2009 (No. 24)

PARLIAMENT OF TASMANIA

JOINT SELECT COMMITTEE ON ETHICAL CONDUCT

Final Report

'Public Office is Public Trust'

Brought up by Mr Wilkinson and presented to the Deputy President of the Legislative Council pursuant to Standing Order 197 (L.C.).

MEMBERS OF THE COMMITTEE

Legislative Council	House of Assembly
Mr *Wilkinson* (Chair)	Mr *Best*
Mr *Hall*	Mr *Llewellyn*
Mr *Martin*	Mr *McKim*
Ms *Thorp*	Mr *Rockliff*

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1 APPOINTMENT & CONDUCT OF THE INQUIRY

1.1 The Honourable Member for Nelson, Jim Wilkinson, the eventual Chair of this Committee, on 17 April 2008 gave notice of a motion in the Legislative Council (the Council) that he intended to move for the establishment of a Select Committee of the Council to inquire into and report upon:-

> *... the issue of ethical conduct, standards and integrity of elected Parliamentary representatives and servants of the State in performing their duties with particular reference to:*
>
> *(a) an assessment of mechanisms currently available to address ethical and open Government in Tasmania;*
>
> *(b) whether existing entities are appropriately equipped to fulfil this function; and*
>
> *(c) the quantum and type of additional resources which may be required;*
>
> *the investigation of possible alternative mechanisms to address issues of ethical and open Government in Tasmania;*
>
> *an examination of legislative requirements and whether legislative change may be required; and*
>
> *any matters incidental thereto.*[1]

1.2 The Honourable David Bartlett MP, on 27 May 2008, gave notice of a motion to establish this Committee, the first day he appeared in the Chamber of the House of Assembly (the Assembly) as Premier.

1.3 The final resolution received the support of the Assembly without a division being taken, as was the case when the Council considered the message from the Assembly requesting its concurrence with the resolution.

1.4 The resolution was as follows:-

> *That a Joint Select Committee be appointed, with power to send for persons and papers, with leave to sit during any adjournment of either House exceeding 14 days, and with leave to adjourn from place to place to inquire into and report upon the issue of ethical conduct, standards and integrity of elected Parliamentary representatives and servants of the State in performing their duties with particular reference to—*
>
> *(a) a review of existing mechanisms currently available to support ethical and open*

[1] Legislative Council, *Notices of Motion and Orders of the Day*, Session of 2008, No. 1.

Government in Tasmania and the capacity to conduct independent investigations;

(b) an assessment of whether those mechanisms need to be augmented by the establishment of an Ethics Commission or by other means and if so by what means; and

(c) any matters incidental hereto.

1.5 The Committee resolved at its first meeting of 17 June 2008 that unless otherwise ordered, the Committee would operate pursuant to the Standing Orders of the Council.

1.6 The Committee further resolved at that meeting, to invite, by way of advertisement on the Parliament of Tasmania Internet page and in the three daily regional newspapers, interested persons and organisations to make a submission to the Committee in relation to the Terms of Reference. In addition to such general invitation, the Committee directly invited a number of persons and organisations to provide the Committee with any information they deemed to be relevant to the inquiry.

1.7 The Committee received 136 submissions and 44 documents as exhibits.

1.8 As previously reported[2], the Committee received a number of submissions from persons which detailed their negative experiences in dealings with public bodies and/or officials in the apparent expectation that this Committee was itself a form of appeals body or investigative authority which had powers and functions that would allow it to investigate or revisit such cases and recommend specific remedy. It is quite clear in the view of the Committee that the inquiry did not extend to an investigation of such cases which was conveyed to relevant witnesses.

1.9 The Committee carefully considered the receipt of all submissions. Such deliberations were conducted within the context of both: the strong desire of the Committee for an open process; and the need to ensure the inquiry was conducted in such a manner to ensure that reputational harm was not caused by the publication of evidence.

1.10 Accordingly, with the exception of one submission which the Committee resolved not to receive as it was submitted

[2] Ethical Conduct, Joint Select Committee on: Interim Report (Paper No. 25 of 2008 (L.C.))

anonymously, all submissions were received and taken into evidence, thus informing the Committee's inquiry.

1.11 The submissions received, taken into evidence and ordered by the Committee to be reported are listed in Appendix 'A'. Such documents were reported with the first Interim Report of the Committee.

1.12 The Committee further resolved however, that some submissions should not be reported in order to ensure that no breaches of natural justice occurred by the denial of any right of reply. Such submissions are listed in Appendix 'B'.

1.13 The submission resolved by the Committee not to be received is Appendix 'C'. Documents tabled by witnesses in the course of the hearings and resolved to be reported by the Committee are listed in Appendix 'D'.

1.14 Documents tabled by witnesses in the course of the hearings and resolved not to be reported by the Committee are listed in Appendix 'E'.

1.15 In order to enable the publication of the transcripts of evidence heard by the Committee in public the Committee provided the Houses with two further Interim Reports[3].

1.16 The Committee met on 23 occasions, such meetings being conducted in Hobart, Launceston and Devonport. A Sub-Committee was appointed for the purpose of conducting interviews in Brisbane and Sydney, such Sub-Committee met on three occasions.

1.17 The 'default' position for the Committee hearing evidence was to examine witnesses in public. The Committee did however resolve on occasion to hear witnesses *in camera.* With one exception, the transcripts of evidence heard *in camera* were resolved by the Committee not to be published. The exception was the evidence of the Solicitor-General. The Committee indicated to the Solicitor-General at the time that it was likely that some of his evidence may be utilised in the report, the Solicitor-General indicated to the Committee that he had no issue with such proposition.

1.18 The Minutes of the proceedings of the Committee and Sub-Committee are detailed in Appendix 'E'.

[3] Ethical Conduct, Joint Select Committee on: Interim Report 2 (Paper No. 26 of 2008); and Interim Report 3 (Paper No. 8 of 2009)

2 SUMMARY OF FINDINGS

The Committee finds that on the evidence presented, the prescriptions of the Electoral Act 2004 regarding the conduct of candidates in relation to: elections: campaigning; and advertising, provide a level of protection appropriate to ensure the proper conduct of elections in Tasmania.

The Committee finds that on the evidence presented, the prescriptions regarding the candidature of State Servants provide the separation from their official position appropriate to enable their participation in election campaigns.

The Committee finds that on the evidence presented, the prescriptions of the Constitution Act 1934 regarding the conduct of members of Parliament in relation to: the holding of an office of profit under the Crown; and attendance in the respective Houses of Parliament according to their duty require no amendment.

The Committee finds that the application of the Act be extended to include people related to a Member of Parliament.

The Committee finds that on the evidence presented, there should be an avenue for any person to pursue a concern in relation to an alleged conflict of interest.

The Committee finds that on the evidence presented, the Code of Ethical Conduct and Code of Race Ethics of the Assembly are valuable public declarations of the standards of conduct expected of Members of that House.

The Committee finds that Members of Parliament would benefit from participation in an appropriate program focussed on the theory and practical application of ethics as they apply to politics specifically and the wider social context.

The Committee finds that there is a lack of any mechanism to allow a member of the public to pursue an alleged breach of either of the Codes and accordingly finds that a need exists to provide a complaints process for the treatment of alleged infringements.

The Committee finds that there is a need for an additional avenue for Members to raise matters of privilege.

The Committee finds that in respect of the Assembly, the current methodology for referrals to the Privileges Committee and the membership of the Committee exposes such Committee to claims of partisanship in the conduct of its affairs.

The Committee finds that it would be prudent for a review of legislation pertaining to the operation of the Parliament of Tasmania be undertaken.

The Committee finds that on the evidence received, the mechanisms available to both Houses of the Parliament to scrutinise the actions of the Executive are considerable but entirely dependent upon levels of resourcing provided to the Parliament to perform this fundamentally important function.

The Committee finds that on evidence received, the issue of the size of the Tasmanian Parliament is worthy of further consideration.

The Committee finds that in order for the Parliament to properly pursue its role as the principle scrutinizer of the activities of the Executive, recognition of the need for an enhanced level of self determination in resourcing is essential.

The Committee finds that the worthy principle of the separation of powers recognised in the enactment of a separate Appropriation Act for the Parliament and associated Offices is to some degree, potentially weakened by the actual control of the appropriations by the Executive.

The Committee recognises that the Executive, as the manager of the Public Account, must of course be involved in any process where expenditure from the Public Account is considered.

