

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT
MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON
THURSDAY 11 SEPTEMBER 2008.**

Dr RICHARD HERR, HONORARY RESEARCH ASSOCIATE, UNIVERSITY OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Richard, thank you very much for coming along. Thank you also for your submission in relation to the matters at hand and obviously your expertise in this field is going to be much appreciated. I will leave it to you as to how you present your evidence. What people have been doing is giving a broad overview and then we ask some questions.

Dr HERR - That is what I thought I might do. Given that I didn't do it in my submission, I am going to take the opportunity to read a quote that I wish I had put in at the beginning of my submission. It comes from the Federalist Papers No. 51 on the structure of government and furnishing proper checks and balances. It says:

'If men were angels, no government would be necessary. If angels were to govern men, neither external or internal controls on government would be necessary. In framing a government which is to be administered by men over men' -

Forgive me, Lin, but it was that period of time -

'the great difficulty lies in this: you must first enable the Government to control the governed and then oblige it to control itself.'

This is really the focus of my submission, as you have seen.

CHAIR - Richard, when you talk about men Lin always says, 'Woe' - interestingly, just prior to 'men' - 'Wo-men'.

Dr HERR - That is all right. This was the eighteenth-century Enlightenment, which was not quite as enlightened as perhaps the twenty-first century enlightenment. The primary focus, as you have seen in my submission, is encapsulated in this quote and that is, the integrity of government really begins with confidence that the Government itself is limited and under the control of the public. That means proper checks and balances. It will come as no surprise to this committee, I am sure, that I do believe that our Westminster system of check and balances has been severely eroded and undermined by the reduction in the size of the Parliament. Indeed, I advocate a need for restoring the Parliament to a proper size in order to eliminate this huge democratic deficit in our political integrity system.

I am going to look forward to discussing with you elements of that part of my submission but there are a few points I would like to make first. One is one that I have made in the media repeatedly with regard to the emphasis on ethics in terms of probity and

integrity in government. As I have pointed out in the newspaper columns I submitted with part of my submission, I have written long before you were set up that I believe that ethics is important but it is not the problem I believe that is before you. Ethics is a form of self-regulation and simply, from the start of modern democratic government, the public does not believe politicians are very good at self-regulating. You give them power and they use it. So the problem, as I said in my submission, is like a driver's licence. Yes, you have to be trained to learn how to drive. You then get a certificate that says that you are entitled to drive but that does not take the cops off the beat or the speed cameras and so forth off the roads. We need to constantly monitor how people use their understanding of what is doing the right thing.

I believe the real problem for you is addressing clearer laws. Some of the laws are ambiguous, and we have seen that in the recent controversies as to what interfering with a minister in the performance of his duty means. The laws on that sort of thing are very imprecise and it leaves a lot to judgment. The rules and procedures are not always clear either.

I think that relevant to this and an issue, particularly for me, in terms of the reduction of the size of Parliament, has been the need to address the number and influence of political minders. It is something which I think has gone completely out of hand, not because these people are not doing perhaps useful work but political minders are not steeped in the administrative law and procedure of the advisers that come out of the public service. A part of ensuring administrative propriety in government, I believe, is to, again, get a proper balance here and get a balance which, in fact, is located in full understanding, respect for and compliance with the powers that a government has and are operated through the laws and the administrative regulations that allow things to be done.

Mr BEST - Do you see then, maybe the role of the Public Service Commissioner needs to encapsulate some of those things?

Dr HERR - I would assume that it would be there if more ministerial advisers came out of the public service and I think this is a useful thing for a small parliament in any case because, as governments change, the public servants go back into the public service and corporate memory is not lost and also, public confidence in the public service, the State Service, in the case of Tasmania, is reinforced by the knowledge that these people will serve any government freely, fairly and honestly.

Mr BEST - Going back on that other piece that you talked about, about the grey area, I suppose, the ethical, we heard from Rick Snell early this morning about his idea of having, in fact, two bodies, one being an ongoing, continuous monitoring, like an oversight commission of Parliament, as well as an investigative body. What would you feel about that?

