

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON PUBLIC SECTOR EXECUTIVE APPOINTMENTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY, 16 OCTOBER 2008.

Mr NIGEL FRANK BURCH WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Harriss) - The hearing is declared open as a public hearing. Nigel, thank you for accepting our invitation to appear before the committee. We presume you have received and understood the explanatory document which we produce for all people appearing before committees of the Legislative Council, so that you understand what is appropriate within the confines of the committee and what is not appropriate outside the confines. You understand that you are protected by parliamentary privilege as a result of being here?

Mr BURCH - I do.

CHAIR - It is also important for you to understand that under the Parliamentary Privilege Act any witness before a select committee who wilfully gives false evidence is guilty of perjury.

Mr BURCH - Yes.

CHAIR - If there are times where you feel any of your evidence is appropriate to be in camera you are welcome to make a submission to the committee as to the reasons the committee should proceed in camera. We would then consider that in private, and advise you in open session as to whether we accept your request to proceed in camera or continue in public.

Mr BURCH - I have prepared quite a long statement on the basis that I was happy for this statement to be in the public area, but it may be that if you have questions my answers to the questions would need to be in camera.

CHAIR - Okay.

Mr BURCH - Let me begin by saying that I do not support the establishment of an ICAC in Tasmania. I believe that the Western Australian experience demonstrates that an independent commission against corruption can be subverted to political ends and can thus be a hugely expensive undertaking that does not achieve the purpose for which it was set up.

In addition, in my experience within the Government I never saw a single example of the sort of corruption that we read about from New South Wales. I saw the misuse of public money, I saw theft of public money and public property and I saw ordinary Tasmanians being treated with appalling cruelty and disdain by bureaucrats and the Government, but I never saw corruption that I judge warrants the establishment of an ICAC.

The problem in Tasmania is not one of corruption but of impropriety and incompetence and this would be best tackled by a new ethics and misconduct commission such as the Premier has proposed, but not without teeth as the new Attorney-General would like us to acquiesce to. Such a commission must have teeth, including the ability to investigate allegations of corruption that may arise from time to time.

The fact that I never saw corruption does not mean that it does not exist and never will exist. There have been, for example, allegations of corruption within the Huon pine extraction industry that an ethics and misconduct commission might well wish to investigate and it must have the ability to do so if it sees a need. It is also necessary that an ethics commission be specifically empowered to hold advisers to account as has recently been legislated in Canada.

Mr HARRISS - Just before you go on, Nigel, is there a great deal of content in this submission which addresses the ethics issue because that is another committee?

Mr BURCH - No, this is introductory.

Mr HARRISS - This is preamble - right. Sorry to interrupt.

Mr BURCH - The other way to tackle impropriety and incompetence is at its cause and that is why this inquiry today is so important because the origin of the problem of maladministration in Tasmania is in inappropriate appointments to senior public sector positions and in a complete absence of supervision of the people who are appointed, which in turn comes back to a failure of selection procedures for government members and their staffers whose job it is to supervise the public sector departments.

Peter Costello said recently that the failure of regulation of the financial sector in America that is likely to now cause a major worldwide recession could not have happened here. 'We do things better in Australia', he said and he was right. We can be proud of that. We lead the world in the regulation of our financial sector, but not in public administration. There is a huge opportunity for Tasmania to lead Australia and the world in our systems of public administration.

We have already shown our capacity for originality and readiness to accept creative initiatives with our Hare-Clark electoral system and it is well within our abilities to become a paragon of good government and good governance that other States could strive to emulate. Our small size and isolation is an advantage in this.

Apart from Terry I do not know you gentlemen but I know people who do know you, and you do not know me but you know people who do know me. This enables a trust between us if we will allow that trust to develop. In a way all Tasmania is like an extended family and we could work together to do great things in our little State. I have lived or worked in every State and Territory of Australia and I choose to live here. Regardless of the personal consequences I will do my utmost to help Tasmania achieve its potential.

We need professionalism in all aspects of public service in Tasmania. We need to only preselect political candidates who have the ability to be good ministers. We need to give them staff selected on their experience, temperament and capacity to make up for the

inevitable shortcomings of their ministers and we need to select and supervise senior State Service officers who can work with the government of the day in the real interest of the Tasmanian community.

The Liberals have just won power in Western Australia. I have met their new Premier, Colin Barnett. When I was in the West Australian Labor Party we had respect for him as a courteous and intelligent opponent and as a decent man. Let us look at his Cabinet. He has appointed Christian Porter, a former State prosecutor, as Attorney-General; Kim Hames, a former GP, as Minister for Health; Graham Jacobs, a doctor and former family counsellor, as Minister for Mental Health; Elizabeth Constable, a psychologist and former principal, as Education minister; Terry Waldron, a former State footballer and cricketer, as Sports minister; and John Castrilli, a former mayor, as Minister for Local Government. Contrast this with Tasmania. Not only do our ministers have very limited relevant experience or ability but to quote the *Mercury* there are also myriad brothers, sisters, wives, husbands and partners of government politicians or senior public servants who appear to effortlessly gain work in government offices, driving ministerial cars or running government organisations without always possessing the necessary skills and experience.

The answer to the lack of talent on the government benches of the House is not, as many have suggested, to increase the number of politicians. I understand that argument and increasing the number of government members would mean that ministers were looking over their shoulders, conscious that they could be easily replaced. But that solution doesn't actually address the problem, which is a failure in the pre-selection of candidates. It is only by keeping the number of members low that we can force the parties to address the real problem and give us candidates whom we can elect in confidence, knowing that they will be good ministers in government and capable of holding the Government to account when in opposition.

If the Government cannot find talent in its own ranks then why shouldn't it look to the independent members of the upper House to make up the Cabinet positions? I don't recall anyone ever suggesting this, but why not? There's no political impediment to appointing independents to Cabinet. Ruth Forrest, for example, could be an excellent Health minister and you, Terry, might be an excellent Attorney-General. The answer is not necessarily to increase the size of the lower House. By rough calculation, the cost of one extra unnecessary politician would make for eight extra nurses and, given the choice, I would take the eight nurses and I believe that most Tasmanians would be with me.

The appointment of a magistrate in Hobart in 2007 illustrated many of the problems that exist throughout the public administration. Hobart did not need an extra magistrate. There were, and remain, too many magistrates in Hobart. The Attorney-General knew this and he and I had discussed the matter on several occasions. We could have reduced the number of magistrates by two and saved nearly \$1 million with all the on-costs, even without introducing any of the desperately needed reforms to the administration of justice. That's another 10 or 12 nurses for the Royal.

With reform of the justice system the need for magistrates would fall even further but the Attorney faced a united front of the Premier, a secretary of Justice appointed by the Premier without any advertisement or selection procedure, and a head of the Attorney-General's office directly appointed by the Premier and married to the Premier's media

adviser. So why were we looking to appoint a magistrate? Primarily because the Premier of the day wanted to remove a particular person from the RPDC.

Mr WILKINSON - Can I ask you a question please, Nigel, in relation to that? I hear what you're saying in relation to magistrates but some would argue that the backlog of cases is quite significant. The delay from the time of first charging until the completion of the matter is quite significant. It has improved to some degree but certainly not to a degree where justice delayed is justice denied.

Mr BURCH - That's a problem in administration of justice and increasing the number of magistrates will not help that. Many of the delays occur because the magistrates don't manage their cases properly.

Mr WILKINSON - I'd have to disagree with you totally there because what occurs is first when people come before a court is that they go before a magistrate and that magistrate then in Hobart organises when the matter is next to be heard, when the matter is to go before a contest mention, and after the contest mention if it is to proceed to hearing.

If you look at the statistics in relation to it you could argue that there was certainly a great need for an extra magistrate, especially when you consider that in only the previous year there was a situation where a number of matters lasted for quite some time in the courts, which held up at least one or two of the courts, because another person or a couple of people were away.

I hear what you say, but when you look at the facts of the courts down here and speak with people actually involved with the courts I think they'd disagree strongly with you.

Mr BURCH - I take on board what you say there. I was working within Justice; I was working for the Attorney-General and -

Mr WILKINSON - I have been involved in the court system to some degree for more than 30 years.

Mr BURCH - I understand that.

Mr WILKINSON - If you speak with the people at the coalface, as opposed to, let us say, ministers and some of the ministers' officers, you would see that there was certainly a need for that extra magistrate. No question about that. That is my view though I am certainly open to people to disagree.

Mr BURCH - That is fair enough. The view of the Attorney at the time and other people within the system was that there were two too many magistrates in Hobart. There was a case for an extra magistrate on the north-west coast.

Mr WILKINSON - Had they practised in the area and had they seen what was going on by actually being in the courts?

Mr BURCH - Yes.

Mr WILKINSON - I think the answer to that, if you asked the people down there, would be no. But that is another debate.

Mr BURCH - Okay. It is difficult for me to pass on names and who said things. These were comments from high up within the system. One comment that I had was that the scheduling of cases in Hobart was being deliberately split between morning and afternoon sessions in order to give the appearance of a full day when a full days' work was not there. There were many such comments. Our view was that there were too many magistrates in Hobart and we could save a lot of money by introducing reforms to justice and reducing the number of magistrates. That was our view at the time and here we were being told to appoint a new magistrate.

Mr WILKINSON - Because another magistrate had retired from down here, as you are aware.

Mr BURCH - No. We were being told to appoint a magistrate because the Premier wanted to remove somebody from the RPDC.

Mr WILKINSON - Is that what you were told?

Mr BURCH - That is what I was told. I did not talk to the Premier. I only talked to the Attorney-General.

CHAIR - And you will probably get to that, will you, further in your statement?

Mr BURCH - Yes.

CHAIR - Specifically with regard that magistrate.

Mr BURCH - Yes. So the Attorney was originally dead against the idea of appointing another magistrate. He had been telling constituents and staff that it was his intention to merge the RPDC and RMPAT and the person now in line to be a magistrate was the perfect person to head the merged body. But things changed in early 2007. Through 2006, the Attorney had become increasingly frustrated by interference by the then Premier in the Justice portfolio and by a lack of progress on a number of matters. The coastal and protection of agricultural land policies had bogged down. Technically these were the Premier's policies but they were formulated by us. The Attorney had run reform of the PAL policy as a central plank of his election campaign and made promises to a number of constituents. Now the Premier was refusing to progress or even discuss the matter.

The Hudson case was another source of frustration. The Attorney twice tried to arrange a compensation payment and was twice blocked by the Premier or people appointed by the Premier. The Attorney even threatened to pay the Hudson's funeral costs out of his own pocket and embarrass the Government but to no avail. The proposed charter of rights for Tasmanians was an example of direct interference. The Attorney and I were not convinced of the need for it anyway but there was an expectation from the party and our constituents that we would progress the matter. However, the then Premier had other ideas and instructed the Attorney that he would not introduce a charter and he would instead send it out for review. This was of course to kill the matter as an issue.

A second example of direct interference was with workers' compensation. I was the adviser for this portfolio area and I was convinced that a number of reforms were needed. The Attorney agreed. It was largely decided that the 30 per cent threshold for access to common law damages would be dropped to 20 per cent and a narrative test introduced to provide a second path to the courts. The Attorney had even gained the consent of the insurance companies to these changes. But then the Premier stepped in and instructed the Attorney that there would be no changes to workers' compensation. So the Attorney sent it out for review. Things came to a head in the beginning of 2007.

The then Premier told the Attorney that a senior person at the RPDC was resigning and that he would be paid \$180 000 in compensation. The Attorney said that if he was resigning then he should pay us. We had no legal obligation to pay out his contract on resignation.

Mr MARTIN - Who was that?

Mr BURCH - Julian Green.

Mr MARTIN - He was paid \$180 000?

Mr BURCH - We were told it was \$180 000. Subsequently the then Premier claimed it was \$143 000 but we were told \$180 000. I have never reconciled that discrepancy. The then Premier's response to the Attorney was not only would the payment proceed but also it would come out of Justice's budget. The Attorney discussed the state of affairs with certain confidants, one of whom was me. My advice was to stand up to the Premier on the RPDC matter and to also raise the workers compensation matter publicly. I said that if the unions had to choose between him and the Premier in the full knowledge of the workers compensation issue they would support a change of Premier. I said that this was the time for a challenge and he may never get another.

