconstitutional - that they do not infringe the charter. There has to be a balancing act.

For those people in Australia who tell you that the rights of the defendant and the rights of those being investigated far outweigh those of the investigators, I say they are living in cloud cuckoo land. The pendulum has swung so far in favour of the rights of the police and the State that we in this country are now an international embarrassment because we do not have a charter that protects people's freedoms. That is about all I wanted to say.

Let me just say about Tim Ellis that I am not condemning his appointment. I am merely saying that no-one should throw stones in relation to these appointments.

Mr MARTIN - Greg, for someone who has been an advocate for the development of some sort of body, the concern I have had in advocating this is the Western Australian example that you gave and the injustice of it, but to me that has come down to the individual. Surely there are good people out there who would not do that. Would you agree with that?

Mr BARNES - With the noticeable exception of Max Bingham -

Mr MARTIN - There must be more than one Max Bingham?

Mr BARNES - The people who have run these commissions, and a number of DPPs around Australia, love the media and they love their power. In New South Wales, Ian Temby's sacking of Nick Greiner was the most egregious example of a commissioner getting above himself and taking the matter of corruption to a ridiculous level. There are good people. It is like the Haneef case: you could say in relation to it that there are good police officers, and here are some very good police officers who would not have done what happened, but if you give them the power it will happen.

Mr MARTIN - If we accept your perspective on that, so we do not have this sort of body, what has led to the calls for this is a litany of scandals or issues over the last couple of years. Without going into the merits of each of them the fact is that the public perception of politicians and governments is fairly low. To me the biggest reasons for that is that there are so many questions in relation to the scandals and the issues that have just not been answered. Despite the best efforts of the Parliament, Estimates committees, Auditor-General and so on, there still remain all these unanswered questions. That is why I think the public are so strongly pushing for development of this sort of body - the frustration about unanswered questions. Have you got a solution for that?

Mr BARNES - I do not accept the premise of your question, Terry. What are those scandals? I know that we have only got half an hour but let me take you through them: what are those scandals? Some hearsay upon hearsay allegations made by a disgruntled ex-employee of the Government. That is one.

Mr MARTIN - Forget that one.

Mr BARNES - The others seem to me to have been investigated. In relation to Mr Green, he is either innocent or he is not. You cannot have a lower burden of proof for politicians. You cannot say that the court did not find him guilty but we know he is. That is the innuendo here and that is an evil in a democracy, that there is some sort of lower standard for politicians, for Mr Kons and Mr Green, just because they are politicians. These are innocent people who have, in the case of Mr Green, been dealt with by the courts on two occasions. He is innocent; he is entitled to continue to hold that presumption of innocence and he is entitled to be restored to public life, or else are we saying now that there is a lower standard of proof for people in public life? Because if we are, then let us legislate for that. Let us make two classes of citizens. But what are these scandals? I do not accept the premise of your question.

Mr McKIM - What about the Premier leaning on the head of the RPDC's pulp mill assessment panel?

Mr BARNES - I would say that was all revealed. Are you saying that an anticorruption would stop that?

Mr McKIM - No, but I am saying it would have been an appropriate thing to be investigated. It was never investigated. It was revealed because Mr Wright's statement.

Mr BARNES - You have Mr Wright's version of events and you have the Premier's version of events. Now that is not proof beyond reasonable doubt. Some of you will say to me that that is the lawyer's tag. It is there for a reason, as Jim knows; in our society you do not make serious accusations against people unless you can prove them beyond reasonable doubt. You have Mr Wright and Mr Lennon - two different views.

Mr McKIM - I only make the point that it was never investigated.

Greg, you said that you do not support the establishment of an ICAC-style body in Tasmania. Can you just turn your mind to the situation whereby the police commissioner has been accused of a breach of the criminal code? He is being investigated by police. In other words he is being investigated by individuals who, until

very recently, were his subordinates and in fact may be his subordinates in the future. Do you think that accords procedural freedom to either the officers or to the commissioner?