Dr HERR - That is part of what I am leading to with this in a moment. But it is relevant to it. As I have said in my submission, I believe that a permanent committee that serves as a triage committee to direct public complaints to the appropriate integrity agency is a highly desirable thing and I think it would reinforce the responsibility of parliament to accept its own duties with regard to the enforcement of integrity and probity in government and would also help the public to know that they can come to the Parliament and get advice as to should I go to the police, should I go to the Ombudsman and so forth

and, to a certain extent, it would help these other agencies by highlighting the urgency perhaps of the issues that were raised because again if they come to a committee of parliament, you can take their concerns under privilege and at least get something of a story before you then refer it on to someone for dealing with, so partly I think that answers that.

Mr BEST - Sure. Sorry.

Dr HERR - No, that is all right. I had myself all wound up but now you are going to -

Laughter.

Mr BEST - I was just interested.

Dr HERR - No, that is all right.

New South Wales has an ethics adviser, I believe, on staff to assist people to evaluate ethical issues but, at the end of the day, I do not want the police coming and knocking on my door and asking me if my ethics are in order. They could ask me whether I in fact was driving the car at the time or whether I in fact approached a member of parliament improperly or things which are laid down in black and white law or administrative rules and procedures that I should have known about or should be careful to observe but I do not want them to say, 'Times have moved on, Richard, your ethics are a bit passe, we really want to hammer you for not being up to date'. People should not be responsible for that and, indeed, I think it is one of the devaluing influences on politics across Australia over the last 15 to 20 years and that has been the emphasis on values as opposed to conformity with procedural obligations. I think that that is what we have to expect people to do and they ought to be clear and precise, not waffly, 'I like your values. I'm going to trust you'. We do that politically. We do that when we vote for you and we might say that we like your values and we will vote for you because we think that your values are the sort that are going to make decisions that I would have made if I had been in Parliament in your stead. But that is a political decision, it is not something that should be enforced through integrity commissions or whatever.

I honestly do not know as opposed to whether we need a new one but I do believe that the evidence is built for suggesting that this committee ought to be supplemented with a royal commission. I do that not because I believe the evidence is clear that a royal commission, that is to say a commission of inquiry, is clearly necessary, but I think that when the Premier of the State is able to support a new integrity commission with perhaps more limited powers of investigation than some might like it does create in the public mind a sense that a lot of the concerns of recent years are in some way justified.

I do not know whether they are all individual mistakes or miscalculations or simply misunderstandings of events and I do not believe you are going to have the powers to actually resolve that either but if we do need a new independent integrity commission of some sort, agency or whatever, it has to be on the basis of fixing an ongoing problem, something that is an enduring and continuing issue, and for that happen you have to have the evidence that that exists.

The second reason I think we need a royal commission is a lot of significant elements of the existing integrity and probity processes have been drawn into this inquiry - you had it yesterday morning. That raises doubts in the public mind about these appointments and the people who are involved. Those people deserve to be either exonerated or, if guilty, dealt with in an appropriate way. It shouldn't just hang out there while the allegations against them are there. Look at the newspaper and other media reporting. Some say that one of your witnesses yesterday spoke of being concerned about allegations of impropriety and in some of the media the word 'allegations' was dropped and that these people had done these things. This is a terrible burden for these people to carry if they are not able to be exonerated, if they're not guilty. I think there is a good reason on the basis of natural justice to these people that there should be an appropriate commission of inquiry to assist them.

CHAIR - I take it you're saying that a commission of inquiry should be set up to look at, say, parliamentary past practices or complaints that have been made against certain individuals. Would it be restricted in any way or would it just be a royal commission for the sake of it to look at anything?

Dr HERR - No, I think it has to be into allegations of serious matters that have been raised with regard to things such as the TCC, shreddergate, judicial appointments and so forth. In the public mind - and you have listened to me on the radio occasionally and heard me speak on these matters - there has emerged a belief that a lot of these things are connected in a pattern of misadministration or malfeasance in office or something and that it is all connected. There is no reason it should be all connected. It may not be and it may be that in the rough and tumble of political debate a lot of smoke and mirrors have been used to make things look different from reality.

CHAIR - It might be argued that we've already had two court cases in relation to one minister, and we also have investigations presently being carried out in relation to a couple of matters, so therefore there has already been this investigation. Would this royal commission be treading over trodden ground?