The Attorney did not take my advice. Instead, he decided to leak the RPDC payment details. This caused a huge fuss, but I believe that it had one beneficial effect so far as we were concerned in that the payment ended up coming from someone else's budget. Following the uproar -

Mr WILKINSON - Which one was that?

Mr BURCH - I am not sure, perhaps from DPAC.

Following the uproar and an unsuccessful investigation to find the source of the leak, the Attorney was summoned to the then Premier's home for a conference. At that conference the Premier told the Attorney that it was his intention to step down before long and to make him the new Premier.

I was not present at that conference of course and rely upon what was said to me by the Attorney when he returned to Burnie. 'We have wronged the Premier,' were the Attorney's first words to me. 'No more leaks against him, he is a great bloke.' I strongly suggested to the Attorney that he had misread the situation. I reminded him of the old adage that premiers keep their friends close but their enemies closer. I said that the

Premier was not a fool and must realise that he was the source of the leaks, but the Attorney would not have that and said that from now on he would work with the Premier.

I then said that the next Premier would be David Bartlett with Lara Giddings as his deputy instead of him if we were not seen to be on the ball with our portfolio. I told the Attorney that even if he did not accept my reasoning he should get friendly with David Bartlett because his position as A-G could ultimately rest on this. The Attorney said that I was crazy and that I did not understand politics. He said that Bartlett could never be Premier because he did not have a faction to support him. He sat down with me and went through the numbers to prove that he would be Premier himself. However, he did ensure that he was privately friendly with Mr Bartlett.

As 2007 progressed the Attorney simply did everything that he was told by the Premier, by the Secretary of DPAC and by the Secretary of Justice. In effect, he became a clerical officer not a minister and that concerned me because the Premier's decisions were often questionable. When the Premier instructed him that a senior person from the RPDC was to be made a magistrate in order to get him out of the RPDC and the Justice Secretary drew up an appointment document, the Attorney was eager to obey even though he had desperately wanted this person to head up his new merged planning body. However, he was cautious enough to bring the appointment document, a Cabinet minute, to me prior to signing. On reading the document, I told him that Justice was stitching him up. I said that if he must do the Premier's bidding then do so but, I said, he should not let Justice manoeuvre him into stating in writing that it was his own choice because that was not true. I said that he knew there were too many magistrates already in Hobart and he wanted this man for another job. If he signed the document and there were questions afterwards he could never say that he was just following orders. The document would prove otherwise.

The Attorney accepted my advice and altered the document to say that he was appointing the person recommended to him, not chosen by him. He showed the alteration to me and with my approval he then signed the appointment. Almost immediately afterwards a call came through from the Secretary of DPAC who is head of the State Service. The Attorney took the call in his office. Immediately after that he shredded the magistrate's appointment documents in front of me and in front of the other staff member who had put through the phone call. The Attorney's actions concerned me greatly. He had become so accustomed to obeying the Secretary of DPAC that he did it automatically and without even consideration whether she had the authority from the Premier.

Why was she ordering something that was the opposite of what the Premier had ordered? The Attorney just assumed that as a political appointee she had to be obeyed. The DPP has subsequently said that no crime could be committed unless there was a threat and there was no threat. That, with respect, is rot. There is always an implied threat when the Premier or his delegate issues an order: the knowledge that you will be sacked if you do not comply.

As the Attorney's friend and adviser I was used to protecting him and covering for him, and when he shredded that magisterial appointment all my instincts for self-preservation and protecting my friend were aroused. This was particularly so because I knew something that the Attorney had not had the courage to tell either the DPAC Secretary or

the Premier. That was that he had already told the magistrate of his appointment, and how would this appointee react after being shafted?

CHAIR - That is Mr Cooper: he had already told Mr Cooper?

Mr BURCH - He had already told Mr Cooper. How would the appointee react after being shafted, would he go public?

CHAIR - Do you have a date for that? Sorry to interrupt, but just in terms of the context of that comment.

Mr BURCH - He told Mr Cooper at a restaurant in Hobart. I cannot remember the date.

CHAIR - We will come back to that clearly, get some detail from you as to who was there and so on.

Mr BURCH - It was a private meeting between the Attorney and Mr Cooper.

Not knowing where this matter would go, not knowing if the Secretary of DPAC had authority for what she had ordered, and fearing that the Attorney or I could end up being made scapegoats or fall guys, especially if a crime had been committed, I believed that it was in the Attorney's interests that the document not be destroyed. Shortly afterwards, when the DPP ordered an investigation of the matter and I was subsequently interviewed by the police, I told the police of the document and was asked by them to retain it. The police have confirmed this.

Many months later I was sacked by the Premier after I sent a private and confidential letter to him complaining about his management style, staffing practices and the treatment of staff. As an aside, documents I have FOI'd show that the then chief of staff told the Premier that my letter came out of the blue, that I had never expressed any concerns previously. That was not true. I had recommended changes to our staffing systems on two separate previous occasions. Chief of my recommendations was that a personnel manager be appointed within the Premier's office. There are around 140 parliamentary and ministerial service staff and no-one is in charge or responsible for them. They are appointed directly by the Premier's office, bypassing DPAC and without DPAC's formal selection processes, yet DPAC is nominally responsible for them. They are hired and fired directly, usually without advertisement, often without full documentation, without training, without staff assessments and with no access to the usual feedback or appeals procedures that would be available to DPAC public servants.

Further to my aside, I note that our system of advisers does not exist under the Westminster tradition. It was introduced by Gough Whitlam and adopted by the States. Unfortunately, the States have forgotten the purpose for which advisers were introduced and they have become just another layer of bureaucracy. The situation in Tasmania is particularly bad. Whereas advisers in other States do appear to at least have expertise in their field, advisers in Tasmania normally do not and have become merely highly paid post boxes who take complaints from constituents and pass them on to the departments for actioning. Indeed, advisers who want to perform a useful function are actively prevented from doing so.

During my tenure the Ag adviser, for example, was not allowed to travel to Launceston to see the TFGA. I was a director of the TFGA prior to joining the Government and at that time we did not even know who the Ag adviser was. When I became adviser responsible for building, I had to have secret meetings with the HIA because had I told anyone other than the Attorney I would have been barred from having those meetings. The Attorney of course knew and approved of those meetings and gained a benefit by having what the HIA later said in writing was the best relationship they have ever had with a minister.

A few weeks after my sacking, an article appeared in the *Mercury* giving details about the magistrate appointment matter. That article was not precipitated by me, which is easily seen as it contains details that I could not possibly have known. The Government denied everything about the article and called it another *Mercury* fantasy. When the Government described the *Mercury* article as a fantasy and with the police not having asked for the document, I determined that the document in my possession proving the matter should be placed before the Tasmanian people immediately.

I have a great respect for the authority of Parliament. Every person sitting in the lower House directly represents 100 000 Tasmanians, and our Parliament is the supreme law and administrative body of our State. You will note that I did not give the document to a journalist. The *Mercury* article appeared on Saturday, the next day Sunday, I gave the document to a member of parliament with the strict instruction that it was to be tabled in Parliament on the following Tuesday, which was the next available sitting day, and at the earliest opportunity, which was question time. As we all now know, prior to tabling the document the MP asked the Attorney about it several times. Confident that he had shredded it, the Attorney chose to repeatedly deny that it had ever existed. This was the Attorney's choice and I could not know three days previously that he would do this. He could have said that he did sign such a document but changed his mind, or he could simply have told the truth. He chose to lie. In consequence he had to resign or was sacked.

The MP who asked the questions acted completely in accordance with this undertaking from me -

Mr WILKINSON - There shouldn't be a choice though, should there? It shouldn't be a choice. You should tell the truth.

Mr BURCH - You should always tell the truth.

Mr WILKINSON - That's right.

Mr BURCH - It's a big problem today that people go into court and deliberately lie and it's accepted that they do so in order to get a better outcome. We need to change that. We'll only change it by coming down hard on people who lie.

Mr WILKINSON - Correct. We're not only talking about court but here we are talking about Parliament. As you say, you gave this document to a person within Parliament to keep it within the parliamentary system because that's what you wished to do. Whatever the case, though, there even shouldn't be a consideration. You should at all times - and I

don't want to sound like a goody-goody when I say it - tell the truth because without that what do we have? Nothing.

Mr BURCH - Correct. I may disagree with you about magistrates but I agree 100 per cent with you on this.

The MP who asked the questions acted completely in accordance with his undertaking to me. He tabled the document in question time, being the first session of the first available parliamentary sitting day. That was as I had asked him to do. The DPP has now investigated the circumstances of this and the Solicitor-General matter. He found that there was insufficient evidence to prosecute. The lack of evidence arose because the former Attorney suffered repeated lapses of memory and the secretary of DPAC refused to cooperate with the police. It is an extraordinary thing when a government will not cooperate with the police and this is the second time that the current Government has done so. It will certainly make it hard for this Government to go to an election on the law and order platform.

The former Attorney first maintained, in Parliament that the magistrate matter had never occurred and no document existed. Then he admitted in Parliament that the document had existed and said he had ordered it shredded. Then he admitted to the Press that he shredded it himself but said that it was his own decision. Finally, under close police questioning and, presumably with the production of telephone records and other statements substantiating my evidence, the former Attorney finally said he could recall a female voice saying, 'Shred it', but he could not identify that voice. Perhaps he thought it was his mother. In any event, it was a disembodied female voice whose orders he obeyed without question. Telephone records show that the Attorney heard this disembodied female voice that he could not identify at exactly the same time as he was taking a call from the head of the State Service and Secretary of DPAC, Linda Hornsey, as I see it.

By coincidence, I believe that it was on the very morning the shreddergate affair blew up in Parliament that the police rang me to say that their investigation was resuming. I had to tell them that the key document was just being tabled in Parliament. It is interesting to speculate what would have happened if I had not given the document to that MP when I did. If I had not, the then Attorney-General would likely have denied its existence to the police. It is difficult to imagine a greater shock to the system than to have to convict the Attorney-General of perjury. Perhaps, by tabling the document, in the end I achieved my original aim in preserving it, which was to protect the Attorney.

When the DPP decided not to proceed, the former Attorney claimed to have been cleared. This was a piece of political spin that I can only admire as he had not even been under investigation. He had only been a witness and not a very useful one. Any suggestion that he had been cleared was absurd. The former minister who started all the Government's problems with the TCC scandal also put out a press release saying 'allegations found to be baseless and false' and suggesting that he had also been cleared. Good spin, again, but not in the same class as the Attorney's. I do not recall ever even mentioning the TCC minister in my statement to the police. He certainly was not under investigation any more than the Attorney was so he could not be cleared. The allegations were not found to be baseless and false. In fact the DPP made clear in his statement that all the evidence that the police had been able to gather in both matters, even without the

cooperation of the Government, had all corroborated my testimony. The TCC minister seems to forget that documentary proof of the truth of one of my two concerns has been tabled in Parliament.

The question is not whether I spoke the truth because it is clear that I did speak the truth. The question is why the Government did not cooperate with its own police force and, by this lack of cooperation, blocked the investigations. The TCC minister should also remember that I was not a classic whistleblower and had in fact agreed with the Attorney that we would keep silent about the TCC contract whilst quietly removing the TCC from any role in building regulation. I would never have talked to the DPP or to the police had I not been called as a witness in the TCC affair for which he was responsible. From that point on, all I did was tell the truth. The 'shreddergate' affair of 2007 that I have discussed illustrates just one problem that was, at its root, caused by the way we select people for senior positions in Tasmania.

The head of the State Service during the shreddergate affair was a political appointee, as was the head who followed her. I am pleased to see that the new Premier has justified my faith in him and has not continued this practice. As a political appointee, the Secretary of DPAC's loyalty was to the Premier. She actually came from the Premier's office, having been an adviser to Michael Field. So who then represented the State Service, and what sort of message does such a political appointment send to State Service officers who ought to be able to aspire to a career path that goes all the way to the top job? Where is the independent advice when the top jobs are filled by political appointees? Is it conceivable that a DPAC Secretary who was a career public servant could presume to give an order to the State Attorney-General to shred the appointment of a magistrate? It is inconceivable.