The Committee finds that there is community concern that the number of Members of the Parliament of Tasmania is insufficient for the Parliament to properly fulfill its roles in:

- providing the members of the Executive; and
- scrutinising the Executive.

The Committee finds that on the evidence presented, the Code of Conduct for Government Members; the Cabinet Handbook; Government Members Handbook; Instruments of Appointment of Ministerial Staff; and the Caretaker Conventions provide appropriate prescriptions for the conduct of the targeted office holders.

The Committee finds that on the evidence presented, there is a significant need to formalise compulsory induction and on-going training for Ministers, 'Government Members' and their staff.

The Committee finds that on the evidence presented, there is a significant need for the legislative prescription of appropriate penalties for any breach of the instruments abovementioned.

The Committee finds that on the evidence presented, the prescriptions regarding the conduct of State Servants contained in the State Service Act 2000 are appropriate and require no amendment.

The Committee finds that on the evidence presented, there is a significant need to formalise compulsory induction and on-going training for State Servants.

The Committee finds that on the evidence submitted, the new Audit Act provides the most advanced statutory framework in the country.

The Committee finds that "adequate" resourcing for the office of the Auditor-General is critical to enable the full exercise of the powers of that Office particularly in carrying out investigations.

The Committee finds that that the Office of the Ombudsman should be appropriately resourced to enable the full exercise of the powers of that Office.

The Committee finds that there is considerable merit in the formalisation of a relationship between the Office of the Ombudsman and a Parliamentary committee.

The Committee finds that there is a need for an enforcement provision to give effect to the recommendations of the Ombudsman.

The Committee finds that the office of the Director of Public Prosecutions should be appropriately resourced to enable the full exercise of the powers of the Office.

The Committee finds that section 7 of the Police Service Act 2003 is ambiguous and that the divergence of opinion in the interpretation of such section leads to the detrimental perception that operational matters, including criminal investigations, may be directly influenced by members of the Executive.

The Committee finds itself in concurrence with the view that Tasmania Police officers work within a regime which holds them to a higher standard of conduct than other public officials. The Committee notes the effective denial for Tasmania Police officers of the fundamental right to silence enjoyed by every other citizen.

The Committee finds that the adoption of the guidelines submitted by the Commissioner of Police further would reinforce the operational independence of the Tasmania Police Service.

The Committee finds that this specifically targeted review into the Public Interest Disclosures Act 2002 is necessary and awaits its outcome.

The Committee finds that on the evidence presented, the prescriptions contained in the Commissions of Inquiry Act 1995 are appropriate and require no amendment, with the exception of the amendments recommended by the Law Reform Institute.

The Committee finds that this specifically targeted review into the Freedom of Information Act 1991 is necessary and awaits its outcome.

The Committee finds that there is a need for a review of the Criminal Code Act. Notwithstanding the amendments made to the Act, the original statute was enacted in 1924 and the Committee concurs with the view that much has changed since that time.

The Committee finds that on the evidence received, the prescriptions contained in the Judicial Review Act and the Magistrates Court (Administrative Appeals Division) Act are appropriate and require no amendment.

The Committee finds that it would be beneficial for members of the media to appraise themselves in matters of ethical behaviour and processes.

The Committee finds the following areas of concern exist in the mechanisms currently available to support ethical and open Government in Tasmania and the capacity to conduct independent investigations:

- The development of standards and codes of conduct is currently *ad hoc* and organisationally based – there is clearly a need for uniformity of approach across the entire public sector.
- Training and professional development in relation to ethical conduct is similarly of an *ad hoc* nature. The lack of ongoing training for new public officers was of particular concern to the Committee.
- There is a need for the co-ordination of training for all public officers including a community outreach program.

- There is a need for a dedicated research function to support the continual development of standards and codes of conduct.
- There is a need for an authority to provide confidential advice to public officers in relation to the conduct of their duties.
- The current mechanisms for the investigation of complaints-based breaches of the law are appropriate. There is clearly a need for the ability to investigate and expose conduct by public officers that whilst not illegal is nevertheless contrary to the public interest and necessarily constitutes a breach of public trust.
- The Committee is persuaded by the argument that there is a need for a 'triage' function to be performed by a oversight body – to receive; assess; and either refer or investigate complaints received. There is clearly a need for the formalisation of a 'networking arrangement' between the Statutory Officers examined by the Committee: Director of Public Prosecutions; Ombudsman; Auditor-General and State Service Commissioner.

The Committee considered the possible allocation of these functions to the Offices of the Auditor-General and the Ombudsman. Whilst obviously possible by legislative means, the Committee found that such a distribution of tasks may be detrimental to the conduct of the discrete functions of those Offices.

The Committee finds that the need for a new body clearly exists to address the identified deficiencies in the existing system of governance.

The Committee finds that sufficient evidence was received to support the proposition that the law relating to donor disclosure should apply equally to any person or organisation conducting a promotion of a political nature during electoral campaigns.

The Committee finds that sufficient evidence was received to support the proposition that a review be conducted into the desirability or otherwise of public funding of political parties in Tasmania.

The Committee finds that the establishment of a Statutory Officers Committee is a reform worthy of further inquiry by the Legislative Council and the House of Assembly.

3 SUMMARY OF RECOMMENDATIONS

Recommendation 1 – The Committee recommends that the Parliamentary (Disclosure of Interests) Act 1996 be strengthened by amendments to provide for the following:-

(1) The definition of 'related person' to be added. Such definition to mean –

(a) the spouse of a Member;

(b) a child of a Member who is wholly or substantially dependent on the Member; or

(c) any other person –

(i) who is wholly or substantially dependent on the Member; and

(ii) whose affairs are so closely connected with the affairs of the member that a benefit derived by the person, or a substantial part of it, could pass to the Member.

(2) Consequential amendments to require the declaration of a related person's interests in the Registers of Interests.

Recommendation 2 – The Committee recommends that the Local Government Act 1993 be amended to provide for a Register of Interests for each Local Government Council.

Recommendation 3 – The Committee recommends that, with the exception of the detail of each Member's residential address, the Register of Interest of Members of the Legislative Council and the Register of Interests of Members of the House of Assembly be published on the internet site of the Parliament of Tasmania.

Recommendation 4 – The Committee recommends that, in order to provide a further level of public accountability, the Parliamentary (Disclosure of Interests) Act be amended to provide that complaints regarding alleged breaches of the Act may be made to the Tasmanian Integrity Commission (*vide* Recommendation 29).

Recommendation 5 – The Committee recommends that the Legislative Council adopt a Code of Ethical Conduct and a Code of Race Ethics.

Recommendation 6 – The Committee recommends that one of the principal roles of the Tasmanian Integrity Commission (*vide* Recommendation 29) will be to encourage ethical behaviour by developing, in consultation with external bodies such as the Centre for Applied Philosophy and Ethics and the Tasmanian Institute for Law Enforcement at the University of Tasmania:-

- guidelines and codes of conduct;
- training courses;
- resources for Government; and
- civic education to schools, interest groups and the public.

Recommendation 7 – The Committee recommends that, in order to provide a further level of public accountability, complaints regarding alleged breaches of the Code of Ethical Conduct and Code of Race Ethics of the Assembly and any similar code/s of the Council may be made to the Tasmanian Integrity Commission (*vide* Recommendation 29).

Recommendation 8 – The Committee recommends that the Council and the Assembly adopt procedures to enable Members to raise matters of privilege other than 'suddenly arising' as follows:-

1 A Member desiring to raise a matter of privilege must inform the President/Speaker of the details in writing.

2 The President/Speaker must consider the matter within 14 days and decide whether a motion to refer the matter to the relevant Privilege Committee is to be given precedence. The President/Speaker must notify this decision in writing to the Member.

3 While a matter is being considered by the President/Speaker, a Member must not take any action or refer to the matter in the House.

4 If the President/Speaker decides that a motion for referral should take precedence, the Member may, at any time when there is no business before the House, give notice of a motion to refer the matter to the Committee. The debate on the motion must take precedence on the next sitting day.

5 If the President/Speaker decides that the matter should not be the subject of a notice of referral, a Member is

not prevented from giving a notice of motion in relation to the matter. Such notice shall not have precedence.

6 If notice of a motion is given under paragraph (4), but the House is not expected to meet on the day following the giving of the notice, with the leave of the House, the motion may be moved at a later hour of the sitting at which the notice is given.

Recommendation 9 – The Committee recommends that the House of Assembly prescribes that resolutions of its Privileges Committee may only be reached by a bi-partisan majority of the Committee in circumstances where one political party has a majority of members on the Committee.