Dr HERR - No, it will be different because it will be looking at specifically the broader issues of interconnectedness and what has fallen in the gaps between these things. It will look at the use of powers by particular individuals as to whether or not those were legitimate or non-legitimate, and how they were or were not connected with other events. Proving that people are innocent is particularly important as well. We have already seen that in one court case with two hung juries. People said, 'He wasn't actually innocent. It was just that he wasn't found guilty'. That is not the point. The point is that the law handles it in a certain way. A royal commission will look at the whole process and be able to establish if there are grounds for concern that might help this committee then to make judgments as to how systemic the issues are, and how big a hammer or how small a screwdriver you need to fix the problem.

Ms THORP - You're saying that this commission of inquiry, or however it is termed, needs to occur before this committee reports?

Dr HERR - I would believe so. I think it would be helpful to you. If you were to reach a decision that we needed an ICAC, then note that these kinds of bodies have only been set up in the wake of royal commissions, where a royal commission has established that the

problem was so widespread and systemic that it needed an ongoing body to deal with it because of the loss of public confidence in other integrity commissions or committees or arrangements. Therefore it was appropriate to set it up independently to deal with the issues. So if you were to make the decision that you needed something like that, it would presumably be on the basis of a fairly sustained belief by this committee that you thought there were very probable grounds that that level of systematic abuse of power had occurred at some level.

The third point I was going to make as to why I think it's necessary is that the people of Tasmania, before they go to the next election, need to have some of these doubts removed. I don't think a government should be re-elected on the basis that scandals weren't properly dealt with, any more than it should be dismissed from office on the basis that everybody knows scandals were probably going on because there is no smoke without fire. Those are my three basic reasons for thinking that it's necessary.

Ms THORP - If I am understanding you correctly, the benefits would be, firstly, that any new body that was set up as a result of recommendations of this committee could then start fresh.

Dr HERR - Start with a work program based on the findings of the committee of inquiry as well as your own work. Yes.

Ms THORP - Okay - which covers both of the points I was trying to make. Thank you.

Dr HERR - As I say, I worry about - let me put it in bold terms - the ethical position of people who tell you that the problem is so severe that it needs an ICAC. That's condemning people, as the Chair said, who haven't yet been found guilty of anything but are still under investigation and so on. I just don't see how you can do that. I think you need something solid and genuine to be able to get to that stage.

Equally, if we need it, I would like you to be able to find that on the basis that there is real evidence that would guide you in recommending the kind of agency that would most effectively address the problem.

Mr MARTIN - The reason so many people are calling for an ICAC, and there's such a popular push for it, is that so many allegations of various scandals haven't been addressed. So if there's a royal commission then people probably wouldn't be calling for an ICAC.

Dr HERR - That's right; that's my point precisely, and I'm reinforcing that point, Terry. If we believe the situation is such that it requires an ICAC then I believe it's sufficient to require a royal commission of inquiry beforehand. I was impressed when the Premier said that he would support such a new body, but he didn't think we needed a commission of inquiry. I thought it had gone a bit in front of the evidence in that case.

Mr MARTIN - He might know something that the rest of us don't know.

Dr HERR - I wouldn't comment on that, Terry. A lot of people know things that I don't know.

Mr HALL - Richard, I might have seen somewhere in the evidence that you are a bit concerned that this committee is actually conducting this inquiry whereas it should have been the forte of a non-parliamentary process. Did I see that somewhere?

Dr HERR - No, not particularly; I am quite happy. I guess one of the bits of encouragement I take from the committee is if you do release an interim report. That's probably why I changed my notes to speak to you this morning to emphasise the need for the commission of inquiry. If you are going to issue an interim report then it does help create perhaps the momentum for such an inquiry in a timely fashion, both to assist yourself and the public of Tasmania.

CHAIR - I suppose, Richard, what you're saying is that if you don't know what troops are amassing over the hill - in other words if you don't know what's out there - then you don't know how to have the armoury to properly combat it, do you?

Dr HERR - No.

CHAIR - In other words, if you do not know what is out there you do not know how to have the armoury to properly combat it, do you? What you are saying is let us investigate what is out there and then we can get the armoury in place to properly deal with it.