It is even more astounding that, on the information emerging, it appears possible that the Premier did not even know that she had given this order to the Attorney and that when he found out he sacked her. Could such a situation have ever occurred except that the DPAC Secretary saw herself as the Premier's political partner rather than as the head of the State Service? The Senior Executive Service system of putting senior public servants on contracts was implemented by Bob Hawke in 1984. The State governments followed suit and it is under this system that the former Premier was able to appoint the heads of DPAC, Justice, Health and the police commissioner without any selection process.

The original idea of Bob Hawke's was perfectly reasonable. The permanency that senior public servants had enjoyed had given them the confidence to thwart the governments of the day and be completely unanswerable. This was then replaced by contracts with performance-based conditions that made sacking them much easier when they refused to perform, or were incompetent. Unfortunately, subsequent governments have forgotten the reasons for the change and no longer show any interest in the performance of senior public servants unless their failures lead to political embarrassment. At the same time, successive governments have misused their new power and have politicised senior public service roles and often appoint senior public servants directly from outside the service, usually from the ranks of their families, friends, political allies, political staffers and failed Labor candidates.

This has not served Tasmania well. It means that many of our top executives are incompetent, and those that are competent have been politicised. Although not in

Tasmania, the classic examples of recent years are Iraq, Children Overboard and the Australian Wheat Board, in which cases the top bureaucrats deliberately did not tell their ministers the truth because they knew that the ministers did not want to know. These astute public servants were quietly promoted, but those few promotions cost Australia a war and the collapse of the single-desk wheat trading system that had served us so well. In Tasmania, the price we pay is incompetence - incompetence that costs us billions of dollars and saddles us with second-class services in areas such as health that have sufficient resources to lead the world, but not the talent to take advantage of those resources.

Senior public servants in Tasmania are not supervised and departments are not supervised because the way we select politicians and their staff ensures that there is no capacity to supervise the State Service. In consequence, senior public service contracts are routinely renewed with no assessment whatsoever of their performance. Then, when the inevitable embarrassments occur, as the Auditor-General has just complained about, because we have renewed the contracts we are forced to pay out hundreds of thousands of dollars to incompetent individuals to get rid of them.

The Auditor-General noted examples such as the \$250 000 paid to one departmental head to force him out and another unnamed bureaucrat paid nearly \$650 000 to encourage him to leave, of which \$202 808 was unexplained and in excess of his contractual entitlements. In the words of the Auditor-General, it is a mess. The whole thing needs a big clean-out but it is more than that, it is a scandal that the contracts were entered into or renewed in the first place, because that was usually done without any thought or consideration and the contracts often given to mates and political allies.

With the notable exception of David Bartlett himself, the present Government has shown itself utterly incapable of supervising the State Service and the public not understanding the role of government have not realised the enormity of this failure. The supervision of the State Service is the primary role of a government. The public generally believes that they elect a government to enact a set of policies that are enunciated during a campaign. This is a minor role of government.

In my own Justice portfolio area we went to the last election with perhaps three or four policies. Once in government we were hit with the TCC scandal, the Beaconsfield mine collapse and perhaps a dozen other significant portfolio issues in our first few weeks. The handful of policies we mentioned during the election were dwarfed by the number of issues that came in every month, or even every week. It is the role of the State Service to run Tasmania and it is the role of the Government to direct and supervise the State Service and, with the exception of David Bartlett, not one minister since the 2006 election has proved capable of performing this role.

Of course I should say that Graeme Sturges, Lin Thorpe and Allison Ritchie have not yet had the opportunity to prove themselves.

I note that the Secretary of DIER has recently been sacked. If the sacking was justified then why had his contract just been renewed? As a result of this renewal, we are now going to pay him a small fortune in compensation.

Mr HALL - Sorry, when was that renewed? Do you know?

Mr BURCH - It was renewed in 2007, as I recall.

By far the biggest cost to this State is health and the Health department is about to commit Tasmania to the most expensive project ever undertaken in this State, the new Royal Hobart Hospital. The Health department is probably the worst example of a failure of supervision of the State Service and it concerns me deeply that the Health minister has now been given Justice as well. Two of the worst-performing and worst-supervised departments are now under the one minister who, while possessing excellent diplomatic skills, has proven to have no ability to supervise a department.

The Health minister recently appointed a new Health secretary. We were told that he came from England with excellent credentials, including being partly responsible for the new University Hospital in Coventry. The University Hospital in Coventry was a financial disaster. The Health minister says she is assembling a team to plan the new Royal and she says that in fact it includes people with experience in planning the new Fiona Stanley Hospital in Perth. The Fiona Stanley Hospital in Perth is the biggest financial catastrophe to ever befall Western Australia. From memory, the Fiona Stanley was originally costed at around \$400 million and it is now expected to cost \$2 billion. It is approximately the same size as the new Royal.

Western Australia has massive surpluses and can cope with this disaster. We cannot. I have repeatedly asked a simple question, and that is, what is the Health minister doing to understand why these cost overruns occur in hospitals and what is she doing to ensure that this does not happen to Tasmania? This comes back to the selection of the people who will run this project. I have never had an answer. The former Attorney-General had an answer of sorts; he said to the former Premier, 'Give the project to me, there is no reason why building a hospital should be any different from building a hotel. Give it to me and I will deliver it on time and on budget', he said. Instead, the Health minister and the Government are planning for failure.

The former Premier committed us to the new Royal after commissioning an architects report in 2006. That report costed the new hospital at, from memory, \$280 million yet the Health minister has already asked for \$900 million. Planning for failure like this will ensure that the hospital ends up costing the \$2 billion that the Fiona Stanley is costing, and it will cripple us.

I believe that you, gentlemen, can hold the Government to account and ensure that this does not happen. The Health department is a disaster and it comes down to the way we have filled the senior health department staff positions and how we have filled the Health minister's office staff positions.

I have criticised the Health minister but she can at least say that she was elected by the people of Tasmania. The failing then is to provide her with the staff in her office and department who can make up for her shortcomings and ensure the delivery of a good health system. It is not about money. It is a myth and a distortion of the truth to say that the problems arise from a national shortage of medical staff.

There is no shortage of medical staff in Australia. What there is is a shortage of competent managers in the Health department. The suggestion that there is not a

shortage of medical personnel may come as a surprise considering the regularity with which the Health minister uses that excuse. I have just returned from a consultancy for an Aboriginal health service in the Northern Territory. I saw many interesting things. To begin with, we had no shortage of medical personnel. We were able to fully fill our 40-odd medical places with doctors and nurses even with the disadvantage of extreme remoteness and poor conditions.

On ABC NT Radio I heard about the former Director of Nursing at the Royal Darwin, Professor Di Brown, having to approach the former Chief Minister, Clare Martin, because she was not allowed to talk to the Health minister.

'We have given lots of money to the hospital so why isn't it fixed', was Clare Martin's question to Professor Brown. 'It is not actually about money', Professor Brown replied, 'It is about clinical governance and how we make decisions about staffing'. I have heard similar words from senior hospital officials in Tasmania.

Last month the Darwin Coroner handed down his decision in the matter of the death of a patient at the Royal Darwin Hospital. In his determination the Coroner said that the death was caused by the shortage of nurses and he named the assistant secretary of Health as being directly responsible for the death by refusing to hire nurses.

He found that, contrary to the Health department and Health minister's claims of a national shortage of nurses, in fact there was a secret departmental policy to not hire nurses. He found that when the hospital asked for more nurses the assistant Director of Nursing was sacked by the department.

At the same time as the department and the minister were claiming that they could not find nurses, there were 40-50 applications for employment from nurses sitting on the desk of the assistant Secretary of Health unanswered.

The assistant Secretary of Health resigned after this coroner's report but, as the *Northern Territory News* reported, the day after his resignation he was given an equivalent position in another department.

In a further outrage last month the Northern Territory Health department went to the Northern Territory Supreme Court to try to prevent the Ombudsman from delivering his findings in a health complaint to the Health minister. This is an example of a rogue department, a department that has no supervision from its minister, and the situation is the same here. Most of Tasmania's problems in Health and in most other portfolio areas have simple solutions. Those solutions will not be found and will not be implemented unless our staff selection systems in both the ministerial and the parliamentary service and the senior State service are improved.

In Burnie we have a public dental clinic. On one occasion I talked with the former Attorney-General about the crisis in the public dental system. He came up with a simple solution involving a joint State/local government initiative to clear the waiting list with Burnie as a pilot. He asked me to follow up and I talked to the Burnie mayor and he was enthusiastic about the idea. So I wrote to the Health minister's office. They never even replied. Dealing with the Health department and the Health minister's office is like banging your head up against a brick wall.

At one time I represented a nurse on King Island who could not get work at the King Island Hospital. I found that it was well known on King Island that there were at least three nurses living on the island who could not or would not work at the King Island Hospital. The department was flying nurses in from Adelaide rather than employing locals. There are nurses who would be happy to work at the Royal if there were childcare facilities. The North West Regional Hospital loses doctors and nurses regularly because the department treats them so appallingly.

The Federal Government poaches our people because we do not appreciate them and that applies to Justice and other portfolios, not just Health. I note that the Health minister herself recently lost her top adviser to the Federal Health minister and I note that Devonport's top lawyer has just been appointed as a Federal Court magistrate after a rigorous selection procedure. Was he ever considered as a potential magistrate or judge by our Justice department? Not to my knowledge.

The problems are not unique to Tasmania but we can solve them if we have the will. Gentlemen, you cannot change the ministers and you cannot force the Labor Party to be more discriminatory in its preselection procedures, although you can block an expansion of Parliament, which may help. However, you can have an influence in ensuring that the deficiencies of our ministers are compensated for by the professional and wise selection of their staff and in the selection of senior public servants.

CHAIR - Thanks Nigel. We will now proceed to questions. I think it fair to say that I allowed some latitude there. I was cognisant of our terms of reference addressing best practice et cetera but I allowed some latitude because you were, in my judgment anyway, providing examples of other jurisdictions to support your case that we do not do well in this State with regard such appointments.

Mr BURCH - We do not do it well in this State. That is correct. Most States have their problems. The Federal Government is doing much better, I am proud to say.

Mr HALL - Thanks for that, Nigel. As the Chair quite correctly mentioned, that the last part of your dissertation was referring to our term of reference one, which was best practice for appointment of individuals to fill senior public sector executive positions. That was a part of the question that I would ask. Are there other jurisdictions we could learn from? You mentioned that other States are not all that good and perhaps that goes back to the time of the Whitlam years after 23 years of coalition government. Political appointments were put in place because they did not trust the public sector, as I understand, back at that time.

Mr BURCH - Correct.

Mr HALL - So therefore they put in their own people to give them the answers that they wanted. I think you alluded to quite a bit of that, but you did just mention that the Federal Government in your view is now conducting that process in a better way. Would you care to elaborate on that?

Mr BURCH - I do not work for the Federal Government.

Mr HALL - No, I know you don't.

Mr BURCH - So I do not have an intimate knowledge but I understand that they are going to considerable measures to seek out people with expertise that they can put into areas where that expertise can be used. We do not do it that way. We think of the person and then find a job for them. We do not consider what the job entails and try and find somebody who would fit that. We do it the wrong way around. We say so and so needs a job, let us find one for him.

Mr MARTIN - Have you got examples of that?

Mr BURCH - I have very much tried to avoid using names or specific situations. I can give you many examples but I certainly do not want to do it in an open hearing.

Mr MARTIN - Fair enough.

Mr BURCH - I have already been criticised on the basis that by criticising our system of appointments to ministerial offices I am actually casting aspersions on my former colleagues. I have been criticised for doing that. It is a little unfair but I do not want to justify that criticism by giving specific examples.

Mr MARTIN - That is fair enough.

Mr BURCH - Especially not in a public hearing.

Mr HALL - You mentioned that you have worked in most other States.

Mr BURCH - Not for governments, though.

Mr HALL - No, but you alluded to the fact that supervision of the public sector here in Tasmania is virtually out of control. Is that a fair statement to make about the lack of supervision?