Mr BARNES - No I do not. There are many retired police commissioners around Australia - Mick Palmer, Neil Comrie - who do exactly this sort of thing in other States. I do not accept what Mr Ellis said about it, if I read him correctly, that we did not have time. That is a nonsense. You can get people down, swear them in or give them the appropriate powers. I think that was outrageous.

Mr McKIM - I agree by the way and I have made those views very clear.

Mr BARNES - I saw your comments.

Mr McKIM - Is it not a fact that if we had a standing body here, someone such as I could have sought to refer that matter to that body for investigation rather than the current structures which really only allowed me or any member of parliament to move in Parliament for a commission of inquiry, which the Government then voted down using its majority in the House and therefore there was no capacity for anyone to have any material influence on how that investigation was conducted, given that the Premier formed a view on the basis of what I would describe as political advice from the Solicitor-General - not legal advice but political advice from the Solicitor-General -

Mr BARNES - Have you seen the advice?

Mr McKIM - Yes, I tabled it in the Parliament.

Mr BARNES - Do you think it is political?

Mr McKIM - I do.

Mr BARNES - Have you told him that? Nick, I would say about that that you do not use a sledgehammer to open a walnut. One of the problems I had with ICACs is they are used by politicians and opponents of governments for specious purposes. New South Wales is littered with examples of politicians being dragged in front of ICAC because the Opposition has put them there. It is used for political embarrassment and that is one of my concerns about it.

I am not saying in your case that is the case, I am just saying that it does get abused. Just remember what you are dealing with here; you are dealing with, if you head down this path, a severe diminution of people's rights in circumstances where you have a small population, where if, for example, serious allegations are made by a person they are known by everyone in this State - this is not California, they are known by everyone - and it makes it, I think, virtually impossible for them to get a fair trial.

Mr McKIM - There are mechanisms available, though, to potentially protect against reputational damage at least - for example, in camera hearings. Do you not think that it is possible to structure up an authority in such a way that it can take action to protect against any potential reputational damage?

Mr BARNES - I think the problem with that, Nick, is that the media will make their job impossible because the media hate suppression orders and I have just come from a case where the media got up every second day to argue against a suppression order. Let me tell you, they are bolshie about them and particularly the organisation for which I write and that is News Limited. It would make that commission's job impossible. There would be an enormous number of leaks which would undermine the commission. The commission in law would find it very difficult to make blanket suppression orders because of the principle of fair and open justice. I take the point you are making but I think it is very, very difficult.

I am not saying I am opposed to some form of ethics body. I like the Canadian parliamentary model where you have a parliamentary ethics committee and I think you have an ethics commissioner in the public service. I think these are cultural issues. I think in Tasmania - and I have been the one who has been writing this before it became popular - there is corruption but it is a cultural corruption. It is the good old boys.

Mr MARTIN - What do you do about that?

Mr BARNES - There are three ways to solve that, Terry. The first is impossible - that is, you get massive migration where you break up the existing order and that is what happened in Melbourne after 1945, but forget about that.

I think the second way you would do it is to set up an independent body which appoints people to various boards and commissions and you make that body answerable to the Parliament and not to the Government and you empower the Parliament to have some form of oversight of that body to make sure it is doing its job. That is the second way you do it.

I think the third way you would do it is in a sense make much greater use of our expats - and this might sound tangential but it is not. We do not in this State make great use of our expats. We do not put them on boards, we do not bring them back into the State, in contrast, say, to South Australia. Doing that I think does two things. One is that they are not as connected with the club because they have gone but they are still passionate about the State. Secondly, they bring a set of skills and values which I think in many cases are more concomitant with the way organisations ought to be run in the twenty-first century. In other words, it is an injection of almost outside talent into positions. I would even do it for judges. There is no reason, for example, that you have to have judges appointed from the Tasmanian Bar or Law Society - there is no reason at all, particularly when it is a small pool. Really Jim and I are the only appropriate people to appoint as judges and the rest of them we would not appoint.