Dr HERR - Yes, to use your military analogy, if it is guerrilla warfare you need one style of integrity arrangements and if it is a full-scale battle then you obviously need some heavier armour and the committee should be aware of that.

Ms THORP - I have had no experience of committees of inquiry or royal commissions as nothing has happened in my time, but what is the process of setting these things up?

Dr HERR - I just know vaguely that they are set up under the Crown with full powers of investigation -

Mr McKIM - They are set up by the Governor. The Governor make an order to establish them and generally that would -

Dr HERR - But the Governor does it on advice, so it is really the Government.

Mr McKIM - Richard, you have spoken about your view that there is a need for a commission of inquiry and you said that the reason why think that is necessary on top of some of the investigations that have already occurred is because it would address some of the broader issues of potential interconnectiveness. Can I put to you that another reason may also be that some of the investigations that have occurred have been of the nature of, for example, the police investigating themselves, so maybe there were some process issues or perceived process issues in terms of the way that some of those investigations were carried out?

Dr HERR - Yes, I have certainly said that publicly and given a number of factors that have gone on in the police inquiry into the commissioner, I think that it has been inappropriate and I would have much preferred that it was handled in a way which was fair to all concerned. That means the police who have to investigate their boss as well as the boss,

who should not have people looking at job prospects and other issues as a consequence of which ever way the findings went. I think that is part of it.

Mr McKIM - So your view is that the way that investigation occurred lacked procedural fairness on both sides; in others words, for the officers who were doing the investigating and also for the commissioner who was being investigated.

Dr HERR - My belief is that it raises those doubts to a very high level. I could not comment on how well it has been done or anything of that nature but I believe that, yes, it is part of that.

Mr BEST - You mentioned wanting to get these issues clarified before the next election with a royal commission. Given the way royal commissions have functioned in the past it would perhaps be fairly ambitious to think you could have it all done and dusted before -

Dr HERR - I agree, and that is why I mentioned that part of my concern would be for a government to be hung out to dry on innuendo and scandal that turned out to be unsubstantiated. I do not know how government can deal with these things in a way which will satisfy public expectations without some independent review. It can be fairly narrowly focused on the procedural matters that we have discussed. I still think that it could be done in reasonable time, both for the work of this committee and for fairness before the next election because I do not think that it should overhang the next election. I think that would be unfair to all sides.

Mr BEST - I do not think I am out of order to say that it is anticipated that this committee may not even be finished before April next year. I do not know.

Dr HERR - Honestly, I cannot answer how long it would take.

Mr McKIM - We will not have an election before then, I hope.

Mr BEST - No, but the question is whether you can go through these matters. One of the questions that has been put to this committee has been the issue of retrospectivity if we were to have some commission of integrity or whatever the name of it might be, but what it would do is have investigative powers. Maybe that could be another avenue that would clarify some of the issues you have raised.

Dr HERR - A commission of inquiry would have the powers to investigate, I would hope, illegal activity or malfeasance in office or corruption - whatever it turned out to be. Everything is retrospective -

Mr BEST - Yes, I know; there are two schools of thought on this.

Dr HERR - The only thing that would interdict that of course is a statute of limitations on various crimes and so forth, otherwise it is all investigative things that have already happened and I do not have a problem with that. I guess I cannot answer your question, Brenton, because I do not believe there should be such a commission until we have established -

Mr BEST - I know what you are saying, the cart-before-the-horse sort of thing.

Dr HERR - Yes.

Mr BEST - I asked this question yesterday of Michael Stokes. If we were going to look at things in retrospectivity, things that have been already investigated and decided upon, you would think that there is little point in going back onto those; it is perhaps these other issues that are left unanswered that might be the -

Dr HERR - That is right. The double jeopardy issue of course arises anyway in any legal proceeding, so that is not, to my mind, a particular problem, but sometimes someone who may have been acquitted of one crime may not have been charged with other criminal activities related to the crime for which she or he was acquitted, so it could actually bring up new areas of criminality or -

Mr BEST - Or just make it a grey area of conduct that you have some sort of process or procedure on.