Mr BURCH - There is no supervision of the public service in this State - no supervision. In fact it is quite conscious. I was told on separate occasions that ministers should do what their departmental secretaries want. I was told that ministers who do not do what their departmental secretaries want lose their jobs. The departments get back at them or this sort of thing. There is also the belief that if a minister does exactly what the secretary asks or puts things out to review and does what the review suggests then there is no responsibility on the minister for that decision so that is part of it as well.

Mr HALL - I could say that in the past 10 years it would seem that the salaries and wages budget has virtually doubled in Tasmania.

Mr BURCH - Certainly in health the budget has doubled but with no increase in service.

Mr HALL - You also mentioned that many of our top executives are incompetent. That is a failure of the government of the day or the minister at the time to appoint the appropriate people?

Mr BURCH - Yes, because there is no assessment of competence. The contracts are routinely renewed with no assessment of competence.

Mr HALL - Even though they have KPIs or supposedly have KPIs?

Mr BURCH - Supposedly. For instance, I was working for the Government prior to the 2006 election and after the election. All contracts within the ministerial and parliamentary service terminated with the election. I can't think of anyone who was not re-employed, but some of the people were known to be completely and utterly hopeless. In fact I can remember at a meeting of electorate staff being told how to get around one adviser who was particularly incompetent yet that adviser's contract had just been renewed.

Mr WILKINSON - And he is still an adviser?

Mr BURCH - Yes. And where did the advisers come from? The positions are not advertised. They come from political allies, friends, failed Labor candidates.

Mr WILKINSON - You were the political adviser for Steve Kons.

Mr BURCH - I was workplace standards adviser.

Mr WILKINSON - How did you get your job? Was yours a job you had to apply for and go through a process or were you just picked to do the job?

Mr BURCH - I wasn't even picked. I asked for the job. After the 2006 election all contracts were being renewed for everyone within the ministerial service.

Mr WILKINSON - And you had helped the Government with the 2006 election.

Mr BURCH - Yes. I campaigned at the 2006 election. I was a member of the Labor Party and I was a friend of Steve Kons. I had been working for him as an electorate officer. He became Attorney-General and I said that I would like responsibility for a portfolio area. I was allocated workplace standards.

Mr WILKINSON - So up to that stage you were not working with the government, is that what you are saying?

Mr BURCH - I was working within the ministerial and parliamentary service but as an electorate officer up until the 2006 election. After that election I became an adviser.

Mr MARTIN - How did you come into that position originally?

Mr BURCH - I came into the position because the previous electorate officer was moving and suggested my name to the Premier's office. Given that an election was looming there was no time for advertising, even if they'd wanted to, but it wasn't their practice anyway. I was just appointed to the job.

Mr HALL - You also mention, Nigel, that you as an adviser - and advisers per se - were stymied from speaking to stakeholder groups around the State?

Mr BURCH - Yes.

Mr HALL - That obviously concerned you.

Mr BURCH - Very much. I came to Steve Kons when he was Minister for Primary Industry. I had to resign as a director of the TFGA in order to join the minister's staff. I can't remember a single occasion when I was asked an agriculture-related question. I wasn't asked whom we should talk to; I wasn't asked anything about agriculture and the agriculture adviser was actively prevented from meeting with the TFGA. It was just absurd.

Mr HALL - Do you think that was endemic across the whole system, that advisers right across all portfolios were precluded from speaking?

Mr BURCH - Right across the system, yes. When I became an adviser there was no process of hand-over. You expect, in private enterprise when you take over a job, a formal hand-over process. There is no hand-over process in the government. There's not a hand-over process for ministers, let alone for their staff. So I became workplace standards adviser with no instruction, no training. I sought out the previous adviser, who was Guy Nicholson on Bryan Green's staff. Guy Nicholson is a gentleman and an intelligent man. I asked, 'Will you give me a hand-over?' So he sat down with me for an afternoon and went through the whole portfolio with me, but that was because I did it. When Steve became Attorney-General there was no hand-over. As a new minister he relied on what the Justice department told him was relevant, and that's not sufficient. The Justice department will say what suits the Justice department. Steve actively sought out Judy Jackson and asked her what the real issues were and whom he should talk to and that sort of thing. There was no formal process.

Mr HALL - Given our terms of reference and obviously the committee has more evidence to take, we need to frame some recommendations. How would you advise us to perhaps frame a recommendation to sort out this problem? Could you encapsulate it in a few words to cover the issues that you have raised this morning?

Mr BURCH - I did have a question in my mind as to whether you are including ministerial and parliamentary staff in your public sector ambit or if you are only looking at the State Service. I believe that you should include it, but it's not specifically stated.

Mr HALL - No, it's not, is it?

CHAIR - If we're going to expand the terms of reference we need to go back to the House.

Mr BURCH - Well, it's not really an expansion because when you say 'public sector' the parliamentary and ministerial service is certainly within the public sector. We're paid out of the public purse but we're Crown prerogative appointments or whatever the term is. So we are not actually public servants. I believe that you can choose to include it in your inquiry and I think it's worthwhile to do so because it's an enormous problem.

CHAIR - The committee can take account of that. It was always intended that the terms of reference would be broad enough for there to be a sufficiently robust investigation so we can make the proper recommendations going forward.

Mr BURCH - Okay. The critical problem in the ministerial and parliamentary service is that there is nobody responsible. Theoretically the chief of staff is responsible for staff, but he isn't. He appoints staff as a delegate of the Premier but he doesn't actually take responsibility for them. There's no training; there's no advertising; there's no selection process; there's no hand-over. Somebody needs to be responsible. There are about 140 staff there. Who is responsible for them?

Mr MARTIN - To give us an example, in the 2006 election you were part of a new office being set up.

Mr BURCH - Yes.

Mr MARTIN - Can you run through how the appointments to that new office, Steven Kons' office, were filled and who was responsible?

Mr BURCH - Yes. After we won the election we had a pool of people who needed jobs. There was a reshuffle of ministers but we were all still there. I expected that we would take on some of Judy Jackson's staff and in the end we got all her staff, I think, but nobody had asked Judy Jackson who to keep and who to let go. The contracts had been determined but ended in 2006 so this was the ideal time to sort out who was useful and who was not. It was all decided in the Premier's office. Nobody talked to the Attorney-General. As far as I know, nobody talked to Judy Jackson either. The Premier's office simply allocated people to positions without any regard to their expertise and it just happened that we ended up getting most of Judy Jackson's staff.

Mr MARTIN - In your case, Steve Kons was the minister. Did he have any say in who was appointed to his office?

Mr BURCH - He had no say in whom he got and who he did not get, in fact he complained about his legal adviser. He said that giving him a legal adviser without experience made things difficult for him because everyone would say, 'You have a legal adviser so why did you do such and such?' when that legal adviser had no capacity to advise. He said that he would prefer not to have a legal adviser than to have a legal adviser not capable of doing the job.

Mr MARTIN - Surely the minister has some say in the appointment of the chief of staff?

Mr BURCH - A strong personality like Bryan Green will insist on a say in whom they take but most ministers accept whom they are given. Steve simply accepted whom he was given. He was given a junior person from the *Mercury* who happened to be married to the Premier's media adviser, a person with no experience whatsoever in law or in government and this turned out to be a disaster for us.

Mr WILKINSON - When you say 'he was given' - and you have said that a couple of times - who is the giver? Who is the person -

Mr BURCH - The Premier.

Mr WILKINSON - It seems to be implied from what you are saying that whoever is the minister does not really have a say because they are always answerable to either the Premier or the Secretary of Cabinet. Is that a fair implication to make?

Mr BURCH - Ministers are always nervous about their position and they will normally do what the Premier wants. Sometimes a minister might be particularly friendly with a premier, as Bryan Green was, in which case they can get their own way. Every now and then a minister will put down his or her foot, as Lara did in the case of her head of office. She insisted on her head of office; she was advised against it but she insisted. There are exceptions.

Mr WILKINSON - Or, as reported, Premier David Bartlett, when he wished to keep the Education portfolio whilst being Deputy Premier, he obviously put his foot down, one would assume.

Mr BURCH - I am sorry, he was already Education minister, so what are you saying?

Mr WILKINSON - It has been rumoured that to become Deputy Premier he had to step down from that position but he put his foot down and stated that he would not be doing that.

Mr BURCH - Okay. I am not aware of that. What I understand is that at that time the position of the then Premier was considerably weakened because he insisted on Paula Wriedt as his deputy. Everyone in the party knew that Paula Wriedt was facing a crisis and if she were appointed deputy then we would have another deputy overboard. My understanding is that when the Premier tried to insist on Paula as his deputy, the party lost confidence and so he would not have been in a good negotiating position to strip David Bartlett of Education.

Mr WILKINSON - We are looking at positions and how best to vet the people who are put into those positions. You said that you stated to the new minister that you were looking for a job, that you believed you would be able to do a job as a Workplace Standards adviser.

Mr BURCH - I did not choose the portfolio area. I said that I wanted a portfolio role and I was allocated Workplace Standards.

Mr WILKINSON - Was your training in that area because you seemed to suggest that people trained and experienced in a position should be put in those positions, as mentioned in relation to the Western Australian Government now? Were you trained in workplace standards?

Mr BURCH - No. At one time in my life I was a registered builder which was relevant, but that was not a consideration in giving the job. The way I ended up with the job was that the other jobs were allocated and Workplace Standards was left over.

Mr WILKINSON - Do you believe that there were people to be put into jobs and you wished to be put into a job and there a place in Workplace Standards so you were appointed adviser?

Mr BURCH - Correct.

Mr WILKINSON - Without, as I understand it, the proper background to be that adviser.

Mr BURCH - Correct. I think it was merely fortuitous that I was a good workplace standards adviser.

Mr WILKINSON - You went into that position without any real knowledge of Workplace Standards, other than the fact that you had been registered as a builder at one stage?

Mr BURCH - Correct.

Mr WILKINSON - Were people taking advice from you as to how to run Workplace Standards?

Mr BURCH - No. An adviser talks to a minister, the department and to stakeholders when they are allowed to. In practice, they are prevented from talking to the department and often prevented from talking to stakeholders as well.

Mr WILKINSON - Were you prevented from doing both those things?

Mr BURCH - I was not prevented from talking to the department but I was pulled into line. I had an arrangement with Roy Ormerod, who is head of Workplace Standards. We had an agreement that I could talk to all his divisional heads and the divisional heads would report to him on what the subject of the discussion was. The Secretary of Justice, Lisa Hutton, then put her foot down, overruled Roy Ormerod and said that I was only to talk to him. This was impractical because Roy was extremely busy. I was developing a good relationship with his divisional heads and Roy was happy about it, but Lisa Hutton said that was not to continue. My access to the department was largely blocked when Lisa Hutton made that decision.

My access to the stakeholders was behind the Premier's Office's and department's back. I made the arrangement with the Attorney-General himself, that I could talk to stakeholders. Because I was based in Burnie and had a government car, I was able to go and see stakeholders whenever I wanted and the Attorney would simply cover for me.

Mr WILKINSON - I hear how you got the job and you say other people got jobs in other areas the same way that you obtained your position.

Mr BURCH - Yes. For example, while I was there, one day Jim Bacon's son turned up. Jim Bacon's son is a lovely bloke and it is very awkward that so many of these people are wonderful people. The problem in the system does not reflect on the individuals. It is very much a procedural problem. One day Jim Bacon's son turned up in our office and the Premier's Office had said, 'Jim's son needs a job. We've decided he'll work for you guys, so find him a job'. He was only a kid and initially they thought that they would make him responsible for two of the most important portfolio areas, mining and forestry. That was the initial thought. I do not know how it all ended up because I left not long after, but he was just a kid. There was no advertising of a position and finding the best person it was, 'Jim Bacon's son needs a job. Your area is going to take him. Find him one'.

Mr WILKINSON - What do you believe is the best process to appoint people in the positions in accordance with our inquiry? This might be a leading question, but the process used to appoint a Federal magistrate, to me seems a very good system to appoint proper people who are able to do the job.

Mr BURCH - Yes, that is right. As I mentioned, they have just appointed Mr McGuire from Devonport -

Mr WILKINSON - Terry McGuire?