Laughter.

Mr BARNES - But you know what I mean, there are some very, very skilled Tasmanian lawyers at the Melbourne Bar and at the Sydney Bar who would think about an appointment back here, and a number of them who have come down now have chambers here. If you look at who is on boards around this island, it is the same-old, same-old. I occasionally get a bloke in from Melbourne because he is a management consultant who did a consulting job for Hydro once and we get someone from Macquarie Bank so Hydro

can be fleeced. We do that sort of thing. But we do not have a systemic culture of bringing in outsiders.

CHAIR - Greg, I hear what you say in relation to a body being set up and that body being used by opposition to embarrass and in the end ruin their career. It has been done not only with people in Parliament but also with people wanting to stand for any public position. The Crime Commission has not worked badly, though, over the years, has it? I know I have appeared before it on a number of occasions.

Mr BARNS - The Australian Crime Commission?

CHAIR - Yes. It has led to a situation where the people that you were appearing for and the matter under investigation, to my knowledge, were kept quiet.

Mr BARNS - Yes. It is the other edge of the issue. The Australian Crime Commission, do not forget, has a brief to look at organised crime. Even if you take these allegations at their highest in Tasmania, it is - excuse the French - pissant stuff compared with the organised crime syndicates that the ACC looks at - international drug-smuggling et cetera, money laundering.

CHAIR - Even murders.

Mr BARNS - Murders. But murders that are in the context of organised crime. One of the complaints, though, about the ACC is its secretiveness and the fact that there is a severe diminution of rights, as you know, when you appear there. You are not even allowed to talk about the fact that you have been there. If you do, that is a criminal offence. Most of my colleagues in Melbourne at the Bar find it offensive that they cannot tell anyone. You cannot even tell your clerk when you are going off to court, 'I'm going to that place'.

Mr MARTIN - Really?

Mr BARNS - Yes. The National Crime Authority was the same. This, by the way, was contrary to the recommendations of Frank Costigan in the 1980s, who said that the NCA would be a disaster if it were secretive. He was out-gunned by Hawke and Keating and their New South Wales' mates and when they got Stuart in as the first Chair. That was Costigan's view: if you make this secretive, it will not work. I think that there is room, for example, for an independent police complaints and corrections complaints authority.

Mr McKIM - Like an OPI-style one.

Mr BARNS - Yes. As Nick knows, I would love a corrections complaints authority. I would have somewhere to go every day. But I think there is scope for an OPI/corrections as an almost security service because that is where there is enormous interaction. I think the other point to make here is that most corruption in democracies is not the sexy high-level stuff. It is the copper who says to the kid, 'I know your old man. I won't do anything because your old man owes me a few beers. Go home'. It is the prison officer who knocks off a couple of spare fridges and takes them home or gets prisoners to go and work at his house - real-life examples, by the way.

They do not make the newspapers but I can tell you now, that happens every day of the week in every society. There are serious ethics issues at that low level. Part of that is based on culture again - in the police force, in the case of the office of corrections. Part of that is also based on, to be frank, low wages. And even in road traffic management or licensing or local councils and planning, I would be stunned if there were not examples of corruption. If there were not, it would be the only State in Australia where there are not. No-one talks about those. We concentrate on whether Steve Kons shredded a document.

Mr MARTIN - Regarding the example you gave before, I have never been worried about the legality or otherwise of it but surely there is an ethical problem with the minister signing, the day before an election is called, a monopoly agreement for a former colleague.

Mr BARNS - I said at the time that he would not be convicted because I said -

Mr MARTIN - That does not worry me - the legality.

Mr BARNS - I think it was a very foolish thing to do, and you cannot bind future governments. It was a useless thing to do in law. You cannot bind future governments.

Mr MARTIN - It has to be an ethical problem, does it not?