Dr HERR - Sure, but again, a royal commission would help to establish grey areas that might need clarification. As I already said in some of my opening remarks, I believe that the legislation is in part guilty of this - and since the media are listening here I will pick on them for a moment. One of my examples was the charge of bribery against Jim Cox over the Betfair and Jockeys Association business. I heard about it on Thursday afternoon and figured that I was likely to get asked a question about this the next day so I had better do some homework. I went to the legislation and could not find a single law that Jim was in breach of. I asked some of the people involved to tell me what section of the act had been violated because I thought I was looking at an issue of how serious was the offence. Was it likely to cost him his job or not? That is what I wanted to look at. The answer was, 'Don't know, but the police will find out'. I said, 'How can a complaint of bribery be raised? Everybody knows bribery is illegal.' Well, actually it does not appear to be. For three or four days he was pilloried over this allegation when it was quite clear legally that there was nothing to answer.

That was not a mistake of an ambiguous law, that was a mistake of people not actually doing their homework and, with respect to all of you in the room here, one way or another, people were perfectly willing to either let him hang out to dry with public embarrassment or were defending him on wrong grounds because people had not tried to clarify what was an important issue.

This, to me, is part of the responsibility of all members of parliament. One of the points that I tried to make in my submission is that the responsibility of members of parliament is not your political party, not to your government or to your shadow ministry, it is to the Parliament first, and there is a line - and that is something you need to reinforce for the community - which you will not cross on the grounds of putting your party first or the Government first or the shadow ministry first or whatever.

Mr MARTIN - I probably agree with that.

Dr HERR - Yes, but the public -

Mr McKIM - Demonstrably so, some might say.

Dr HERR - What I am saying is that it is part of building up confidence in the Parliament itself and, if I can, I will make a few comments on the areas where I think the Parliament and the reduction of the size of Parliament has been a problem for integrity. Parliamentary debates are briefer and I think, by and large, less effective today than they were before 1998. There are only so many hands available to prepare for debates and there is only so many interventions that a member is able to make and this results in less effective review of legislation. This is undesirable because, as you know, the debates of parliament serve as extrinsic information to courts to interpret the mind of the Parliament, what was the Parliament's view on an issue. I am happy to say this to you because you know I say it publicly and I will say it privately as well and that is, I think the treatment of the pulp mill legislation, which has cost so much public confidence, really was down to very poor professionalism by the Parliament. There was not enough debate in the lower House and you cooperated in that by not insisting on a fuller debate. Again, it was the like the 40 per cent pay rise and all those things, 'If we shove it through quickly, no-one will notice and people will forget and it will all be gone'. People have not forgotten and they will not forget and if there are problems with the legislation, it will be the Parliament's fault for not doing its job properly.

When it got to the Legislative Council, at least the Legislative Council did resist on some matters but it still was not nearly comprehensive enough and there were things in terms of the fairness to the community that the community deserved some support for. You will not let your own members mislead Parliament and yet you were perfectly willing to let others mislead Parliament in their briefings to you on how urgent that legislation was. We know it was not urgent, we know damned well it was not urgent, and you have not called anybody to the Bar and asked them to explain to you why they told you the things that have proved to be either incompetently unsubstantiated or simply deceitful. Why?

I just took an oath to you when I came in here to tell the truth, the whole truth et cetera. Certainly you would have expected that of people who give you briefings, people who give you the advice that you act on and force you to act with undue and improper haste and if the company that does it is not competent enough to even get it right, why do you continue to support them and not ask for these explanations? I do not understand these things and it is my job to understand them. If I feel this frustration, you ought to understand how deeply frustrated the community is, and this is not taking issues on whether there should be a pulp mill or not, it is about what we are talking about this morning, proper due process in the way the Parliament carries out its duties and who it feels its responsibilities are to.

I do not teach it at the moment but I have taught respect for the democratic process. I have been involved in it with a Third World country for much of this year and I think that we ought to be an example to other countries as to what proper parliamentary procedure is, not an excuse for them not to do any better than they do. This is one of my problems.