Mr BURCH - Terry McGuire as a Federal magistrate. I never heard his name mentioned by the State Justice department. As far as I know, he was never considered as a magistrate or a judge at the State level. Why not? I believe because he was not in Hobart and he was not a friend of the right people in Hobart, assuming that he never was considered. I had never heard his name, but it is possible that sometime in the past he was considered.

Mr WILKINSON - In relation to the magistrate's position - and again we are speaking about here - did you at any stage have a list of people coming before you to look at to see whether they would be appropriate magistrates or were you aware that the Attorney did?

Mr BURCH - Yes. For example, at the time that we were looking at appointing Simon Cooper, we had a list. I do not know how that list was arrived at and I am not sure that the best people were on it, but there was a list of people who could be appointed to that magistrate's position. The list was ignored and we were told that Simon Cooper would be appointed.

Mr WILKINSON - That is what I want to get at if I can. You had this list, you do not know how the list arrived on your desk but there was a list?

Mr BURCH - Yes, and the list came from the Justice department. It did not take account of what we in the minister's office believed. We did have some ideas of people who would make good magistrates on the basis of the need for reform in the justice system, but we never had any input.

Mr WILKINSON - Did the Justice department, through the Attorney at the time, ever interview any of these people on the list or was it a case of, 'No, this is the person we want'?

Mr BURCH - I do not recall any proposals for interviews or anything but there was a list. Initially we were told by the Premier that we had to appoint Simon Cooper -

Mr WILKINSON - Were you told why?

Mr BURCH - Yes, to remove him from the RPDC.

Mr WILKINSON - And who told you that?

Mr MARTIN - Why was he to be removed from the RPDC?

Mr BURCH - The Premier was not satisfied with his performance in the RPDC because of the pulp mill.

Mr MARTIN - Because of the pulp mill?

Mr BURCH - Yes.

What was your question again?

Mr WILKINSON - It was in relation to whether there were any interviews done.

Mr BURCH - I do not recall interviews but I would not necessarily know about that. The list existed. It was ignored. After Simon Cooper's appointment was shredded we went back to the list and the Attorney-General was told by the Secretary of Justice that he would appoint the gentleman who was appointed whose name was on the list.

Mr WILKINSON - Who, by the way, is a very good magistrate.

Mr BURCH - Yes. It is not a criticism of him in any way. He was always on the list and he was overlooked but I do not know how that list was arrived at.

Mr MARTIN - It seems rather odd that at one stage Mr Cooper was being pushed by the former Premier and your minister was forced to appoint him to the position, but then at some stage you were stopped from appointing.

BURCH - He had been appointed.

Mr MARTIN - He had been told by your minister that he was appointed.

Mr BURCH - He had been told by the Attorney-General that he was about to be appointed or had been appointed. I think Steve might have been a bit loose and said that he had been appointed. Then his appointment document was signed. Immediately after it was signed we got the phone call from Linda Hornsey saying, 'Shred it'.

Mr MARTIN - You said the reason for that was the Premier was not happy with his performance at the RPDC because of the pulp mill.

Mr BURCH - The reason that he was being appointed was because the Premier was not happy with his performance at the RPDC. The reason for overturning his appointment I was not told; that instruction came from Linda Hornsey. I am not sure that Steve was told of a reason. He was just ordered to shred it. It was the opposite of the Premier's wishes and it was a very strange thing. I was concerned as to whether Linda Hornsey had authority from the Premier for doing this. Did the Premier even know?

Mr MARTIN - Did your minister believe that Linda Hornsey's action in that alleged phone call was that sanctioned by the Premier? Did Minister Kons think that?

Mr BURCH - I doubt that the Attorney would have asked. He was in the habit of just doing what Linda Hornsey told him to do. Linda Hornsey and the Premier were, as far as the Attorney was concerned, the same person.

CHAIR - If I can rewind for the moment before you go on - and you can come back to that in a minute, Terry - Nigel, you indicated that Simon Cooper had been identified for appointment as a magistrate and the reason for that was -

Mr BURCH - I do not think he was on the list. He was not on the list.

CHAIR - No, but that was the outcome, the document being signed. The reason for that was to remove him from the RPDC process because the Premier was not satisfied with what was going on in his role with the RPDC.

Mr BURCH - Yes.

CHAIR - How were you or the Attorney aware that that was the Premier's view? How was that communicated to you? Is there documentation of that, were there telephone calls or were there casual conversations?

Mr BURCH - I only know what I was told by the Attorney. I was not present at any telephone calls and I did not sight any documentation. I believe it was all verbal and it was passed on to me verbally.

CHAIR - About what time was that in the scheme of things and where were you when the Attorney told you that? Were there any other people in attendance when you were made aware of the Premier's views?

Mr BURCH - Other people were aware. I cannot remember if they were told by the Attorney at the same time or on other occasions. I suspect other occasions but there were other people aware of the circumstances and I know that one of those persons told the police that they had significant evidence to give but would only deliver it if they were compelled, such as to a Royal Commission.

CHAIR - Such as to a Royal Commission?

Mr BURCH - Yes.

CHAIR - Or a parliamentary inquiry?

Mr BURCH - Possibly.

CHAIR - Where privilege is accorded.

Mr BURCH - That is possible.

CHAIR - Can I take you back to part of that other question: where were you when the Attorney told you of the Premier's dissatisfaction with Mr Cooper in his role at the RPDC, and about what period of time?

Mr BURCH - This would have been mid-2007. It was something that we discussed on an ongoing basis both at Steve's home and in the Burnie office and driving around. There wasn't a specific point that I can recall; it was something that was ongoing.

CHAIR - Can you recall any specific point where other people might have been or were in attendance when you and the Attorney had discussed that?

Mr BURCH - I can't, no.

CHAIR - You're aware of other people who are -

Mr BURCH - I'm aware of other people who know, yes.

CHAIR - But they weren't ever in your company when the Attorney advised you of that?

Mr BURCH - They may have been. I can't remember, but I know that they know.

CHAIR - Okay.

Mr WILKINSON - The thing is, how do they know?

Mr BURCH - They would only know because the Attorney told them, the same as he had told me. It's a similar case to the Solicitor-General matter. I never alleged that there was a deal between the Premier and a solicitor for the Solicitor-General's job. I never alleged that a deal existed. What I said was that I was told by the Attorney that a deal existed. The Attorney told other people of that deal but those other people are not prepared to come forward voluntarily.

Mr MARTIN - If we were in camera, would you be prepared to give us the names of those other people?

Mr BURCH - Yes.

Mr MARTIN - Mr Chairman, I've just asked Mr Burch whether he'd be prepared to give us the names of the other people if we were in camera and he has indicated he would. Could we perhaps come back to that later?

CHAIR - Yes, we can come back to that later. We'll keep proceeding for the moment. Terry, you were constructing a line of questioning.

Mr MARTIN - When you were talking before about the appointment of people to ministerial offices -

CHAIR - Sorry, can I just intervene - are you coming back to the magistrate issue or do you want to move to general ministerial?

Mr MARTIN - I was going to move away a little bit.

CHAIR - Okay. I want to stay with the appointment of magistrate issue if I can and then we'll come back to Terry to construct that area.

Nigel, can you walk us through the process from the time that the cabinet minute was signed by the Attorney, the circumstances of that, your role in that, the role of other

people in the office, how that cabinet minute arrived in the office, and from whom it came. You indicated in your evidence to the committee at the commencement that the minute was prepared, as I recall, by the Secretary of the Department of Justice.

Mr BURCH - Yes.

CHAIR - I'd like to understand whether it was only the Secretary of the Department of Justice who was involved in the preparation of that minute or whether the Secretary of the Department of Justice - and I presume you were referring to Ms Lisa Hutton at the time - was instructed by other people to so prepare the minutes. Can you give the chronology of that, please, and then I'd want to ask you what the circumstances were after the Attorney took the telephone call from, as you testify, Linda Hornsey. What followed after that? Can you lead us up to that point, please?

Mr BURCH - The cabinet minute came in, as I recall, by e-mail and was printed off by our electorate assistant, Stephanie -

CHAIR - Stephanie who?

Mr BURCH - Stephanie Shadbolt.

CHAIR - Thank you.

Mr BURCH - And was given to the Attorney. I believe that the e-mail came from our departmental liaison officer, Michelle Lowe, in our Attorney's Hobart office and I believe she got it from Lisa Hutton's office.

CHAIR - Via e-mail?

Mr BURCH - Via e-mail.

CHAIR - Lisa Hutton e-mailing Michelle Lowe?

Mr BURCH - I believe so. I cannot really know that. As I recall, Stephanie got the e-mail from Michelle Lowe. She printed it off. It was a cabinet minute to appoint Simon Cooper as a magistrate and she gave it to the Attorney who read it and then showed it to me. I recommended changes. He made those changes. Then a call came through - I cannot remember whether it was on Steve's mobile or on the office phone - but Stephanie took the call and she either gave the mobile to Steve or she transferred the call to Steve's office. He went into his office and closed the door, which was unusual. The call was from Linda Hornsey; it was identified as Linda Hornsey by Stephanie. Steve went quickly into his office, closed the door and then shortly afterwards he came out and shredded the appointment in front of Stephanie and me.

CHAIR - You were the only two other people -

Mr BURCH - We were the only two people in that office -

CHAIR - At that time?

Mr BURCH - We were the only two employees in that office.

CHAIR - You have just indicated that when that document arrived it was amended before the Attorney signed it. What was the content of the amendment or amendments?

Mr BURCH - I have not seen the document since although it was reproduced I think in the *Mercury* or something but, as I recall, as I said in my statement, I said to Steve that the way the document was presented was not true, that he had not chosen Simon Cooper and he should not say that he had and that the way Justice had worded it would lock him into something that was not true. He then made an alteration to show that Simon Cooper was not his choice. I remember him doing that in blue biro.

CHAIR - What is your best recall of what words he inserted to give that particular message that it was not his choice?

Mr BURCH - I do not have a copy of it so -

CHAIR - As best you can recall at this stage.

Mr BURCH - As best I can recall he deleted the part that said that Simon Cooper was his choice and he inserted words to the effect that 'in accordance with recommendation of the department' - something like that.

Mr MARTIN - Chairman, can I just clarify something that we have just gone past. You, Nigel, seem very, very sure about the fact that that call was from Linda Hornsey -

Mr BURCH - Yes.

Mr MARTIN - yet in your statement you have indicated - and I think we know from the advice from the DPP - that the minister cannot recall who that call was from. That just seems rather extraordinary.

Mr BURCH - Correct. I am aware that the former Attorney rehearsed his answers prior to talking to the police and he rehearsed his answers with a staff member in order to not incriminate himself or the former Premier or the head of the State Service. That is what he was attempting to do.

Mr WILKINSON - Did he speak with you about that or is that your belief as to why he did it?

CHAIR - You have said you are aware, and I suppose the further question to that is how are you aware that that is what he did, that he rehearsed?

Mr BURCH - Because the staff member he rehearsed with has passed that on to me.

Mr WILKINSON - So that is hearsay from that staff member. Are you willing to give the staff member's name?

Mr BURCH - In camera.

Mr WILKINSON - Okay.

CHAIR - Are you aware as to whether that staff member has provided any statement to police or to the DPP or to anybody in authority to investigate the circumstances surrounding these issues?

Mr BURCH - I believe that the police are aware of this, yes.

CHAIR - How have you formed that opinion?

Mr BURCH - From what the staff member told me.

CHAIR - So it is likely, then, that the staff member has provided a statement to police.

Mr BURCH - Yes.

CHAIR - I just want to continue on so that I am absolutely as clear as I can be about the chronology of what has been going on here. You have taken us through the recommendation, the fact that the minute was amended by the Attorney himself, by the insertion of words to the effect of what you have already given on the record and we will revisit that when we read the transcript. Soon thereafter, as I recall you having said, the phone call comes, Miss Shadbolt takes the call and indicates to the Attorney - if I am reconstructing this correctly - that Linda Hornsey wants to speak with you.

Mr BURCH - Yes, I cannot remember her words, but yes.

CHAIR - To that effect.

Mr BURCH - To that effect.

CHAIR - So there was no doubt in your mind, having being there, that the Attorney was made aware that it was Linda Hornsey who wished to speak to him before he went into his office and closed the door.

Mr BURCH - Yes.

CHAIR - No doubt at all?