Recommendation 10 – The Committee recommends that a review of the Privilege Acts and other legislation pertinent to the operation and processes of the Parliament of Tasmania be undertaken in full consultation with the Council and the Assembly.

Recommendation 11 – The Committee recommends that prior to finalising the annual appropriations of Parliament and of independent Statutory Office holders, the Treasurer and/or the Budget Sub-Committee of Cabinet must receive and consider submissions for the annual proposed expenditure for the services of: the Legislative Council; the House of Assembly; Legislature-General; Office of the Ombudsman; Office of the Auditor-General; Office of the Director of Public Prosecutions; and the Tasmanian Integrity Commission (vide Recommendation 29) for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

Recommendation 12 – The Committee recommends that the annual expenditure submissions of Parliament and Statutory Office holders, as submitted to the Budget Sub-Committee of Cabinet, be tabled in each House of Parliament by 30 April each year.

Recommendation 13 – The Committee recommends that in relation to future Consolidated Fund Appropriation (No. 2) Bills, the Clause entitled "Issue, application and appropriation of ..." be drafted to properly reflect that such funds are to be applied for the services of the Parliament and Statutory Offices rather than the current form which states that such funds are applied "for the services of the Government".

Recommendation 14 – The Committee recommends that an independent inquiry be conducted into:-

a. whether or not there should be an increase of the number of members elected to the Legislative Council and the House of Assembly;

b. if an increase is recommended, to report on the way such increase should be achieved; and

c. any matters incidental thereto.

Recommendation 15 – The Committee recommends that the development of guidelines, definitions and instructions applicable to all Members of Parliament and political parties in relation to the appropriate expenditure of public funds be expedited and provided to all members of Parliament.

Recommendation 16 – The Committee recommends that a principal function of the Tasmanian Integrity Commission (*vide* Recommendation 29) be to:-

- Develop standards and codes of conduct to guide public officials in the conduct and performance of their duties;
- Prepare guidance and provide training to public officials on matters of conduct, propriety and ethics;
- Provide advice on a confidential basis to individual public officials about the practical implementation of the rules in specific instances.

Recommendation 17 – The Committee recommends that, in order to provide a further level of public accountability, complaints regarding alleged breaches of standards and codes of conduct by State Servants may be made to the Tasmanian Integrity Commission (*vide* Recommendation 29). Where such complaints are proved but do not amount to criminal conduct, a 'name and shame' process may occur.

Recommendation 18 – The Committee recommends that pursuant to Recommendation 11, the Auditor-General furnish the Treasurer and/or the Budget Sub-Committee of Cabinet with advice appropriate to inform the annual formulation of the proposed expenditures for the Office of the Auditor-General for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

Recommendation 19 – The Committee recommends that the Ombudsman Act 1978 be amended as follows:-

1. To establish a Joint Parliamentary Committee with the following functions:-

a) To monitor and review the performance by the Ombudsman of the Ombudsman's functions under the Act;
b) To report to both Houses on any matter concerning the Ombudsman, the Ombudsman's functions or the performance of the Ombudsman's functions that the committee considers should be drawn to the attention of both Houses;
c) To examine each annual report tabled under this act and, if appropriate, to comment on any aspect of the report; and
d) To report to both Houses any changes to the functions, structures and procedures of the Office of Ombudsman the committee considers desirable for the more effective operation of the Act.
e) To inquire into, consider and report upon
(i) a suitable person for appointment to the Office of Ombudsman; and
(ii) other matters relating to the performance of the functions of the Office of Ombudsman; and
(iii) any other matter referred to the Committee by the Minister responsible for the administration of the Ombudsman Act; and
(iv) to perform other functions assigned to the Committee under the Ombudsman Act or any other Act or by resolution of both Houses.

2. To provide for the review of the non-implemented recommendations of the Ombudsman through the Tasmanian Integrity Commission (*vide* Recommendation 29).

Recommendation 20 – The Committee recommends that pursuant to Recommendation 11, the Ombudsman furnish the Treasurer and/or the Budget Sub-Committee of Cabinet with advice appropriate to inform the annual formulation of the proposed expenditures for the Office of the Ombudsman for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

Recommendation 21 – The Committee recommends that pursuant to Recommendation 11, the Director of Public Prosecutions furnish the Treasurer and/or the Budget Sub-Committee of Cabinet with advice appropriate to inform the

annual formulation of the proposed expenditures for the Director of Public Prosecutions for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

Recommendation 22 – The Committee recommends that section 7 of the Police Service Act 2003 be amended to properly reflect the convention that the Executive cannot direct Tasmania Police on matters of an operational nature.

Recommendation 23 – The Committee recommends that guidelines be prescribed by the Government in consultation with Tasmania Police to clarify the difference between policy and operational matters and where any serious doubt exists as to whether a particular direction related to a policy or operational matter the Commissioner of Police may apply to the Supreme Court of Tasmania for a Declaratory Order.

Recommendation 24 – The Committee recommends that Tasmania Police Internal Investigation files involving allegations of criminal misconduct which the Director of Public Prosecutions has decided not to prosecute should be referred to the Tasmanian Integrity Commission (*vide* Recommendation 29) for independent review as to the adequacy of the investigation.

Recommendation 25 – The Committee recommends that the Government show cause why the recommendations of the Law Reform Institute Report on the Commissions of Inquiry Act 1995 have not been acted upon.

Recommendation 26 – The Committee recommends that the Commissions of Inquiry Act 1995 be amended to provide that on application of a commissioner of inquiry, a magistrate be granted the power to issue a warrant to use listening devices to a commissioner where the magistrate is satisfied that the commissioner holds a reasonable belief that the use of such devices is necessary and appropriate to obtain evidence in relation to a matter relevant to the inquiry. That such power be restricted by the same restrictions as apply to the granting of such warrants to police officers under the provisions of the Listening Devices Act 1991.

Recommendation 27 - The Committee recommends that the Attorney-General initiate a review of section 69 of the Criminal Code Act 1924 to ascertain its current applicability or the need for an amendment to remove any ambiguity or perceived ambiguity.

Recommendation 28 – The Committee recommends that the Attorney-General request the Tasmania Law Reform Institute to

examine and report upon the Criminal Code Act 1924 with a view to proposing recommendations for any necessary legislative change. Such review to be adequately funded by the Government.

Recommendation 29 – The Committee recommends that legislation providing for the creation of the Tasmanian Integrity Commission be drafted.

The objectives of the Commission are to:-

1. improve the standard of governance in Tasmania;
2. enhance public trust that misconduct, including corrupt conduct, will be investigated and brought to account; and
3. elevate the quality of, and commitment to, good governance by adopting a strong, symbolic and educative role.

The Commission will achieve these objectives by:-

1. educating public officials in Tasmania on integrity;
2. investigating allegations of corrupt or inappropriate behaviour made against public officials in Tasmania; and
3. making findings in relation to those investigations and taking the appropriate action.

Recommendation 30 – The Committee recommends that the matters detailed in paragraphs 18.1 to 18.21 of this report be included in the draft legislation.

Recommendation 31 – The Committee recommends that pursuant to Recommendation 11, the Executive Commissioner of the Tasmanian Integrity Commission furnish the Treasurer and/or the Budget Sub-Committee of Cabinet, with advice appropriate to inform the annual formulation of the proposed expenditures for the Tasmanian Integrity Commission for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

Recommendation 32 – The Committee recommends that a review of the Electoral Act 2004 be conducted to provide for the disclosure of the identity of sponsors of political advertising conducted by persons or organisations other than political parties during election campaigns

Recommendation 33 - The Committee recommends the establishment of a Lobbyists Register and calls upon the

Government to progress its commitment to develop such a register.

4 OVERVIEW

4.1 The question as to whether or not there existed a need for an inquiry was one for the two Houses of the Tasmanian Parliament which was self-evidently resolved in the affirmative. The Committee is of the view however, that it is entirely appropriate to provide some background to the decision of the Houses in order to inform any reader's understanding of the prevailing sentiment within the community which brought about the inquiry.

4.2 The following issues broadly represent the focus of the debate in the Assembly on the motion:

- the issue of 'connectivity' between Tasmanians with their democracy;
- the opportunity the proposed inquiry would provide for discussion of the degree and strength of trust in Tasmania's public institutions;
- what flaws, if any, could be identified in the current mechanisms available to support open and ethical conduct by public officials; and
- whether there was a need for a new body, variously described as an: Ethics Commission; Independent Commission Against Corruption (I.C.A.C.); or 'Anti-Corruption Commission'.