I think that the size of the Parliament has made debates less full. As this committee demonstrates and other committees, they are harder to staff now with the smaller Parliament. It is much harder for you to find times to meet. You have something which I think is appalling, situations where ministers are included in parliamentary committees. They should never be included in any committee. You can look at the *Parliamentary*

Practice for the Federal Parliament. Ministers should not be on committees, except housekeeping committees, what are the appropriate wines for the dining room and how many books to buy for the library, those things.

CHAIR - Those big decisions?

Dr HERR - Ministerial involvement on housekeeping is perfectly reasonable but not on major substantive committees of the Parliament because your job in Parliament is to control the Government. We don't have a government of angels. Sorry, Brenton. It would be the same if Jeremy or Nick's party were in power as well.

Mr BEST - We do have a new premier, though, who has said we have done more than enough for the pulp mill and I don't think he wants to do any more for it.

Dr HERR - Ministerial involvement is improper and yet it happens because it is simply too hard to staff committees of the Parliament.

Mr ROCKLIFF - An example of a minister sitting on a committee would be the recent gene technology committee inquiry.

Dr HERR - Yes, sure.

Mr McKIM - There would be the Attorney-General sitting on this committee, as a matter of fact.

Dr HERR - Indeed. These things shouldn't happen. As I say, since 1688 the role of the Parliament is to control the Crown, and that is your first job.

CHAIR - And you're saying that that is one of the real downfalls of the reduction of numbers of members of parliament?

Dr HERR - Yes. I'm trying to give you precise, clear reasons and how that impacts on the integrity issue. The expression 'a fish rots from the head first' - I'm not quite sure how to fit that in - but in terms of integrity and probity the Parliament is the starting point for the whole of any effective system.

Mr ROCKLIFF - So in terms of strengthening the integrity and whatever might come out of this committee, Richard, the establishment of an investigative body or whatever, to strengthen the reason we are here, would you envisage one of the key recommendations from this committee would be to increase the size of the Parliament?

Dr HERR - Yes, to increase the capacity of the Parliament to do its job in overseeing government. You can't do it just by the committee system alone; it has to happen in the debates in the two Chambers of the Parliament, in keeping the integrity between the two Houses and so on.

Mr ROCKLIFF - There has been a lot of debate about increasing the size of parliament, which is mainly focused on the lower House, what about the upper House which also had a reduction in 1998?

Dr HERR - I can't see the Parliament in the lower House getting to the numbers it should be. I use the example of Papua New Guinea because Australian advisers helped to frame that Constitution. In the Papua New Guinea Constitution the size of the Government is set at no larger than one-quarter of the size of the House of Assembly - I think it is the Legislative Assembly - precisely because of the Westminster concept that for a government to be sustained it has to have support from at least half of the Parliament plus one. That means that the Government would always be smaller - the front bench would always be smaller than the back bench. If you were to use that standard for Tasmania, what we would be doing is looking at how many ministers we need - and I think we need probably in the order of 12 to 14 ministers. I think we have to have roughly the number that South Australia has. There are no economies of scale and increasingly involvement in Federal legislation in cooperation with other States et cetera involves ministers in a whole range of issues and Tasmania shouldn't have one hand tied behind its back by having too many ministers going to too many meetings, not fully briefed because they have too many other jobs to do.

If you are looking at 12 to 14 ministers, let us be outrageous and take 14, four times 14 is 56, plus one would be 57. That would be the size of the lower House in order to give Tasmania an effective government that was still based fully within the Westminster system. I don't think we are going to get that, so to come back to your question, I would be happy if the upper House were restored to a level that allowed it to be more effective in its committee system because that is a vital part of achieving executive oversight, a critical role of the upper House.

Ms THORP - You mentioned a few moments back that you questioned the ethics of those calling for an ICAC; could you expand on that, please?

Dr HERR - To assume the problem is so large that it requires an ICAC is to assume that a lot of people must be guilty of a lot of things, and I do not like that assumption. I still believe in the assumption of innocence until proven guilty so to that extent I worry about building that assumption into the proposal for an ICAC.

Ms THORP - So it is politically expedient for some people to make calls of that kind.

Dr HERR - I would not judge their motives; all I am saying is that I think there is an intermediate step that needs to be taken to legitimise such a call. That is a personal judgment that I make.

Mr MARTIN - The Premier has called for that of course.