Mr BURCH - There is no doubt in my mind.

CHAIR - Okay. Thank you. Roughly how long did the Attorney retire to his room in private before he came out and shredded the document?

Mr BURCH - That I cannot remember.

CHAIR - Was it a short time, a long time?

Mr BURCH - It was a short time.

CHAIR - Is it a reasonable suggestion to put to you that it may have only been a couple of minutes? It was not five, 10 or 15 minutes, it was only a short time?

Mr BURCH - It was only a short time but I cannot remember.

CHAIR - When he emerged from his office was there anything he said to you and Miss Shadbolt before he shredded the document?

Mr BURCH - Not that I recall.

CHAIR - What was his demeanour, his state of mind from your best recall, in your opinion?

Mr BURCH - Agitated. Perhaps a little excited.

CHAIR - Did he make any gesticulation? Did he have the document in his hand? Was he in the process of tearing it up? Was he waving it around?

Mr BURCH - I do not recall, I am sorry.

CHAIR - You said he was excited and agitated. What led you to that view?

Mr BURCH - I know Steve well; we are friends, or we were friends. I was conscious of his moods. For some reason I remember his mood but not what he was doing physically.

CHAIR - So he then proceeded to the shredding machine and shredded the document.

Mr BURCH - Shredded the document in front of Stephanie and me.

CHAIR - After having said nothing?

Mr BURCH - He did not explain. I remember being puzzled. I could not understand what he was doing.

CHAIR - So he just emerged from his office in an agitated or excited frame of mind, in your judgment, and shredded the document.

Mr BURCH - Yes.

CHAIR - Without question he had taken a phone call from Linda Hornsey -

Mr BURCH - Yes.

CHAIR - and without question simply shredded the document.

Mr BURCH - I do not know if he questioned Linda Hornsey but he did not say anything to us - to Stephanie and me.

CHAIR - Are you aware as to whether he took any other telephone calls while he was in his office?

Mr BURCH - I am not aware of any other calls.

Mr WILKINSON - Was he able to make calls without you knowing, if you were outside and he was in that office?

Mr BURCH - He could not make a call on the landline but he could make a call on his mobile.

Mr WILKINSON - And when you were saying that it was Linda Hornsey, that is as a result of what was told to you as opposed to you actually speaking with the person to see whether it was Linda.

Mr BURCH - Correct.

Mr WILKINSON - I just wanted to clarify that.

CHAIR -That is helpful, thank you. We have got to the stage of the document being shredded. What time elapsed? Sorry, let me go back half a step. Who recovered the shredded document? I presume there was a receptacle under the shredder. Who retrieved the shredded document?

Mr BURCH - I retrieved the document but I would prefer not to go into details about that.

CHAIR - I suspect we can question you further on that in camera if the committee is of a mind to go into camera. I can just indicate to you here that if the committee does resolve to take further evidence in camera then that, whatever -

Mr BURCH - It will be difficult for me to talk about that. There are forthcoming proceedings for defamation and one of the allegations that was made against me was that I was a thief. I would prefer that I defend that allegation in court rather than go through all the details here.

CHAIR - We can consider that because, if it is in camera, then that is where it stays. If goes nowhere and is reported to nobody. You would understand that Parliament and an adjunct committee such as this are pre-eminent. We will think about this as the day unfolds as to whether there is detriment or prejudice to the process in camera.

Mr BURCH - There would also have to be a justification for the question. I am not sure that you need to know.

CHAIR - Just staying on that for the moment then. The document was retrieved and you have indicated in your own evidence that you have passed that on to a member of parliament. Why was that so? What was your concern?

Mr BURCH - The document had not been recovered by the police. They had asked me to hang on to it but they had not reopened the inquiry and it had become a public issue. As I said in my statement on the Saturday, the *Mercury* ran a story and the Government immediately reacted saying it was a fantasy, so I decided to provide the document to the Parliament.

Mr MARTIN - In your statement at the start you mentioned that at some stage Mr Cooper had been told by the minister that he had the job?

Mr BURCH - Yes.

Mr MARTIN - Do you know how long this was before the day with the phone call about the shredding of the document?

Mr BURCH - I think about two weeks. I cannot remember exactly. I do not have the minister's diary but it was a dinner engagement at a restaurant in Hobart.

Mr MARTIN - Do you know what restaurant?

Mr BURCH - I did know but I cannot recall now. I think it was about two weeks prior to signing the appointment document.

Mr MARTIN - So there must have been an embarrassing moment for the minister when he had to tell Mr Cooper that he did not have the job. Do you know when he did that?

Mr BURCH - I am not sure that he told Mr Cooper. In fact, I am sure he did not. I am not sure if he saw Mr Cooper again. I cannot recall.

Mr MARTIN - The document was shredded. Is there a protocol in place within the office or within the government as to what happens to documents after they are shredded? Do you know what happens?

Mr BURCH - I am not aware of any protocol. I was not made aware of any protocol. The only relevant protocol was that for sensitive material we asked for a security bin to be sent to us. We would put sensitive material into the security bin, which was locked and then taken away for secure disposal.

Mr MARTIN - Obviously in this case that did not happen?

Mr BURCH - No, not in this case. We could have done it that way but we did not.

Mr WILKINSON - At what time of day was this?

Mr BURCH - I cannot be sure. I think it was late morning.

Mr WILKINSON - Other shredded material was in the bin or was this the only one?

Mr BURCH - We very rarely shredded material.

Mr WILKINSON - Was this the only document that was shredded?

Mr BURCH - As far as I was aware at the time, this was the only shredded material. It does now appear that when the Attorney shredded the appointment he shredded a couple of other things at the same time.

Mr WILKINSON - Was that relating to the same incident that we are talking about now?

Mr BURCH - Apparently there was a second document referring to the appointment and there was a third document that was just some personal financial record of Steve's. I did not know what was there and I do not have the documents. I started to put them together but it was a big job. I managed to put together about three inches and those three inches I put together were clearly about a cabinet appointment of Mr Cooper but it is was a big job and I just then handed it over to the member of parliament.

Mr WILKINSON - So you handed the whole lot of what was in the rubbish bin to the member of parliament?

Mr BURCH - Correct. It was a wad of shreds.

Mr WILKINSON - So all of them were shredded, were they?

Mr BURCH - Yes, it was all shredded. All I was able to ascertain was that the document that I recalled was in the shreds. I thought that was the only document in there but, as it turns out I was mistaken.

Mr WILKINSON - In relation to the member that you handed it to, was there any reason why you handed it to that member as opposed to a number of other members?

Mr BURCH - I suppose there is a bit of a tradition of going to the Greens rather than to the Libs. For a Labor person to go to the Libs would have been the ultimate treason. There is somewhat of a tradition of giving things to the Greens, I think. The minister and that particular Green were friends. In fact I knew that particular Greens member of parliament through the minister. He had introduced us and told me to get friendly with him, so it was a natural thing to do.

Mr HALL - Was anybody else involved in retrieving the shredded material?

Mr BURCH - No, there was not, only me.

Mr HALL - Only yourself?

Mr BURCH - Yes.

CHAIR - Nigel, at the time the Attorney took the telephone call from Linda Hornsey you have indicated that only you and Ms Shadbolt were left in the office?

Mr BURCH - We were the only employees in that office. The office had a staff complement of two.

CHAIR - While the Attorney was on the telephone, what was happening? Were you having a conversation with Ms Shadbolt? She had just taken the call and put the call through to the Attorney, so what was happening at that time?

Mr BURCH - I had just been talking to the Attorney about amending the document -

CHAIR - Which he had done?

Mr BURCH - Which he had done. I think he must have got the call immediately because I think I did stay with Ms Shadbolt whilst he took the call. I assume we speculated about what the call was about but I do not specifically recall.

CHAIR - You have indicated earlier that the departmental liaison officer in Hobart, Ms Lowe -

Mr BURCH - Yes, Michelle Lowe.

CHAIR - had some communication with Ms Shadbolt. When was that?

Mr BURCH - I believe she sent the minute up by e-mail and Ms Shadbolt printed off the attachment, which was the appointment. One thing I cannot remember is whether the signed appointment was faxed to Hobart. After Steve signed it, did he shred it before faxing it to Hobart or not? That is an important point that I cannot remember because I did wonder why Linda Hornsey would call at that time. How would she even know what we had just done? How did she know that Steve had just made the appointment? I could not explain that.

Mr WILKINSON - Is it fair to say that because you spoke with the minister about the amendment that was made to that document you were not happy with the process in appointing Mr Cooper? Is that why you told him or advised him that there should be some amendments made to that document?

Mr BURCH - I was always telling Steve not to lie because he is not a good liar. I always told him to tell the truth and I was always looking out for him. Signing that appointment would make it forever fact that he had chosen Simon Cooper but that was contrary to what he had been telling everyone. He told everyone that he wanted Simon Cooper as head of the merged RPDC-RMPAT. It was not just contrary to what he wanted. It was an appointment that bypassed normal procedure; it bypassed the department and I did not want him saying that it was his choice.

Mr WILKINSON - As I understand it there was no normal procedure from what you saw at that time?

Mr BURCH - That is true, although I am not sure if I was aware at that time that there was a list. I probably was not aware that there was a list of possible magistrates. So, yes, I probably was not even sure that there was a procedure.

Mr WILKINSON - Hindsight is 20-20 vision, I know, but we have spoken now about the way magistrates in the Federal system are chosen and the screening system in relation to that -

Mr BURCH - Yes, there is a Federal magistrate involved and an appointee, a representative of the Attorney-General, which is fine, and a representative of the department .

Mr WILKINSON - So you had not spoken to Mr Kons at all that this is the way it should proceed, this is the way magistrates should be chosen, or anything like that?

Mr BURCH - Oh no, that is not true. We had often discussed reform of the justice system -

Mr WILKINSON - No, I am talking about how magistrates are appointed.

Mr BURCH - The way magistrates were appointed was part of it, yes. I would often express dissatisfaction with that process - not that I was aware of what the process was, I suppose.

CHAIR - Okay, we are reconstructing the circumstances. The document has been shredded and has been retrieved. You have indicated there was some communication between Ms Shadbolt and Ms Lowe.

Mr BURCH - Yes

CHAIR - Then, as I recall from your earlier evidence, you indicated that Lisa Hutton, Secretary of the Department of Justice, subsequently indicated that Glenn Hay was to be appointed as the magistrate?

Mr BURCH - Yes, another document came in appointing Glenn Hay.

CHAIR - How did that document arrive?

Mr BURCH - By e-mail from Michelle Lowe, I think. But again, Stephanie received the e-mails normally, so I did not get the e-mail.

CHAIR - How long after the shredding of the document did the new document arrive?

Mr BURCH - I think it was shortly after but I cannot recall exactly.

CHAIR - Was it a matter of hours, or a matter of some minutes?

Mr BURCH - It may have been an hour or two, but I really cannot recall.

CHAIR - Did you leave the office at any time between the shredding and that subsequent document arriving? Were you still in the office?

Mr BURCH - I cannot recall.

CHAIR - Were there any further communications between the liaison officer, Michelle Lowe, and your office, either with you and the Attorney or with Ms Shadbolt, subsequent to the shredding and therefore the deletion of Mr Cooper? Any further communications before the new document arrived?

Mr BURCH - I believe that there was but I cannot be specific. I cannot recall precisely.

CHAIR - You believe there was? Did you take any telephone calls? Did you receive any e-mails?

Mr BURCH - I did not take any calls; I did not receive e-mails, no. I had no communication but I believe that there was some toing and froing.

CHAIR - What process was used from the Attorney's office to alert somebody here in Hobart, whether it be Michelle Lowe or Lisa Hutton, that the document had been shredded and therefore some other process needed to commence? What happened to alert anybody here in Hobart about the fact that a new process did commence?

Mr BURCH - I do not recall any communication with Hobart saying that the order to shred it had been obeyed or anything like that. As I recall, Steve obeyed that instruction immediately so he would not need to have confirmed it. I think the process of then appointing Glenn Hay commenced immediately.

CHAIR - You say Steve obeyed. Nobody here in Hobart would have known that he obeyed.

Mr BURCH - I assume that when he took the call he said, 'I will do that immediately', or words to that effect. Then he did it immediately.