4.3 It is a matter of history that a number of public proceedings have, in recent times, given rise to a level of disquiet within both the Tasmanian community and the political echelon of the State. Such was the level of dissatisfaction that some form of intervention by the political leadership was, in the view of many, required to address what was perceived by them as the existence of 'institutionalised corruption' which has emerged as a consequence of the failure of the mechanisms currently in place to support ethical and open Government in Tasmania.

4.4 A number of submissions to the Committee communicated personal impressions in relation to the political culture extant in Tasmania which supported the rationale for an inquiry to be conducted. The frequency of the use of the word 'perception' was noteworthy amongst such submissions. The

following extracts are indicative of the nature of such evidence and address the broad areas of concern expressed by many witnesses:

> *I am very concerned about the operation of state government in Tasmania; as a small state there is a greater danger that the voices of powerful interests will be heard disproportionately by the government, that members of the government itself will have vested interests in such particular concerns, or that they will be unduly swayed by pressure applied by such interests.*
>
> *The most egregious example of this currently relates to the proposal to build a large pulp mill in northern Tasmania.*[4]
>
> *... Tasmania has had a long and tumultuous history of discord, related to allegations of collusion and corruption. This discord is usually related to what are seen to be 'sweet-heart' deals with favoured industries such as Hydro-electricity, mining and forestry. My perception is that much of this discord has risen from people's dissatisfaction with process. Successive Tasmanian Governments, of both persuasions, have been more intent on outcomes than process and have been perceived to cut corners, change the rules or decide what is best for the future of Tasmania, whether or not the majority of Tasmanians happen to agree with them or not.*[5]
>
> *Currently Tasmanian people have low confidence in and expectations of their elected officials and senior public servants with respect to their commitment to open and fair processes across a broad range of issues critical to the future of the State in the challenging times ahead.*
>
> *It is clear to many Tasmanians that there is evidence of poor practice at best and corruption at worst. There is obvious legal and financial discrimination in favour of particular industries and businesses and the strong perception of secrecy in dealing with these industries.*
>
> *Many examples are available as case studies but the forestry industry (and Gunns Ltd in particular) and the gambling industry (and Federal Hotels in particular) are the most 'in your face' examples.*[6]
>
> *Community disquiet over parliamentary shortcuts in the Gunns' pulp mill approval process was a significant factor in the demand for this investigation and its emphasis on 'ethics'. This assessment is reinforced by the demand by groups such as Tasmanians for a Healthy Democracy that a non-parliamentary process be used for this inquiry rather than to entrust it to the joint select committee. Evidence that citizens so distrust the parliament to protect their interests against the Government that they would prefer other mechanisms should deeply concern a parliamentary committee.*

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[4] W.J. Spence, Submission 36, p. 1.
[5] P. Pullinger, Submission 63, p.1.
[6] F. Nicklason, Submission 81, p.1.

Community access to the parliament is not only essential to confidence in it as a democratic institution; it is vital in maintaining belief in its probity.

Parliament must accept its own long-standing obligations on behalf of the people to ensure ethical standards in public life. There can be little doubt that had the Parliament of Tasmania exercised fully its obligations to oversight and restrain Government, much of the controversy in recent years over ethics in politics would have been moderated substantially. It is no service to the Government, or even to members of one's own party or those with whom an MP is philosophically aligned, to compromise parliamentary standards of accountability to promote a Government's agenda. There is no theory of an electoral mandate that supersedes the parliament's responsibility to the people. Thus, the starting point for ensuring ethical behaviour in politics must begin with parliament adhering fully to its own constitutional duties and conventional procedures.[7]

I believe that there are various dysfunctions in Tasmania. They are important and institutionalised and are creating massive unnecessary conflict...

Basically, ethics implies standards. There's not much point having ethics if we don't know what the standards are. It also implies definitions. For our purposes, I would suggest to you that corruption is any condition in which a system works against its own wider interests or causes the system to become unsustainable. For example, I can say that a cancer that suddenly takes over and starts growing at the expense of everything else is a corruption of my body's normal processes. That is what we mean by corruption; we don't mean money in paper bags. That might be one form of corruption but corruption means to corrupt a system into working against its own purposes.

The Universal Declaration of Human Rights in 1948 stated:

'All are equal before the law and they are entitled, without any discrimination, to equal protection of the law.'

That is not true in Tasmania. That demonstrates, as far as I can see, that for the entire population the Government is entirely hypocritical. Whether it is the government of the day or previous governments, that class of problem is creating major anger amongst community members.

The second thing is that everyone has the right of equal access to the public service in this country. That is not true in Tasmania. Many people have been denied access to elements of the public service, most particularly in the pulp mill assessment business. That denial is creating anger...

[7] R. Herr, Submission 45, pp. 2-3.

The other thing is unfairness. When we say to one group, 'We are relieving you of those responsibilities', then we create chaos in the system because we can't predict it. [8]

4.5 These submissions clearly indicated to the Committee the attitude of a number of Tasmanian citizens who made submissions which ranged from at least, a strong sense of breakdown in confidence in specific public institutions and Offices, to at worst, a feeling of betrayal and lack of absolute trust in a flawed and dishonest system of government.

4.6 Such evidence supported the argument that a 'disconnect' between some Tasmanian citizens and their system of government had evolved into distrust which naturally lead the Committee to consideration of how terms such as 'ethical conduct' and 'corruption' were understood and utilised during the inquiry. The Committee was assisted in this task both by a considerable body of literature on the subject and by evidence it received. The Committee is of the view that the inclusion in this Report of relevant extracts of such evidence would be of benefit to any reader.

4.7 The following evidence succinctly expresses one view, repeated by a number of witnesses:-

Many people think that "corruption" only exists when money has changed hands or when the law has been broken. However, integrity specialists and anti-corruption bodies worldwide increasingly use a broader definition of corruption as the abuse of entrusted power for illegitimate goals—goals that may not be limited to financial abuse, but can include enhancing personal or organizational reputation or political power. By this definition, corruption encompasses practices that have previously earned the "lesser" charge of "unethical behaviour"—for instance, cronyism in recruitment practices. It also encompasses practices such as regulatory capture, which occurs when "officials inappropriately identify with the interests of a client or industry."

I believe that it is important for Tasmanians to recognize that a wide range of bad practice, whether illegal or simply unethical, can and should be called "corrupt."[9]

4.8 Rob McCusker, of the Australian Institute of Criminology expands upon the issue:-

Definitions of corruption abound, but the most commonly used one refers to the abuse of a public position for private gain. Corruption is facilitated by bribery, embezzlement and theft but

[8] M. Bolan, Hansard, 6 November 2008, pp. 28/38-39.
[9] W. Russell, Submission 118, p. 2.

also by nepotism and cronyism. Corruption affects both the private and public sectors and is often subdivided into grand and petty corruption which ranges from the provision of small 'gifts' in the former to misappropriation of public assets at the highest levels in the latter. Further classifications distinguish between incidental, institutional and systemic corruption and between political and bureaucratic corruption.[10]

4.9 The submission of Andrew Holliday provided the Committee with a further level of detail:-

"The boundary between corrupt and non-corrupt activities is difficult to define because the issue is at heart an ethical one." (Newburn, 1999)

Most organisational definitions and understandings of corruption are of little use, being too narrow and legalistic in conception to achieve their ostensible goals...

... Corruption is essentially an ethical matter rather than (and before it becomes) a legal one. The Kennedy Royal Commission into police corruption in Western Australia resulted in the Western Australian Police Service adopting a simpler and more useful definition:

Corruption is the abuse of a role or position held, for personal gain, or for the gain or to the detriment of others. This definition is straightforward and comprehensive. It applies to all employees and encompasses all forms of corruption, legal or otherwise. Corruption is at one end of a continuum encompassing a range of behaviours, which includes actions that, although they do not meet the criteria deemed necessary to be regarded as corruption, nevertheless open the way and begin the descent into corrupt activities. Although not all of those who engage in organisational deviance will become 'corrupt' their professionalism and therefore the professional standing of an entire organisation is diminished.

These activities may not themselves be illegal or breach any regulations but they do breach the spirit of those regulations and laws. Practices that are both unethical and pave the way for the development of corrupt practices are sometimes referred to as 'organisational deviance'. Corruption is the extreme culmination of unethical behaviour and organisational deviance is the fuel from which corruption is ignited. By intercepting this process, not only at an individual level but also at the cultural and structural level, an organisation can be fortified against corrupt practice.[11]

4.10 The Committee received further evidence in relation to the usage of terminology relating to ethics:-

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[10] R McCusker, *Review of anti-corruption strategies*, Technical and Background Paper, No. 23, Australian Institute of Criminology 2006, p.4.
[11] A. Holliday, Submission 75, p. 2.