Dr HERR - I know and that is what I am saying; if he believes that is so then I believe that the intermediate step needs to be taken. That is part of my justification. If the Premier believes that we need to go to that other step then we should not miss the intervening step.

Mr MARTIN - Absolutely.

Mr McKIM - I have actually a number of other issues that I would like to raise with Richard but I do not reckon we should go through his entire evidence today without at least giving

him the opportunity to finish what he came here to say. I am prepared to put my questions on hold on the understanding that we ask him back.

Dr HERR - To come back to the public concerns for Parliament, I have already talked about the pulp mill issue and how I think it has reflected badly on it. I think the fact that Tasmanians for a Healthy Democracy actually opposed this committee on the grounds that they did not trust you should have worried you a great deal.

Mr McKIM - It did; it worried me, anyway.

Dr HERR - It worried me. Partly that is based on a misunderstanding of the value of having a parliamentary committee which can take evidence in confidence and can give parliamentary privilege to the people who give testimony and so forth. As hard I have tried not to malign people, I suspect there are things that I would not be too happy to say outside the door.

I have always defended parliamentary privilege on the grounds that we need it but I get very distressed when it is used to attack a whistleblower, because to me it was like attacking a rape victim and saying, 'You are probably at fault for your own circumstances'. It is a deadening effect on other people who want to come forward. You ought to establish your own integrity internally first so that people can come to you.

That comes to perhaps one of the more important points I want to make. We do need a committee on integrity, however defined, in the Parliament which actually will serve this triage function. The police, the Ombudsman, the Auditor-General et cetera cannot always spend the time dealing with constituents' complaints, complaints that may in fact be fully justified but are not very well articulated or need to be refined in some way to make them appropriate to whomever they are going to be referred to or whatever. A committee to receive complaints from the public, assess them for at least their plausibility and then sending them off to the appropriate integrity commission - whether it is the police, Auditor-General or the Ombudsman - with the recommendation that this is a high priority issue would be enormously helpful. It would assist the public to build its confidence in the parliament. It would assist in, as I say, sorting out some priorities and it would also give the parliament direct and visible responsibility for the integrity process.

Obviously resources need to be increased. I would like to see the Ombudsman taken out of the executive branch and lodged firmly in the parliament. It may not change things in practical ways but it certainly would change the way that the public view it. Also I would like to see the Ombudsman office capable of early intervention. There are some areas where the Ombudsman office has to wait until after all avenues have been exhausted. That puts a lot of pressure on poor people who cannot afford to go to the courts, who cannot seek redress for maladministration until a lot of time has elapsed and sometimes they do not have the time.

With questions of access to public resources, if you need it desperately and it is an administrative error that is preventing you from getting medical help or whatever, you cannot wait until you have exhausted all other resources or all avenues of redress before you get that help. There has to be a look at the powers of the Ombudsman's office to

give that capacity for the Ombudsman to say that maybe you have not exhausted all avenues but this requires urgent intervention to deal with the problem.

I also believe that the legislation for whistleblowers needs to be strengthened, with prevention of the deliberate vilification of whistleblowers under parliamentary privilege.

Mr McKIM - Professor Herr, in relation to ethics and good standards of governance do you think we should have State-based donation disclosure laws in Tasmania so that when Tasmanians go to the ballot box they know who is donating for which candidate and political party? Do you have a view on whether people who advertise politically during election campaigns ought to be required to disclose who they are and the source of their funding?

Ms THORP - Including the Wilderness Society.

Dr HERR - The answer to the first question is yes, because we have different circumstances at the State level than at the national level. If 11 people fund one individual's entire campaign for re-election and none of that has to be reported and would not have been reported, yet because of the cap on expenditure for Legislative Council elections it was easily within the small group of people to fund, that raises questions of propriety in the public mind. It is different from a situation where parties host dinners and have their leader there because you are not raising money directly for that one beneficiary. The fact that there was one person who was entirely the beneficiary of a small meeting raises questions of how beholden people are to this. That is a fact and it is not to say that it was wrong. It was not wrong in law at least. But it raises these questions of propriety that would be handled better at the State level because involvement is different to the amount of money spent. The greater transparency the better as long as parties and lobby groups and everybody else understand that sometimes people are embarrassed to be seen having their name splashed about the place, so that will tend to discourage donations and so forth. That is why the Federal Government wanted to raise the bar.