CHAIR - Are you aware of whether Linda Hornsey may have had any input to the subsequent recommendation? She is the one who has phoned Steve Kons and said, 'Shred it'.

Mr BURCH - All I can say is, as I understood it the subsequent recommendation was the recommendation that would have occurred had the Premier not ordered Simon Cooper be appointed. Glenn Hay is the one who would have been appointed and was not being appointed when the Premier ordered that Simon Cooper be appointed.

CHAIR - After the second document arrived it would have been brought to the Attorney's attention, I presume, so that he could sign it.

Mr BURCH - Yes, that definitely would have been done.

CHAIR - And return it to the Justice department, I presume.

Mr BURCH - Yes. I think it was faxed and then put in the overnight bag.

CHAIR - Did you have any conversations with the Attorney or Miss Shadbolt?

Mr BURCH - Certainly, I talked to Miss Shadbolt but the Attorney was not very forthcoming at that time.

CHAIR - Just at that time?

Mr BURCH - I am trying to recall what we talked about afterwards. I do not think he ever explained to me what had happened.

Mr WILKINSON - Did you not say to him about what had occurred, 'This is odd'? You had a chat about changing the document that came through, there was that phone call, he came out after the phone call was made, he shredded the document. As his adviser and, as you say, endeavouring to look after him at all points, did you not say to him, 'What went on in that situation? This is just not right. What went on?' To me that would have been a comment that could quite easily be made with the rapport that you had with him at the time.

Mr BURCH - That is true. Sometimes I was conscious that he was the Attorney-General even though he was my friend, and he was agitated at the time. I do not recall talking to him about it. I certainly talked to Stephanie about it but I do not recall tackling him about it.

CHAIR - No at any time?

Mr BURCH - Not that I recall. I do not recall talking about it. I agree I must have referred to it at some time but I do not recall any specific occasion. I certainly did not ask him at the time. With his mood at the time, I talked to Stephanie about it but I do not recall talking to him about it at the time or tackling him on it.

CHAIR - What about the next day? If you did not talk to him about it and you were concerned to the extent that you say you were concerned, surely you would have spoken to him about it?

Mr BURCH - It is a reasonable question. I cannot recall talking to him about it on any specific occasion. I may well have. It is possible that the fact that I had preserved the document made the subject a little delicate and that I would not tackle him because of that. I cannot specifically recall what my mood was, why I would not tackle him on it. It's possible I did ask him but I can't say to you that I recall a specific occasion.

Mr WILKINSON - You told him you didn't agree with what was in the document itself.

Mr BURCH - Yes.

Mr WILKINSON - And you were concerned to a degree to tell him to make some amendments to the document.

Mr BURCH - Yes.

Mr WILKINSON - Those were made.

Mr BURCH - Yes.

Mr WILKINSON - He listened to your advice there, did he not?

Mr BURCH - Yes, he did.

Mr WILKINSON - From your evidence, he shredded the document.

Mr BURCH - Yes.

Mr WILKINSON - You would have in your mind that he listened to your advice only moments ago -

Mr BURCH - Yes.

Mr WILKINSON - I would suggest surely you would have questioned him about why he did that. He had agreed with you a short time before when you told him it should be changed yet you can't recall anything that happened after that in relation to the conversation.

Mr BURCH - That's true, I can't. It does happen that you talk to somebody about something and you keep at them, but there comes a time where you feel that you cannot take something further without having a belief.

Mr WILKINSON - Sure, but you hadn't spoken to him at all about it. You had not asked why he had done that. That hadn't been the case at all, so it wasn't a case that there was going to be a blue because you hadn't even breached the subject with him.

Mr BURCH - But that's not quite the case because I'd just got him to amend the document. He was the Attorney-General and I had just got him to amend the cabinet minute, the document for the appointment of the magistrate.

Mr WILKINSON - And then he shredded it only minutes later.

Mr BURCH - Then he shredded it only minutes later in an agitated state. There comes a point where you don't really want to go further; you back off. He was agitated and I don't think I wanted to take it further at that time. I can't remember later -

Mr WILKINSON - Or later?

Mr BURCH - Well, I don't know. I don't recall a specific conversation.

Mr WILKINSON - What I am suggesting to you is that because it was such an occasion when it happened, if you did speak with him at some other time you would have remembered what you spoke with him about.

Mr BURCH - That's a fair comment. I don't have an answer for you. Sometimes Steve could be very short, very cutting. I suspect that I didn't want to push him too far and questioning him about his following orders so blindly is not a subject that I think that I wanted to really raise in this specific matter.

Mr WILKINSON - Even though, as an adviser you know you have to give frank and fearless advice, et cetera.

Mr BURCH - I was not an adviser at that time. The Premier removed my advisory role and after the TCC affair he issued an order saying no more advisers outside of Hobart. My advisory role had been removed at that time.

Mr WILKINSON - What was your role?

Mr BURCH - By that time I was back to being electorate officer.

Mr WILKINSON - I see, so at the time this occurred you were back to being electorate officer.

Mr BURCH - That's right. I wasn't an adviser and I was already stepping very much outside of my brief.

Mr WILKINSON - Thank you.

CHAIR - Nigel, still with regard to this shredding issue, you'd earlier testified something to the effect that you had given a statement to police regarding the shredding of the document.

Mr BURCH - Yes.

CHAIR - What were the circumstances which led to your giving that statement to police?

Mr BURCH - I am trying to remember the sequence. Bryan Green was being prosecuted. The Attorney-General and I were both witnesses. The DPP's office sent a representative to Burnie to talk to me as a witness. I told them everything that I knew about the TCC matter and at that time I thought that I should also tell them on a confidential basis, on the understanding that it was verbal and went no further, that I had been told of a deal between Bryan Green's lawyer and the Premier over a government job, the Solicitor-General's job. In the context of my being a witness and being questioned I told them about that. The DPP then said that he very much wanted me to make that formal. Initially, I did not want to but subsequently I thought about it and I agreed to make it formal. The DPP arranged for the CIB in Glenorchy to take a statement from me. In accordance with the DPP's request I made a statement to the Glenorchy CIB.

CHAIR - That you had been told of this deal -

Mr BURCH - I told them of two matters, one was the shredding of the appointment of the magistrate and the other was that I was present when Linda Hornsey had rung the Attorney-General and confirmed to him that a deal existed to make Stephen Estcourt Solicitor-General in exchange for acting pro bono for Bryan Green. The Attorney-General, when he took the call, told me to stay and put his finger to his lips indicating that I should remain silent. I was present whilst he talked to Linda Hornsey and at the conclusion of the conversation he relayed what Linda Hornsey had said which was that this deal existed. We were talking about that as we walked back into the electorate office -

CHAIR - In Burnie?

Mr BURCH - In Burnie, and so we were talking about that as we went past Ms Shadbolt. We went into my office and we continued to talk about it. Steve said to me that if I ever revealed this to anyone I would have to kill myself. I said to him that if there were an ICAC we would have to both go to the ICAC immediately. This is what I told the police.

CHAIR - You were in attendance when this telephone call was made to the Attorney by Linda Hornsey and it was outside the office?

Mr BURCH - We were in the car. We were in the electorate vehicle.

CHAIR - Did the Attorney indicate to you how it was that Linda Hornsey had become aware of that alleged deal?

Mr BURCH - No, he did not. The Attorney had told me previously that he suspected that there was a deal and Linda Hornsey's call was confirmation of the deal. I infer from the call that Linda Hornsey was concerned about it, to call the Attorney-General about it. That is just an inference that she must have been concerned about it. The Attorney-General was very concerned about it but up until that phone call he had not known that it was a fact. The call was to tell him that it was a fact.

CHAIR - How do you know it was Linda Hornsey who phoned the Attorney at that time?

Mr BURCH - The call came when we were in the electorate vehicle and we were just pulling into the car park. We have our own car park underground, next to the office. I believe he said, 'Yes, Linda' or words to that effect. After the conversation he told me it was Linda Hornsey as well but I could not hear what Ms Hornsey was saying. I could only hear what Steve said and he did not say much. It was from relaying the conversation afterwards that I learned what it was about.

CHAIR - But your clear recollection is that at the termination of that telephone call the Attorney made it very clear to you that it was Linda Hornsey and this is what she has told him and you continued to discuss that as you moved into the office?

Mr BURCH - We did, that is correct.

Mr WILKINSON - Did you discuss 'the deal'?

Mr BURCH - We had previously discussed it but there was no evidence of it. What we had previously decided was that we could not know that such a deal existed unless we knew that Mr Estcourt was acting pro bono for Mr Green. That is the only way we could know or could have any confirmation of a deal. We could not very well ask, so we simply were aware of this possibility. But at the time of the call Ms Hornsey confirmed that Mr Estcourt was acting pro bono and that a deal existed. That was what was relayed to me. As I have said to you before, that does not mean that a deal existed. This is only what I was told.

Mr MARTIN - Nigel, you mentioned that the minister was concerned about this?

Mr BURCH - Yes, we had discussed it previously as a possibility.

Mr MARTIN - Did he ever contemplate doing something to stop it?

Mr BURCH - Did the minister ever contemplate doing something to stop it?

Mr MARTIN - Yes.

Mr BURCH - No.

Mr MARTIN - To not comply with the instruction?

Mr BURCH - No.

Mr MARTIN - He never contemplated that?

Mr BURCH - No.

Mr MARTIN - What was the nature of the relationship between Mr Kons and Mr Green at that time?

Mr BURCH - Mr Kons has a hatred of Mr Green that I believe borders on pathological. I do not believe it is reciprocated, though.

CHAIR - The telephone conversation to which you have earlier referred regarding the alleged deal, what was the date of that? Do you have a diary record of that?

Mr BURCH - I sent myself an e-mail recording what had happened because it was of such concern. So I just sent myself an e-mail recording it and then did nothing. That e-mail is dated. It may have been 4 July or something like that.

CHAIR - Can you confirm that for the committee when you have a chance to revisit your records?

Mr BURCH - Yes.

CHAIR - Is there any other record to which you could refer which will support this recent evidence of yours to the committee regarding this conversation between the Attorney and Ms Hornsey?

Mr BURCH - No, because it was verbal. In the case of the appointment of the magistrate, there is documentary evidence because I kept that evidence. But in the case of the Solicitor-General appointment there was no documentary evidence, none that we could possibly have. It was all verbal.

CHAIR - Subsequent to all of this you made your statement to the police?

Mr BURCH - Yes, because the DPP asked me to.

CHAIR - Yes, you have reconstructed that. Was anybody else, other than the interviewing police and the DPP, aware that you had made the statement?

Mr BURCH - Not for some time.

CHAIR - How long after you had made the statement?

Mr BURCH - Probably months later. I cannot remember precisely but certainly earlier this year I had told a couple of people.

CHAIR - So you made this statement while the Green trial was on the books?

Mr BURCH - Correct.

CHAIR - Was there any suggestion that may have prejudiced the Green trial - your revelation of those issues?

Mr BURCH - The police told me that they were going to investigate it. They told me that after they took my statement they gave it to the police commissioner and to the DPP. They told me that a meeting between the DPP and the commissioner had taken place and they had decided that the investigation would be held over until after the Bryan Green trial was finished.

CHAIR - So somebody might have made a judgment that to proceed may have prejudiced the trial. Anyway, it is no use speculating.

Mr BURCH - That makes sense, yes. That is why I told the DPP in the first place, because it was about the trial. I felt the DPP, who was about to face a solicitor for the defence in court, should be aware of a suggestion that the solicitor for the defence had a deal in respect of his fees. It was a pertinent matter and I felt that, as I was already being interviewed as a witness, there was a duty for me to tell him of that, but I wanted it to be kept private and confidential because it involved the reputation of a senior lawyer. The DPP insisted that I make it official, which I had not wanted to do.

CHAIR - When the representative of the DPP's office came to Burnie to interview you, was anybody else in attendance at that interview?

Mr BURCH - No.

CHAIR - Just you and the officer?

Mr BURCH - Yes.

CHAIR - Subsequent to making the statement to police and then providing that documentation to both the commissioner and the DPP, you have indicated that not for some months after did you discuss having made that statement with anybody.

Mr BURCH - Yes.