... the noun 'ethic' relates to the moral principles and rules of conduct that distinguish between right and wrong. ... In relation to the pubic administration this involves public officers acting in accordance with the concepts of integrity, transparency and accountability that have been identified by the United Nations...

... In public administration, integrity refers to 'honesty' or 'trustworthiness' in the discharge of their official duties, serving as an antithesis to 'corruption' or the 'abuse of office'. Transparency refers to unfettered access by the public to timely and reliable information on decisions and performance in the public sector. Accountability refers to the obligation on the part of the elected Parliamentary representatives and public officials to act truthfully and competently or suffer the consequences for any unlawful or incompetent action. Above all they must not be corrupt...

The basic cause of corruption is monopoly and discretion without adequate accountability. This implies that the expanding role of government in development has placed bureaucracy in a monopolistic position and enhanced the opportunities for unlimited administrative discretion. Corruption results from excessive regulation, increased bureaucratic discretion and the lack of an adequate, accountable and transparent system.[12]

4.11 Professor Stuart McLean provided insight from an 'extra-political' perspective, that being the ethical framework of medical research:-

... the general set of principles developed for health research can be usefully applied to other situations. Secondly, the methods used in the research workplace to achieve high ethical standards may indicate how this could be accomplished in public life.[13]

There are four main ethical values in human research. The comments under each have been modified to make their relevance to public activities clearer.

Respect for human beings

This means that the intrinsic value of each person is recognised. There are several aspects to this, but of particular relevance here is that the individuals should have the freedom to choose whether to become involved and that this is assisted by the provision of sufficient information, in an understandable form, for them to make this choice. An important consequence is that people involved must be fully informed about a proposal and its risks, in plain language, before they consent to it.

Merit and integrity

Several questions can be used to test whether a proposal has these values. Is the proposal sound, and based on a thorough

[12] R. Patterson, Submission 19, p. 1.
[13] S McLean, Submission 26, p.1.

review of current knowledge gained from previous experience? Do the people involved have the required experience, qualifications and competence to carry out the proposed work?

Justice

This value requires that all people be treated equally. For example, will the burdens be shared fairly amongst those involved? Will there be a fair distribution of any benefits arising?

Beneficence

For those persons involved and for the wider community, are the potential benefits likely to outweigh the risks of harm or other adverse effects?

These values are not exhaustive, and others of particular relevance to government activities include making a contribution to societal goals and a respect for cultural diversity. These and other values could be added to make a more comprehensive list suitable for public life.[14]

4.12 The Committee found that such ethical values apply equally to the administration of government.

4.13 The evidence of the Professor of Philosophy of the University of Tasmania, Professor Jeff Malpas in relation to the issue was also particularly instructive:-

One of the features of ethical practice and expertise is that it depends on judgment, and it is not judgment that is easily reducible to a single set of codes or rules. It is not a tick-a-box system. ... One of the problems with quality assurance measures ... is that (it) has actually degenerated in many cases into, first of all, a tick-a-box or a quality assessment mechanism, or a risk management system.

Risk is an interesting concept because it's a concept that allows you to quantify things. It allows you to do tick-a-box stuff, but risk and ethics are very different concepts. Sometimes in fact ethical conduct might require that you undertake certain risks in extreme cases, so ethics and risk are actually distinct concepts that ought not to be conflated, but certainly within some quality assurance and management systems they are because the aim of ethical review is very often to reduce risk. When that happens you are in danger.

... ethics is fundamentally about judgment. It is about being able to exercise judgment in all sorts of cases and, as I say, it is not reducible to the tick-a-box or the usual sorts of mechanisms that we use when we talk about quality assurance...

...Judgment is a qualitative issue. The quality assurance mechanisms typically try to focus on things like excellence and quality, but they do it in a quantitative fashion.

[14] Ibid, pp. 2-3.

> *... (quality assurance mechanisms)... do not connect at all with the things that we really do, so what you have is a hollowing out. A term like 'excellence' comes to function within a quality assurance system but the meaning that it has in terms of excellence in teaching, which are all matters of judgment, do not connect up with it at all. So not only do you have a corrosion of the capacity to judge and a reduction of judgment down to a tick-a-box arrangement but you also have a hollowing-out of terms. I think that has happened within aspects of the State Service in which many State servants and public servants no longer view, for instance, ethical notions like trust, honesty, apolitical judgment and so on, as meaning anything significant because they are simply viewed as part of a quality assurance mechanism which you tick off that is to do with reducing risk, managing and controlling difficulties rather than meaning anything substantive.* [15]

4.14 The Committee heard that over the last 10 to 20 years, the development of an audit and quality assurance mentality had negatively impacted upon the operation of professional judgment. Such movement has manifested itself in the situation where it is no longer the case, for example, that experts in particular areas are seen as having some better access to the truth of the matter than anybody else does. Professor Malpas cited events of recent history where he said:-

> *... it was quite common for academics on matters like climate change to be attacked and ridiculed, irrespective of their credentials, and it was almost as if anybody could have a view on these matters because it was all a matter of opinion and spin.*
>
> *There have been a number of factors that have led to this unwillingness for people to say they trust any more. Part of it is a loss of clear moral orientation for people, which is not necessarily a bad thing because in the end ethics ought to be about our ability to make our own judgments. At the same time there has been the development of a sense of pluralism - relativism, according to which there really are no judgments that are sound anyway - and the development of a cynicism and scepticism about there being anything on which you can found things.*
>
> *Those are broad social movements and they are very hard to address. Obviously I am not suggesting you can address them here but I do think that when it comes to matters of government, and where we do have some ability to set up structures and to develop different sorts of culture, one of the things we ought to be doing, one of the areas where we should be leading opinion, is trying to return attention to sets of very basic ethical commitments that in fact we all have.*[16]

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[15] J. Malpas, Hansard, 11 September 2008, p. 8.
[16] Ibid, pp.16-17.

4.15 The Committee was directed to the writings of His Holiness the Dalai Lama:-

> *We can think of honesty and dishonesty in terms of the relationship between appearance and reality. Sometimes these synchronise, often they do not. But when they do, that is honesty, as I understand it. So we are honest when our actions are what they seem to be. When we pretend to be one thing but in reality we are something else, suspicion develops in others, causing fear. And fear is something we all wish to avoid. Conversely, when in our interactions with our neighbours we are open and sincere in everything we say and think and do, people have no need to fear us. This holds true both for the individual and for communities.*[17]

4.16 The evidence clearly indicated to the Committee the complexity of the issue on a number of levels, summarised by Professor Malpas as: structural; behavioural; and cultural. The structural level relates to the processes, procedures and formal lines of communication within an organisation, in this case, the system of government. The behavioural level relates to the character of individuals within the system. Finally, the cultural level, which relates to sets of behaviours that are promulgated within organisations, that are exemplified by leading figures within the organisation and upon which expectations on the part of individuals within the organisation and within the wider community are formed. [18]

4.17 Much of the attention of the inquiry was necessarily devoted to a review of matters of structure and process: rules; codes; legislation; organisational relationships; and the vogue 'tick a box' quality assurance compliance regimes. The Committee was strongly motivated however, to also consider what recommendations, if any, might be made to facilitate cultural change to re-dress the very deep seated attitudes of disaffection by many in the Tasmanian community, for without a positive shift in that direction, any structural changes would be fundamentally unsupported.

4.18 In accordance with paragraph (a) of the Terms of Reference, the Committee reviewed the following:-

- Parliament of Tasmania;
- the Executive;

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[17] Dalai Lama, His Holiness the: *Ethics for the New Millenium*, Riverhead Books, New York, 1999, p. 167. Presented to the Committee by Lucia Ikin-de Brauw and added to the collection of the Parliamentary Library, Parliament House, Hobart.

[18] Malpas, pp. 10-11.

- Ministerial staff;
- Tasmanian State Service;
- State Service Commissioner: Office of the;
- Auditor-General: Office of the;
- Ombudsman: Office of the;
- Tasmania Police;
- Public Interest Disclosures Act 2002;
- Commissions of Inquiry Act 1995;
- Freedom of Information Act 1991; and
- Criminal Code Act 1924.