The point is that wherever the bar is set, whether it is at \$10 000 or \$1 500, that roughly tells you where the perceived level of possible influence kicks in. I think that in a small State and so forth it is appropriate to have a separate one that is more related to the level of expenditure and so forth at a State level.

Mr McKIM - And in relation to the second part of my question, which was -

Dr HERR - Yes, of course - but my point was that in doing that one has to recognise that becomes a matter of - and by the way, I would include in that something that you have not mentioned and that is negative advertising. Negative advertising is more insidious in some ways than positive advertising, so that should be covered as well.

Mr MARTIN - Richard, you basically just touched on and partly answered the question I was going to ask, but I want to take it a little further. You quite often hear ministers in defence of themselves saying, "I have done nothing wrong". What they mean is that they have done nothing legally wrong. To me, that is less important than the question whether they have done some ethically or morally wrong. You touched on that a bit during your presentation. Do you have anything further to add to that?

Dr HERR - Yes, as I said in my earlier comments, Terry, I think that issue is one for the public to decide themselves. I think that if you are concerned that this breach is only an 'ethical' and not a legal breach, then you should deal with it in the appropriate legal or administrative way, because nobody should be disadvantaged by you having different values to me and, indeed, that is one of the problems we have been trying to address in this State over a period of time. But that is what the ballot box is for. If somebody says they have not done anything legally wrong, but the people say, 'Yes, but that is not the way a politician should behave', the redress for that is at the ballot box, not in the court or -

Mr MARTIN - As long as they have all the information before them of what took place.

Dr HERR - Of course, but in that case you are saying that if more information was available and it turned out to be an act of maladministration or illegality, that is a different matter because that is illegal and the integrity systems ought to pick that up and be able to deal with it.

Mr MARTIN - On a completely different topic, you talked about the size of the Parliament before. If the House of Assembly was to be increased back to 35, do you have a view on whether it should be five electorates of seven or seven electorates of five?

Dr HERR - Generally, my preference would be to restore it to its previous configuration to avoid any appearance of manipulation designed to produce party advantage. I think the public are increasingly concerned that a mistake was made in 1998 but I do not think they would like to be afraid that reversing that mistake was an attempt to slide in through the back door or some other partisan advantage. I think that would complicate things and it would be unfortunate, so to me the simplest thing is to undo 1998.

Mr MARTIN - Do you see any reasons other than partisan for having seven electorates of five?

Dr HERR - Traditionally, we have said the advantage is that the Commonwealth does the redistricting for us, it is cheaper, more administratively convenient and people are used to it, and all these might be reasonable factors as well.

Mr HALL - Very quickly, Richard, we talked about the product of a smaller parliament being the fact that ministers have had to sometimes sit on committees and be chairs of committees -

Dr HERR - I do not think they have had to but they've been allowed to.

Mr HALL - In that case, should members of the Legislative Council refuse to sit on that committee if that happens and thus lose the capacity to have input?

Dr HERR - I think each House is responsible for its own privileges and you need to protect your privileges in your own sphere. People keep losing sight of how the Westminster system works and they make a change here and say, 'I'm not aware that it causes any problems so let's do it'. That is, again, one of the reasons by I support bicameralism. I think that unicameralism is possible but you have to put an awful lot of energy into making things work and to that extent, I think that it is better to have the two Houses and

in saying that, that is with the expectation that each House will protect its own privilege appropriately to make sure that it is capable of doing its job the way it should.

CHAIR - Richard, thank you very much for coming along. I think we will have to have you back again, if you do not mind. We are trying to run as best we can to a time schedule.

Dr HERR - Of course. I am trying to give you an excuse to keep going.

Laughter.

CHAIR - We could, but it is unfair on others who are waiting.

Dr HERR - No, I meant by having a commission of inquiry as well to parallel your work.

CHAIR - Right. Thank you for coming along. As you can see, there are a number of questions still lined up to catch you at the next occasion, but thanks very much and we will get in touch with you in relation to that next occasion.

THE WITNESS WITHDREW.