Mr BARNS - I think it was a very, very stupid thing to do. But was it worthy of an ICAC? Probably not. It does not bind anyone in law, so it is null and void. It would not have led to criminal charges. I think it was a very stupid thing to do. It is not the only stupid thing that people do in relation to lobbyists and that is another issue and I know you have had a look at that issue of lobbyists and their access to government.

Mr McKIM - But ultimately, that particular case was only investigated because the then Attorney-General, Steve Kons, made a direct request to the DPP to investigate it. Isn't there a problem with the mechanisms we have in place when it is only one person's decision about whether or not a matter ought to be investigated, and a politician's decision, by the way, that led to that investigation being conducted. There was no way, as I subsequently found out, when I tried to refer another matter to the DPP, that -

Mr BARNS - Surely you would not do something like that would you?

Mr McKIM - I did do something like that. I was knocked back with the letter that I have since made public, that Mr Ellis wrote to me on 11 April, in which he made a whole lot of assertions about the independence or lack thereof, of the Tasmania Police.

Mr BARNS - He was wrong about that.

Mr McKIM - I might come to that in a minute. But isn't there a problem with the mechanisms in place that in that particular circumstance where the DPP did form a view that there was a reasonable life ahead of a successful prosecution because he did take the matter to court twice, that we had to rely on a politician of the same political party of the person in question making a decision to refer it to the DPP?

Mr BARNES - Firstly, one wonders whether it should have even arrived at the desk of the DPP and I think the jury verdicts bore that out. Two jury verdicts; not one but two.

Mr MARTIN - Did they make a decision?

Mr BARNES - He is innocent. You have to make a decision. You have to convict someone. Twice he went to a jury and he could not get it over the line.

Mr MARTIN - But it was not a decision of the jury. It was a hung jury; they did not make a decision.

Mr BARNES - In other words, if we cannot convict this man beyond reasonable doubt, he is innocent. But coming back to your point. In that particular case, that is a matter that the Auditor-General would inevitably have investigated. We under-utilise the Auditor-General in this State. In Victoria the Auditor-General, Ches Baragwanath, was such a useful person that Jeff Kennett tried to get rid of him. The Auditor-General in New South Wales has enormous powers. They have powers under this act but they tend to be softly, softly here. But that is a matter that could have been investigated by the Auditor-General. Nick, if you had taken that complaint to the Auditor-General in Canberra, he or she would have acted on it. There are existing mechanisms.

Mr HALL - I think the questions I had for Greg were looking at ways forward and he gave some examples of some ways forward. I also take on board your concerns about the existing ICACs or the Elliott Nesses, as I think you appropriately put it, that operate within them. There are two other States that do not have ICACs, those being Victoria and South Australia. Do you think, from a casual look at them, that either has suffered because they have not had some form or maybe there has not been a need for it?

Mr BARNES - I think in the case of Victoria there have been calls for ICACs and there is at the moment. The Opposition are hot to trot on that issue mainly because of police corruption. But the OPI has enormous reach and enormous powers, which it has used and abused, and it is now prosecuting a series of people through the courts. In other words, it is dealing with this matter very effectively. As I said earlier, the Auditor-General also has a high profile and enormous powers in Victoria, which are utilised. There is also in Victoria, I think, the upper House. The Government does not have control of the upper House, nor does it here, but the committee system in Victoria seems to me to be quite robust, which is an argument for giving you guys greater resources in your committees. I am told that appearances in front of these committees are hard work, really hard work. I do not sense in Victoria a great public clamour for an ICAC because it has been very much focused on police corruption.

I do not know enough about South Australia. But you have two crazed law and order junkies running that State in Mike Rann and Kevin Foley as Treasurer, who have given the police so many powers I think an ICAC has become redundant. An example would be the anti-bikie gang laws, which make the terrorism laws look like a Sunday school picnic. They bring back the old crime of consorting. If you are seen with a bikie you can go to jail; that is the way that it works. In South Australia Rann just does what he wants. He also has a DPP he continually fights with and the DPP's way of fighting back is to continue to prosecute people in cases where you would say there should not have been prosecutions. I think that South Australia is a bit dysfunctional for other reasons.