5 PARLIAMENT

5.1 Consideration of the institution of the Parliament of Tasmania within the context of this inquiry entailed the examination by the Committee of two distinct areas: first, a review of the mechanisms in place to subject the operations of the two Houses of the Tasmanian Parliament and the conduct of members of each such House to appropriate scrutiny; and second, the ability of the Parliament to execute its role of scrutinising the Executive through Parliamentary processes. Each such area of inquiry is detailed hereunder.

Parliament - General

Candidates for Parliament

5.2 The submission of the Government broadened the scope of the inquiry to some extent by including the conduct of candidates for election to the Parliament of Tasmania.

5.3 Whilst candidates are neither 'elected Parliamentary representatives' nor arguably 'servants of the State' in any strict sense, the Committee was of the view that it was entirely logical for the conduct of candidates in elections for seats in the Parliament to be included in the considerations of the Committee: first, for the reason that many incumbent Members of the House of Assembly become candidates in General Elections following the dissolution of the House, and Members of the Legislative Council similarly become candidates in the periodic elections for Divisions of the Legislative Council; and second, as potential Members of

Parliament, these individuals' conduct should appropriately be subject to scrutiny.

5.4 The Electoral Act 2004[19] contains a number of prescriptions in relation to candidates seeking election to the Parliament, including members of Parliament seeking re-election, concerning conduct regarding election, campaigning and advertising. These include:

- *Section 187 - electoral bribery;*
- *Section 188 - electoral treating, that is the supply of entertainment, food or promise to donate money with the intention of influencing a person's conduct at an election;*
- *Section 189 - electoral intimidation;*
- *Section 191 - campaign material must be authorised;*
- *Section 196 - candidates names not to used without authority;*
- *Section 197 - misleading and deceptive electoral matters; and*
- *Section 198 - campaigning on polling day.*

There are also rules in relation to electoral expenditure of candidates in respect of Local Government elections. These are detailed in Part 7 Division 6 of the Electoral Act 2004.

Rules for State Servants

An officer of the State Service who is a candidate for election to either House of State Parliament must vacate the office on becoming a candidate, i.e. when nominations have closed, and the person is formally recognised as a candidate.

An employee of the State Service who is a candidate for election to either House of State Parliament does not have to resign prior to contesting a seat but is entitled to leave without pay for a period of up to two months for the purpose of contesting an election - Section 2(2)(b) of the Constitution (State Employees) Act 1944.

If elected, the Constitution (State Employees) Act 1944 provides that service as an employee of the State Service is automatically terminated.

While on leave without pay to contest an election, care should be taken by the employee to ensure compliance with the Code of Conduct provisions as outlined in Section 9 of the State Service Act 2000. The State Service Code of Conduct requires state servants:

- *When acting in the course of their State Service employment, to behave in a way that upholds the State Service principles (the State Service Principles assert that the 'State Service is apolitical, performing its functions in an impartial, ethical and professional manner');*

[19] *Electoral Act* (No. 51 of 2004)

- *To behave in a way that does not adversely affect the integrity and good reputation of the State Service;*
- *To disclose and take reasonable steps to avoid conflicts of interests in connection with State Service employment; and*
- *To use Tasmanian Government resources in a proper manner.*

Rules around the use of Government resources apply at election time and to all State Servants whether standing for election or not. For example, State Servants:

- *Must not use agency resources or their positions to support particular issues or parties during the election campaign; and*
- *Should not use government email, faxes etc. to distribute political material. This action would be a breach of the State Service Code of Conduct.*[20]

5.5 The abovementioned provisions are comprehensive in providing the safeguards to encourage the appropriate conduct of candidates for elections within the jurisdiction.

Findings

5.6 **The Committee finds that on the evidence presented, the prescriptions of the Electoral Act 2004 regarding the conduct of candidates in relation to: elections; campaigning; and advertising, provide a level of protection appropriate to ensure the proper conduct of elections in Tasmania.**

5.7 **The Committee finds that on the evidence presented, the prescriptions regarding the candidature of State Servants provide the separation from their official position appropriate to enable their participation in election campaigns.**

Members of Parliament

5.8 The Committee notes the importance of the opportunity that the periodical conduct of free and open elections provides as the ultimate mechanism available to citizens to hold members of Parliament accountable for their actions and behaviour both individually and in the case of the House of Assembly, corporately.

5.9 The following statutory instruments contain provisions governing the ethical conduct of Members and were considered by the Committee.

[20] Tasmanian Government, Submission 125, pp. 29-30.

Constitution Act

5.10 The Constitution Act 1934[21] prescribes specific offences that apply to Members of Parliament. Some of which relate to ethical behaviour and include:

> *Section 32, which provides that members cannot hold an office of profit, that is, receiving money from the public accounts or because of a Government appointment.*
>
> *Section 33, which provides that any person who holds a contract or agreement with the Government of the State shall be incapable of being elected or of sitting or voting as a member of either House during the time he or she holds that contract. Further, if any member continues to hold a contract under which he or she receives benefit his or her seat will be vacant.*
>
> *Section 34, which provides that a member's seat shall be become vacant in certain circumstances including:*
>
> - *The member fails to attend for one entire session without the permission of such House; and*
> - *The member is attainted of treason or convicted of any crime and is sentenced or subject to be sentenced to imprisonment for any term exceeding one year unless he has received a free pardon.*[22]

Findings

5.11 **The Committee finds that on the evidence presented, the prescriptions of the Constitution Act 1934 regarding the conduct of members of Parliament in relation to: the holding of an office of profit under the Crown; and attendance in the respective Houses of Parliament according to their duty require no amendment.**

Parliamentary (Disclosure of Interests) Act 1996

5.12 The Parliamentary (Disclosure of Interests) Act 1996[23] establishes a register of interests for the members of each House which contains information on any pecuniary and other interests of members. The register of each House is available for public scrutiny and contains full details of the interests disclosed by members. The registers are also required to be tabled in Parliament to ensure that the public can readily see any interests of members which might be perceived to impact on decisions being made in the Parliament.

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[21] Constitution Act (No. 94 of 1934)
[22] Government, p. 32.
[23] Parliamentary (Disclosure of Interests) Act (No. 22 of 1996)

5.13 The object of the Act is to ensure the accountability of Members and enhance public confidence in Parliament. The Act requires disclosure of details of:

- each source of income greater than $500 received by a member, including income from trusts;
- all real estate interests of a member except where the interest is as executor or administrator of a deceased estate of which the member is not a beneficiary or as a trustee related to the member's non-parliamentary occupation;
- any interests or any position, whether remunerated or not, that a member may hold in a corporation, except where the corporation is set up as a non-profit organisation for community purposes. This includes shareholdings;
- any position, whether remunerated or not, held by a member in a trade union, professional or business association;
- all debts owed by the member exceeding $500, except where the money is owed to a relative, a normal lender of money such as a bank or building society or arises from the supply of goods or services as part of a member's occupation outside of parliament.
- gifts of value greater than $500, except where received from a relative;
- disposition of property by a member where there is an arrangement for the member to retain the use or benefit of the property or a right to acquire the property at a later date;
- contributions to travel undertaken by a member of value greater than $250. Travel contributions would not need to be disclosed where provided by the Government, a relative or where made in the normal course of a member's occupation outside parliament. Contributions made by a member's political party for travel on party business are also exempted.

5.14 The disclosure of the private financial and other interests of Parliamentarians is an imposition that is warranted, on balance, in the public interest as it provides a level of transparency which enables one to determine that Members are serving the public, not private, interest when

they take office. Specifically, that they are not using their public office for private gain.

5.15 Failure to provide the relevant information is regarded as a contempt and sanctions are prescribed in the Act.

5.16 The Committee received evidence which detailed concerns relating to the Registers of Members' Interests[24], such concerns arose from three particular issues: a broadening of the application of the Act to include the immediate family of Members; a broadening of the application of the Act to include the issue of 'extra-parliamentary' work; and the availability of the Returns for public scrutiny.

5.17 The Committee carefully considered widening the application of the Act to include the family of a Member. Gerard Carney summarises the arguments against the declaration of family interests as being twofold: "the invasion of privacy and the difficulty for a member in knowing of the relevant interests"[25].

5.18 The counter argument of course is that family interests are just as capable of raising an actual or apparent conflict of interest as the member's own interests and second, that their exclusion would leave open an avenue of avoidance, the mere existence of which could undermine public confidence in the registers.[26]

5.19 The Committee also considered the enforcement of breaches of the Act. At present the legislation defines breaches as a contempt of Parliament and punishable by the relevant House of the Member so offending. The Committee considered whether such a regime might provide an opportunity for partisan protection of Members, particularly in the Assembly.