CHAIR - How many months after - roughly?

Mr BURCH - That I cannot remember.

CHAIR - With whom did you discuss it?

Mr BURCH - With Ms Shadbolt and also with Mr Kons' driver.

CHAIR - What was the nature of that discussion and why did you have that discussion?

Mr BURCH - Ms Shadbolt, myself and Mr Kons' driver were all close confidants of the Attorney-General. He talked to us and we talked to each other and we felt it our duty to look out for him. We virtually had no secrets between us.

CHAIR - Virtually?

Mr BURCH - Virtually. I could not come from a police interview and then go and tell them that I just made a statement and what the details of the statement were.

CHAIR - Did you ever discuss the statement with the Attorney? You have chosen to discuss it with Ms Shadbolt and the driver.

Mr BURCH - Yes, but not with the Attorney, no.

CHAIR - Did it cross your mind that it might have been important to alert the Attorney to the fact that you had given a statement about a matter which he had raised with you and for which only you and one other person were in attendance when he took the call?

Mr BURCH - To understand why I would not tell the Attorney you need to understand the Attorney. You would not understand unless you know him. I was very fond of Steve. I still like Steve but if you tell something to Steve you can be sure that everyone will know tomorrow.

CHAIR - So does it then go back to the statement which the Attorney made to you after you have come from the carpark into the office, and the Attorney said that if you disclose this to anybody you will have to kill yourself?

Mr BURCH - Yes.

CHAIR - Was it that which was influencing your thinking as to why you would not tell the Attorney that you had actually disclosed this to the police?

Mr BURCH - I cannot recall what my thinking was but if I had told the Attorney he would have immediately told the Premier and I would have been sacked. Also, at the finish of making a statement to the police I had to give a solemn undertaking to the police that I would discuss it with no-one. I had forgotten about that. So certainly that would have been in my mind.

CHAIR - How was it then that you disclosed it to two people when you had given that solemn undertaking?

Mr BURCH - The time that I disclosed it to Stephanie and the driver was sometime after - months after - in the context that we were very close and rarely kept secrets from each other. They also were aware of these matters already. The only thing they were not aware of was that I had actually made a statement to that effect. Thirdly, we are all human. None of us keeps perfect secrets. You do need to talk to people to gain perspective and get advice.

Mr HALL - The former driver, as I understand, was also a close confident of Mr Booth. Is that so?

Mr BURCH - No, that is not correct.

Mr HALL - Isn't it?

Mr BURCH - The driver knew Mr Booth. I knew Mr Booth. I knew Mr Booth because I had been introduced by the Attorney and Mr Booth had talked to me on a number of occasions about building matters, which he was told to do by the Attorney. It is not correct to say that the driver and Mr Booth were confidants. The driver was always very professional. He would talk to me because we both worked for the Attorney and within the system and we were both aware of the same things because the Attorney told us. There is absolutely no possibility that the driver, with his level of professionalism, would have passed anything on to Mr Booth. That is out of the question.

Mr MARTIN - I just want to go back to the motivation for the then Premier's desire to move Mr Cooper away from the RPDC into the magistrate's job. It is fairly well documented that, in relation to the pulp mill issue and the RPDC's handling of it, on 2 March Mr Cooper, on behalf of the RPDC, wrote a letter to Mr Gay as representative of the proponent, Gunns, telling them that their information was critically non-compliant. That letter was stopped from being sent by the Secretary of the Department of Premier and Cabinet, Miss Hornsey?

Mr BURCH - Yes.

Mr MARTIN - Mr Kons was Acting Premier when that took place. Are you familiar with the circumstances relating to that?

Mr BURCH - No; that all took place in Hobart. I was in Burnie, so, no, I was not aware of what was going on.

Mr MARTIN - So the Attorney never mentioned to you the circumstances relating to that?

Mr BURCH - He may have. I cannot recall. I can recall talking to him on a number of occasions about the pulp mill and the RPDC process, but I cannot specifically recall, no.

Mr MARTIN - You did mention in your statement earlier that the reason was that the Premier was dissatisfied with Mr Cooper's handling of the pulp mill issue.

Mr BURCH - Yes.

Mr MARTIN - Have you any more information in relation to that and the reason he was unhappy?

Mr BURCH - Only about the circumstances that you have outlined but as to what was behind it, I do not have specific information, no.

Mr MARTIN - Was the minister responsible for the appointment of Mr Cooper to the RPDC position?

Mr BURCH - I do not believe so.

Mr MARTIN - You also mentioned in your earlier statement about the payout to the previous chairman of the RPDC, Mr Julian Green, of \$180 000. I think you said in your statement that the payout was in return for Mr Green resigning.

Mr BURCH - Yes.

Mr MARTIN - That is rather an odd circumstance.

Mr BURCH - Correct, and the Attorney-General was unhappy about it. He believed that when somebody resigns they should pay us.

Mr MARTIN - That is a pretty good -

Mr BURCH - That is right, so why were we paying him? And the Premier said, 'Well not only are we paying him but it is coming out of your budget', so the Attorney was particularly upset about that.

Mr MARTIN - Do you know the reasons the Premier would believe that it was appropriate to pay Mr Green for resigning?

Mr BURCH - No I don't, no. I don't recall anything.

Mr MARTIN - Was there any documentation in relation to that provided to Mr Kons that you can remember seeing?

Mr BURCH - Not that I can recall, but I did not receive his e-mails or anything like that.

Mr MARTIN - Are we ready to move on to another topic?

CHAIR - We have a few minutes. We will probably break at 12.30 p.m. and then come back at 1.30 p.m..

Mr MARTIN - With Mr Burch?

CHAIR - Yes. We will go into the in camera session but anyway go ahead, Terry. We have a few minutes.

Mr MARTIN - I will probably need more than a couple of minutes. We spoke in some detail about your appointment to the position. I bring up the subject because it is fairly well documented and you have been fairly open about your departure from the job.

Mr BURCH - Yes.

Mr MARTIN - Can you explain the circumstances leading up to your leaving Mr Kons' office? Are you happy to talk about this in open?

Mr BURCH - Yes that is fine. There was a reshuffle and the Attorney became responsible for Resources and there was no way that the Attorney would work with David Price, who was the Mines adviser to Premier Lennon.

Mr MARTIN - Why would that be?

Mr BURCH - Two reasons. David Price was from the left and David Price was one of Bryan Green's best mates so there is no way the Attorney would work with David Price. That meant that there was no Mines adviser allocated so I wrote to my head of office and asked for the Mines adviser's position because I was contracted as an adviser and I was not operating as an adviser. I was operating as an electorate officer.

I had been removed from my advisory role for reasons unrelated to performance. I was removed because the Premier made a decision that advisers would be located in Hobart as a result of the TCC scandal and I had actually applied for advisory positions in Hobart but they had been blocked. Now with the need for a Mines adviser coming up and no way David Price would be in the role, I sent an e-mail to my head of office, Norm Andrews, asking that I be allocated the Mines role. I said that I was happy to move to Hobart. Norm Andrews wrote back and said staffing matters were handled from the Premier's office and I should talk to them. So I sent an e-mail to the Premier's office. I was the only person who put his or her hand up for the Mines adviser's job but it was allocated to another person who had not asked for it and who had no expertise and knowledge, whereas I have a mining background.

I was upset about this and that precipitated my writing to the Premier about the way we did business and about staffing selection procedures and the way we treated staff. As a consequence of writing that letter I was dismissed without notice and without my proper conditions.

Mr MARTIN - Immediately?

Mr BURCH - No, it took two weeks. Two weeks later two people turned up at Burnie and sacked me on the spot.

Mr MARTIN - Where were they from?

Mr BURCH - One from the Premier's office and the other was Steve's head of ministerial office.

Mr MARTIN - Which one was that?

Mr BURCH - Gary Hill

CHAIR - Who was from the Premier's office?

Mr BURCH - It was a young girl - I only know her nickname - I can only remember her nickname - Hayley, Hayley Phillips from the Premier's office and Gary Hill from our office.

CHAIR - We do not need the nickname now.

Mr MARTIN - What did Mr Kons think about that? What was your relationship with him at that stage?

Mr BURCH - He was very, very upset.

Mr MARTIN - That he could not take any action? Did he try to stop you from being dismissed?

Mr BURCH - No, he always obeyed the Premier. Ever since he was promised the Premiership himself, he just did what he was told.

Mr HALL - Have you taken any action since?

Mr BURCH - Yes, I took an unfair dismissal action, which was settled.

Mr HALL - When was that settled?

Mr BURCH - I took an action in the Industrial Commission - I cannot remember the exact dates - shortly after my dismissal. A settlement was arrived at. The Premier was not happy and instructed the Solicitor-General to take over the case. The settlement was reneged upon. The Solicitor-General took over the case, then the Solicitor-General withdrew, then a new settlement - a higher settlement was agreed upon. Again, the Premier would not approve it and then there was a change of premier and the settlement then went through.

There was discussion as to whether my settlement of the unfair dismissal would simply be of the unfair dismissal. There was a possibility of settling all outstanding issues such as the defamation and the fact that I had not got the Mines adviser's job, but the Premier's office decided that they only wanted to settle the one and I took a small settlement on that understanding.

CHAIR - Is it true there is a confidentiality clause attaching to that which was requested by the Government and not by you?

Mr BURCH - That is true, and when the new premier took over I asked the new premier's office if they wished to insist that that confidentiality agreement be part of the settlement. Because we had not actually settled, I said this was an opportunity to remove the confidentiality from the agreement, but the Premier's office said no, it would stay.

Subsequently I wrote a release so that the Premier's office, in Parliament, could reveal the terms of the settlement. I gave the release, but again they will not reveal the terms and they will not allow me to reveal the terms. I do not know what the situation is here, whether that overrides it.

CHAIR - I think that confidentiality clause ought to be respected, even in this forum. That's my judgment.

Mr BURCH - Yes, okay.

Mr WILKINSON - If you've agreed to that, by way of settlement.

CHAIR - Nigel, in this recent exchange with Terry you've indicated that your termination occurred shortly after you had dispatched the document which was critical of processes going on within the Government.

Mr BURCH - Yes. It was a private and confidential e-mail to the Premier.

CHAIR - Given that I have no idea of the chronology of this, did that happen shortly after your statement to police or did it happen a long time after?

Mr BURCH - No, this was seven months later. At the time I made the statement to the police there was no prospect of being sacked or anything.

CHAIR - Because your statement to police was at that level of confidentiality that you didn't even disclose it to your two close confidants -

Mr BURCH - Not immediately.

CHAIR - for some months after, was your earlier evidence -

Mr BURCH - Yes.

CHAIR - do you have any view as to whether your termination may have been linked to your statement once the fact that you'd made a statement became knowledge to whomever?

Mr BURCH - I had assumed that the Premier did not know about my statement but recent events suggest that he did know and therefore the matters might be linked. It may be that when the Premier sacked me over my letter he knew about my police statement.

CHAIR - But you can't be sure of that. You're assuming?

Mr BURCH - I can only speculate.

CHAIR - I'd asked you earlier whether you were aware whether the Attorney was ever in possession of the fact that you'd made a statement. To your knowledge, does the Attorney - well, go back a step because it's public knowledge now, of course, that you made a statement.

Mr BURCH - It's public knowledge now that I made a statement.

CHAIR - Do you know whether the Attorney became aware of that before it became public knowledge?

Mr BURCH - Yes, he did become aware before it became public knowledge.

CHAIR - Can I take you back, then, to my earlier question? As I recall, I visited that issue with you and you said you hadn't alerted him.

Mr BURCH - Correct.

CHAIR - Are you aware as to who did alert the Attorney to that fact?

Mr BURCH - Yes.

CHAIR - Who is that person or persons who alerted the Attorney prior to it becoming public knowledge?

Mr BURCH - I am not sure that we want to go to this in view of the current proceedings against the Police Commissioner.

CHAIR - It may be something the committee will consider in camera with you.

Mr MARTIN - I'd support that.

CHAIR - I don't have any further questions at this stage. We'll take a break and we'd ask you to return at 1.30 p.m. We then have a further appointment at 2 p.m. When we reconvene my judgment is that there are no further questions in public so we will reconvene in camera at 1.30 p.m.