Mr HALL - Would you agree that members of parliament here and senior bureaucrats should have some 'training' in terms of codes of conduct? Would training in ethical conduct and that sort of thing be of assistance?

Mr BARNES - I think that would be a good idea. It is proactive, it is positive and it is not designed for witch-hunt purposes. My concern is the witch-hunts and I do not underestimate them in this State. You blokes have lived here longer than I have. You know it, it is a small community, it is an isolated community and witch-hunts happen and when they happen they damage people. People leave this island because they have been scapegoated, witch-hunted with no compensation. That bloke up on the north-west coast whose case I think Ruth Forrest has taken up - that is just a disgrace. He was falsely charged with rape and could not get a cent of compensation. Imagine what his life would be like, living up there.

CHAIR - That is Norma Jamieson's case.

Mr BARNES - Yes, Norma. That is just appalling.

Mr BEST - I am interested in your views. You talked about the Canadian model and that we have had some witnesses that have given evidence along the lines of an ethics adviser heading up a panel of existing people in the public service - maybe the Auditor-General, the Ombudsman for example - that might look at process and guidelines and how those things have been followed.

If I can overlay that with another submission that we had, that with anything that we might look at in terms of integrity there should perhaps be a second component - some sort of parliamentary committee that looks at emerging scenarios or something that has happened elsewhere in the world and how it might work for Tasmania.

Mr BARNES - In relating to all of that I think it is a good idea. I notice Bob Brown said last week in relation to the Australian Crime Commission that there needed to be greater parliamentary oversight. He is dead right. The only thing I would say to Bob is the problem with the ACC is that they will come and snowball him. But he is right in what he says because they are the only people who keep them accountable under the existing act.

I think that it comes back to this issue I mentioned earlier. We do have existing institutions such as the Ombudsman and the Auditor-General and I think the appointment of an ethics adviser and office of ethics, which is both proactive and reactive, is a very good idea. To go back to my example, just in relation to ICAC, it was interesting in the early days, and I worked for Nick Greiner in the early days. When ICAC was first established the people in the Liberal Party expected him to use it to go after Wran and Unsworth et cetera. He did not.

Temby's first inquiries were in relation to the motor registry branch, I think, of the Department of Transport where there were licences being handed out to people when they should not have been and bribes going to driving instructors or vice versa and, I think, corrupt garbage collection tenders - stuff that affects people that people pay for. They pay extra for their garbage through their rates because there were all these

backhanders. They were paying extra for their licences because there were all these backhanders.

I think if we had an office of ethics that was really getting hold of some of these institutions I think that would be very useful. With regard to the Ombudsman, I had a discussion with the Ombudsman's office recently about a particular matter and it was very interesting, it was about whether they should look at a certain thing. They said, 'We are keen to do it but, you know, we have had a bit of push back.' It struck me that what they were saying was that they have the resources and they have the powers but they do need to be empowered. I should say the Office of the Ombudsman -

Mr MARTIN - What does 'push back' mean?

Mr BARNS - As in a particular department did not want them coming in and investigating.

Mr MARTIN - Can they stop them?

Mr BARNS - No, but it makes their life more difficult if you do not get cooperation: 'Where are these documents?'. 'We will get them for you' - in six months time. If you do not get cooperation out of agencies it makes life more difficult.

Mr MARTIN - I hope it would not stop the Ombudsman from investigating?

Mr BARNS - No, and it has not but they labour under some difficulty. They have the powers to enforce but I think they need to be empowered. I think people forget about the power of the Ombudsman. I have utilised the Ombudsman's office in relation to a number of cases in the prison, as Jim probably has, to get visitors into the prison and they have been effective. If also have a fair bit of push back from Graeme Barber but in the end they have won; they have been effective.