5.20 The Committee finally considered the lack of a complaint mechanism for alleged breaches of the Act. The Committee noted the procedures in place in Queensland which provide a complaints process for the treatment of alleged infringements. Complaints made by Members about other Members are referred to the Members' Ethics and Parliamentary Privileges Committee, whilst complaints

[24] Parliamentary (Disclosure of Interests) Act (No. 22 of 1996), Part 4.
[25] G. Carney, *Members of Parliament: law and ethics*, Prospect Media Pty Ltd, 2000, p. 362.
[26] Ibid.

from the public are referred to the Committee after a determination has been made that there are reasonable grounds that there is evidence to support the complaint. Such determination being made by the registrar.

5.21 **The Committee finds that the application of the Parliamentary (Disclosure of Interests) Act be extended to include people related to a Member of Parliament.**

5.22 **The Committee finds that on the evidence presented, there should be an avenue for any person to pursue a concern in relation to an alleged conflict of interest.**

Recommendation 1 – The Committee recommends that the Parliamentary (Disclosure of Interests) Act 1996 be strengthened by amendments to provide for the following:-

(1) The definition of 'related person' to be added. Such definition to mean –

(a) the spouse of a Member;

(b) a child of a Member who is wholly or substantially dependent on the Member; or

(c) any other person –

(i) who is wholly or substantially dependent on the Member; and

(ii) whose affairs are so closely connected with the affairs of the member that a benefit derived by the person, or a substantial part of it, could pass to the Member.

(2) Consequential amendments to require the declaration of a related person's interests in the Registers of Interests.

Recommendation 2 – The Committee recommends that the Local Government Act 1993 be amended to provide for a Register of Interests for each Local Government Council.

Recommendation 3 – The Committee recommends that, with the exception of the detail of each Member's residential address, the Register of Interest of Members of the Legislative Council and the Register of Interests of Members of the House of Assembly be published on the internet site of the Parliament of Tasmania.

Recommendation 4 – The Committee recommends that, in order to provide a further level of public accountability, the Parliamentary (Disclosure of Interests) Act be amended to provide that

complaints regarding alleged breaches of the Act may be made to the Tasmanian Integrity Commission (vide Recommendation 29).

Code of Conduct

5.23 Other non-legislative prescriptions for the conduct of Members such as the Code of Ethical Conduct[27] and the Code of Race Ethics[28] of the House of Assembly were cited in evidence. Such codes were adopted as Standing Orders in 1996 following an inquiry of the House of Assembly Select Committee on the Reform of Parliament.

5.24 The Code of Ethical Conduct contains a preamble, statement of commitment and a list of nine general declarations about a range of issues relating to enhancement of ethical conduct, preventing conflicts of interest, gifts and using public property for personal gain. Post Parliamentary employment is also dealt with in the Code.

5.25 The Code of Race Ethics comprises a number of commitments including: respect of cultural beliefs; valuing diversity; help without discrimination; and Aboriginal reconciliation.

5.26 Members of the House of Assembly are required to declare that they have read and subscribe to the Codes when they are sworn in following their election to the House. There is no prescribed mechanism to deal with alleged breaches of the Codes. An alleged breach would be dealt with by the House by way of substantive motion being made.

5.27 Since the inclusion of these Standing Orders, no breach of either of these Codes has been formally alleged in the Assembly.

5.28 The Legislative Council does not have equivalent provisions within its Standing Orders.

5.29 A reference of substance in relation to the Codes was contained in the submission of Emeritus Professor Peter Boyce:-

> *The Select Committee will be well placed to decide the extent to which a new watchdog agency should be entrusted with any function to monitor and advise Parliament itself with regard to its*

[27] House of Assembly Standing Rules and Orders, S.O. 3.
[28] Ibid, S.O. 4.

own ethical standards, but the current code of conduct for members embedded in Standing Orders is quite inadequate. Within the agency's education remit, however, there would be a clear expectation that the electorate be assisted in understanding the ethical basis of conventions which have long informed Westminster-derived parliaments, including ministerial responsibility (notwithstanding that the old text-book definition of that slippery concept requires revision), but the penalties for serious breach of these standards are of course for the electorate to impose.[29]

5.30 The submission of the Commissioner of Police also made reference to the Codes:-

Despite the existence of the code of conduct and register of interests, and similar mechanisms in other Australian jurisdictions, Dr AJ Brown is critical of the 'lack of effective ethical standard-setting and enforcement regimes governing elected parliamentarians and ministers' (Brown 2005: 72). He recommends a number of measures to address this deficiency, including a statutory requirement for a code of conduct for each House of Parliament, for presiding officers of each House, and for Ministers (including ministerial staff), and the appointment of a parliamentary integrity advisor and a parliamentary standards commissioner. [30]

Findings

5.31 **The Committee finds that on the evidence presented, the Code of Ethical Conduct and Code of Race Ethics of the Assembly are valuable public declarations of the standards of conduct expected of Members of that House.**

5.32 **The Committee finds that Members of Parliament would benefit from participation in an appropriate program focussed on the theory and practical application of ethics as they apply to politics specifically and the wider social context.**

5.33 **The Committee finds that there is a lack of any mechanism to allow a member of the public to pursue an alleged breach of either of the Codes and accordingly finds that a need exists to provide a complaints process for the treatment of alleged infringements.**

Recommendation 5 – The Committee recommends that the Legislative Council adopts a Code of Ethical Conduct and a Code of Race Ethics.

Recommendation 6 – The Committee recommends that one of the principal roles of the Tasmanian Integrity Commission (vide

[29] P. Boyce, submission 44, p. 3.
[30] Commissioner of Police, Submission 109, p. 16.

Recommendation 29) will be to encourage ethical behaviour by developing, in consultation with external bodies such as the Centre for Applied Philosophy and Ethics and the Tasmanian Institute for Law Enforcement at the University of Tasmania:-

- ***guidelines and codes of conduct;***
- ***training courses;***
- ***resources for Government; and***
- ***civic education to schools, interest groups and the public.***

Recommendation 7– The Committee recommends that, in order to provide a further level of public accountability, complaints regarding alleged breaches of the Code of Ethical Conduct and Code of Race Ethics of the Assembly and any similar code/s of the Council may be made to the Tasmanian Integrity Commission (vide Recommendation 29).

Privileges Committees

5.34 Pursuant to their respective Standing Orders, at the commencement of every Parliament, both Houses each appoint a Privileges Committee to "report upon complaints of breach of privilege which may be referred to it by the House"[31]. The practice for such complaints being made is for a member to rise in their place in the Chamber/s and speak to the matter of privilege 'suddenly arising'. There is no prescription for matters, other than those 'suddenly arising', to be referred to the Privileges Committees.

5.35 It is, of course possible for the Houses to refer matters to their respective Committees by way of substantive motion. However the Committee was of the view that a need existed to prescribe a mode of referral of matters to such Privileges Committees other than immediately in the relevant House.

5.36 Reference to the issue of members' conduct as part of the proceedings of Parliament is perhaps relevant at this point, particularly in respect of the use of parliamentary privilege, Professor Richard Herr made the following point in his submission:-

[31] Standing Orders and Rules of the Legislative Council, S.O. 170; Standing Orders and Rules of the House of Assembly, S.O. 385.

> *I would like to address the matter of personal conduct in the chambers. Perhaps the most contentious aspect of this in the eyes of the public is the use of parliamentary privilege to impugn the character of other MPs or MLCs. I realise that many might believe the rough and tumble of adversarial politics – disparaging epithets, derision and the like – is the real problem but I do not see this as an ethical concern. Allegations of dubious practices or motivations are vastly more serious since these confirm in the public mind that members could be "getting away" with trickery, dishonesty, or worse – corruption. Unfounded and irresponsible claims are taken up by the media and so given wider public exposure, which discredits the parliament and the Government by innuendo. The answer is not in curtailing privilege to control "coward's castle". The parliamentary privilege to speak freely within the parliament is critical to systemic transparency. However, members must not misuse the public trust by making claims mischievously and solely for partisan advantage. Where there is a genuine issue of corruption, it must be treated in such a way as to respect natural justice...*[32]

5.37 The Committee concurs with the sentiment expressed by Dr Herr. The rules of debate contained in the Standing Orders of each House proscribe: the use offensive or unbecoming words in reference to any other Member; the attribution directly or by innuendo to another Member of unbecoming conduct or motives; and all offensive references to a Member's private affairs and all personal reflections, are deemed to be highly disorderly[33].