In other words, if you utilise your existing resources, build an ethics component on top of that, you start to get a handle on this problem without having to head down the path which I think is a very dangerous path. Let us go back to the Estcourt example. Let us say they had been public hearings. Let us say he had to appear before a committee. That is diabolical. Because it became a national story, I had, in Melbourne, people saying to me, 'Your mate, Stephen Estcourt, I thought he was a good bloke'. I find trashing of a reputation like that disgraceful and that is what happens. Innocent people have their reputations trashed. That is the record of ICACs the world over.

Mr McKIM - But that happened, in this case, in a jurisdiction that does not have an ICAC.

Mr BARNS - Yes and it happened only because he felt that he ought to go public and say it was him because -

Mr McKIM - In fact wasn't it a media report that originally broke that story?

Mr BARNS - It was a media report, courtesy of Mr Burch, who was leaking to a certain journalist, as I understand it.

Mr BEST - Which leads me to the next question, which I have asked a few witnesses. If we did have some system, do you think there should be a process somehow or other that if someone makes a complaint then that is it. You have made your complaint and here is the Auditor-General, the Ombudsman or whoever might look at it, and that does not then give you the right to go banging on about it forever and a day.

Mr BARNES - That is a nice theory, but as you and I know there are some people out there who will campaign and campaign and write you letters and write me letters. I do not know how you stop that.

Mr BEST - What if it is sub judice, for example?

Mr BARNES - It can be. I am ambivalent about sub judice laws. As a media commentator I would quite like a diminution of sub judice, but on the other hand I quite like it when it suits me. If the Ombudsman or the Auditor-General is investigating something then those matters are not sub judice. You can never make them sub judice and you should not because they are not matters before a court. They are not judicial proceedings.

Mr BEST - What can you do to have something that is fair to the participants, so to speak?

Mr BARNES - I think if people make false allegations there ought to be sanctions.

CHAIR - Put the allegations in statutory declaration and if they are proved to be false they can be -

Mr BARNES - That is right if you say to them you will need to sign a statement and swear and if it is patently and deliberately false - not merely that we have heard another version and now we do not agree with your version - you will be charged with perjury. I think most people respect that. They will send you to jail for perjury.

Mr BEST - There is another example that has been discussed. If you are a public servant feeling vulnerable because you have given advice and it is not being accepted, you then go to the minister or whoever and say, 'I have given this advice but you are not listening to it, even though I am qualified'. They could perhaps go to this body and say, 'This is what I am putting in', and maybe there would be some mediation to get the thing resolved.

Mr BARNES - I think that there needs to be that. I have given some advice to a woman who is in exactly that position. The problem at the moment is that the office of State Service Commissioner has pretty limited powers. It is essentially an industrial body. You need to protect not just the whistleblower but also the person who feels as though they are being sidelined. Some people become whistleblowers in effect because they are just treated like crap. In the end of they just get jack of it and sometimes their judgment gets affected and they get things wrong, or alternatively they get it right. But it could have been nipped in the bud if they had been treated better. It is just a human resources issue in many cases. In some cases it is not; it is just clear that there is corruption and you have to expose it.

Mr BEST - Maybe Nigel Burch's thing might have been handled differently if he had somewhere to go?

Mr BARNES - I exposed corruption in the Liberal Party - I can say that because there is no one here from the Liberal Party - and look what it did to me. It got me a newspaper column.

Laughter.

Mr McKIM - You said earlier that you thought Tim Ellis was wrong in relation to his views on independence for the police force. Are you able to expand on that a little bit?

Mr BARNES - It is not a trivial point. When he made those comments I had a look at the act. In theory one assumes that any minister can direct his or her commissioner. We saw in London three days ago Boris Johnson telling the Commissioner of the Met to move on. If politicians want to do it they can do it. I do not accept the view that there is interference by ministers in the running of day-to-day operations of the police. The reason I do not accept that it happens, and that a court would not sanction it, is that it is contrary to established practice and I think it is a very narrow reading of the act.

The act says: 'The Commissioner, under the direction of the Minister, is responsible for the efficient, effective and economic management and superintendence of the Police Service'. Notice those words 'efficient, effective and economic management and superintendence'. It is not 'is responsible for investigations'. It is making sure that the police service operates within budget, that it does not have corruption within it et cetera. It is not about giving them directions. This section does not read in the way that Tim says it reads. In fact, if you read subsection (2) it says 'Matters for which the Commissioner is responsible' and then lists a whole stack of them. It clearly differentiates between the macro-role of the minister and the micro-role of the commissioner.

Mr McKIM - Yes, nevertheless there is a body of opinion that is contrary to yours, including Sir Max Bingham's when he gave evidence to this committee.

Mr BARNES - You know what lawyers are like.

Mr McKIM - I do.

Mr BARNES - It could be drafted better.

Mr McKIM - Thank you; that is where I was going to go. It is at best unclear.

Mr BARNES - I think that it is a very narrow reading and it is wrong, but I accept that it is there and I think it could be drafted better.

Mr McKIM - The committee is charged with potentially recommending mechanisms to improve open and ethical governance in Tasmania. I want to ask you something that I have asked most witnesses that have come in. Do you think that State-based political donations disclosure laws would actually improve open and ethical governance in Tasmania?

Mr BARNES - I do not have a problem with them being entirely open for any donation.

Mr McKIM - We do not have State-based laws.

Mr BARNS - Is \$1 500 the figure?

Mr McKIM - No, \$10 000 at the moment, thanks to Eric Abetz, and Kevin Rudd has announced that he intends to bring it down to \$1 000 but that has not yet, as I understand, got the green light from the Commonwealth.

Mr BARNS - I think that if you make a donation you should declare it. I think that I am pretty scrupulous in my column if I say something about the mining industry I always that I am a non-exempt director. I think that journalists should declare who they vote for, which is Derryn Hinch's view of the world.

Mr McKIM - Do you think it would improve ethical and open governance in Tasmanian if people who pay for political advertising during election periods were required to disclose who they are and the source of their funds. I am talking about the so-called Tasmanians for a Better Future.

Mr BARNS - Yes, I do. I think that was farcical. You should just come out and say it. Why the secrecy? Business loves this. Business always thinks, 'We will get in behind this group. We will set up this group', and they get a lobbying firm or a PR firm to set up these groups.

Mr McKIM - That is exactly what happened in this case.

Mr BARNS - It is just farcical and I do not think it does them any good. They talk about acting in an ethical way. I do not think it does them any good at all. I should say, on that note, that for those of you who think I am some sort of fan of Gunns I think they are their own worst enemy. Their PR could learn a lot from the mining industry about how to do it. I am not getting into the pulp mill debate; I am just saying that there seems to be a perception that I like Gunns. I have never done any work for them. My view on them is that they could do it a lot better. I am in business and if you give donations you should be up-front about them. A company I am involved in far north Queensland campaigned for Warren Inch at the last election. I did not do it but some of my colleagues did. We were quite open about that. It was well known.

Mr BEST - Wayne Crawford felt that the media should not be immune to ethical inquiries.

Mr BARNS - I agree with that. The media is great at dishing it out. I think it is a bit of a one-way street. There is a lot of self-righteousness on the part of a lot of people in the media about the right to know. We all know of them. We have all seen examples where journalists use dubious methods to get information, and where they get it wrong. The problem is that it leads into the police-state stuff. I do not know how you regulate it. I think nine-tenths of journalists do a pretty good job. *Media Watch* - and I mean this seriously - and Crikey do a very good job in keeping them honest. What affects journalists more than anything is their own peers doing them over. That is what they hate.

CHAIR - Greg, thanks for giving evidence in the fearless way you do.

Mr BARNES - I really congratulate you guys on what you are doing. I think it is an issue that does need to be addressed. Terry, to come back to your point at the start, that survey the other day would be devastating if that were my industry. Some 83 per cent of Tasmanians have no trust in politicians. That is not good in a democracy.

THE WITNESS WITHDREW.