5.38 When a Member wishes to pursue a serious matter pertaining to the conduct of another Member, it must be initiated by way of substantive motion. It is incumbent upon the Members of each House to responsibly abide by the Standing Orders and not abuse the privilege of 'free speech'.

5.39 The Committee notes that both Houses have prescribed within their respective Standing Orders a mechanism to enable any person who has been referred to in debate to pursue a claim that they have been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that their privacy has been unreasonably invaded by reason of that reference; and to request that they be

[32] R. Herr, Submission 45, p. 4.
[33] House of Assembly S.O. 181 (1).

permitted to incorporate an appropriate response in *Hansard.*[34]

5.40 There are two principle criticisms of the 'self-regulatory' approach to the enforcement of ethical standards of Members. Gerard Carney outlines them as follows :-

> *The first is the lack of safeguards against political partisanship when a House or committee judges violations of standards. The second is the punitive powers of each House to punish members and others by fine or imprisonment.*
>
> *The former concern could be remedied by the adoption of an independent external body such as ICAC in NSW. The latter concern has been partly addressed in relation to the Commonwealth, Queensland and Western Australian parliaments, where the power to commit for contempt is now subject to restrictions.* [35]

5.41 The Committee sought and received a comparative analysis of the roles and functions of Privileges Committees operating in other Australian jurisdictions. The Committee particularly noted the provisions of the Standing Orders of the Legislative Assembly of the Parliament of N.S.W.

Findings

5.42 **The Committee finds that there is a need for an additional avenue for Members to raise matters of privilege.**

5.43 **The Committee finds that in respect of the Assembly, the current methodology for referrals to the Privileges Committee and the membership of the Committee exposes such Committee to claims of partisanship in the conduct of its affairs.**

Recommendation 8 – The Committee recommends that the Council and the Assembly adopt procedures to enable Members to raise matters of privilege other than 'suddenly arising' as follows:-

1 ***A Member desiring to raise a matter of privilege must inform the President/Speaker of the details in writing.***

2 ***The President/Speaker must consider the matter within 14 days and decide whether a motion to refer the matter to the relevant Privilege Committee is to be given***

[34] House of Assembly S.O. 422 and Legislative Council S.O. 331.
[35] Carney, pp. 389-390.

precedence. The President/Speaker must notify this decision in writing to the Member.

3 ***While a matter is being considered by the President/Speaker, a Member must not take any action or refer to the matter in the House.***

4 ***If the President/Speaker decides that a motion for referral should take precedence, the Member may, at any time when there is no business before the House, give notice of a motion to refer the matter to the Committee. The debate on the motion must take precedence on the next sitting day.***

5 ***If the President/Speaker decides that the matter should not be the subject of a notice of referral, a Member is not prevented from giving a notice of motion in relation to the matter. Such notice shall not have precedence.***

6 ***If notice of a motion is given under paragraph (4), but the House is not expected to meet on the day following the giving of the notice, with the leave of the House, the motion may be moved at a later hour of the sitting at which the notice is given.***

Recommendation 9 – The Committee recommends that the House of Assembly prescribes that resolutions of its Privileges Committee may only be reached by a bi-partisan majority of the Committee in circumstances where one political party has a majority of members on the Committee.

Privileges Acts

5.44 There are six Acts specifically dealing with aspects of Parliamentary privilege and the jurisdiction of both Houses of the Parliament of Tasmania:-

- *Parliamentary Privilege Act* 1858 (22 Vict No. 17);
- *Parliamentary Privilege Act* 1885 (49 Vict No. 25);
- *Parliamentary Privilege Act* 1898 (62 Vict No. 30);
- *Parliamentary Privilege Act* 1957 (No. 72 of 1957);
- *Parliament House Act* 1962 (No. 49 of 1962); and
- *Parliament House Act* 1988 (No. 47 of 1988).

5.45 The Committee informed itself of the statutory provisions of other jurisdictions of the Commonwealth, particularly

Queensland[36] and Federal[37] regarding the operation of their respective Parliaments. Such jurisdictions moved to modernise provisions relating particularly to Parliamentary Privilege. The advantages of such work are obvious:

- consolidation of disparate statutory provisions, some of which are quite old;
- incorporation of contemporary practices, procedures and where appropriate Common Law;
- allows the use of contemporary language.

Finding

5.46 **The Committee finds that it would be prudent for a review of legislation pertaining to the operation of the Parliament of Tasmania be undertaken.**

Recommendation 10 – The Committee recommends that a review of the Privilege Acts and other legislation pertinent to the operation and processes of the Parliament of Tasmania be undertaken in full consultation with the Council and the Assembly.

Parliament – Scrutiniser of the Executive

Responsible Government

5.47 'Responsible Government' is a fundamental concept which refers to the relationship between the Parliament and the Executive.

5.48 The Executive is appointed from amongst the members of the Parliament and maintains its ability to carry out the executive operations of the State only so long as it is able to maintain the support of the Parliament by being responsible or answerable to it.

5.49 Parliament exercises its role as the scrutiniser of the Executive in the following ways:-

- Explanations of Government action are sought during the annual debates on the proposed budget of the Government for which Parliamentary approval is necessary;
- Ministers are required to defend their policies and explain the administration of their portfolios in both Houses of the Tasmanian Parliament;

[36] *Parliament of Queensland Act* 2001.
[37] *Parliamentary Privileges Act 1987* (No. 21 of 1987)

- Ministers require the approval of both Houses to pass legislation and are accordingly responsible to the Houses for their actions in relation to their portfolios;
- Many procedures of the Houses are designed specifically to enable the scrutiny and control of the Government, such as: Question Time; annual Premier's Address or Address-in-Reply debates; general debates; and debates on Matters of Public Importance;
- The Committee system also provides significant opportunities for the Parliament to exercise its scrutiny role and is worthy of particular note.

5.50 The Offices of the Clerk of the Legislative Council and the Clerk of the House of Assembly assist: their respective Houses; Parliamentary Committees; the Presiding Officers; and Members with advisory, procedural, research and administrative support services of a high standard to assist them to effectively undertake their constitutional and Parliamentary duties.

5.51 These services include research and advice on parliamentary practice and procedure, the preparation of documents for use in the House and the provision of staff and equipment.

5.52 The budgets for: the Legislative Council; the House of Assembly; and Legislature-General are determined within the Department of Treasury and Finance with no opportunity for the Members of each House to contribute to their preparation. The appropriations are generally the previous year's appropriation indexed.

5.53 Expenditure by the Parliament is entirely determined by the decisions made by the two Houses. It may well be argued that the ability of the Houses to pursue their role in scrutinising the Executive is limited first, by the ability of the Executive to determine the operational budget for the Parliament; and second, by the inability for any self determination by the Parliament according to proposed activity by that branch of government.

Parliamentary Committees

5.54 The "principal purpose of parliamentary committees is to perform functions which the Houses themselves are not well fitted to perform, that is, finding out the facts of a case or

issue, examining witnesses, sifting evidence, and drawing up reasoned conclusions ... Committees oversight and scrutinise the Executive and are able to contribute towards better Government."[38] Such definition applies to the Tasmanian jurisdiction.

5.55 The following Committees of the Tasmanian Parliament are the principal mechanisms for the scrutiny of the Executive, Government Agencies and the public sector generally:

- Budget Estimates Committees;
- Government Businesses Scrutiny Committees;
- Parliamentary Standing Committee of Public Accounts;
- Parliamentary Standing Committee on Public Works; and
- Parliamentary Standing Committee on Subordinate Legislation.

5.56 Two other Standing Committees, namely the Standing Committee on Environment, Resources and Development and the Standing Committee on Community Development examine a broad range of matters concerning public policy development and implementation. Select Committees are formed from time to time to investigate specific issues.

5.57 Other committees concentrate on the workings of Parliament itself and the conduct of members of Parliament. These include:

- Privileges Committees;
- Standing Orders Committees for both Houses; and
- Working Arrangements of the Parliament Committee.

5.58 Both Houses of course have the ability to establish Select Committees, either of one House, or as is the case with this Committee, a joint Committee to enquire into a specific issue. This form of the Parliament is utilised particularly by the Council as part of its role as a 'House of review'.

Estimates Committees and Government Businesses Scrutiny Committee

5.59 Estimates and Government Businesses Scrutiny Committees are established annually, by Order of the House of the

[38] House of Representatives Practice, 5th Edition (I.C. Harris editor), Department of the House of Representatives, 2005, p. 621.

Assembly and pursuant to the Standing Orders of the Legislative Council. These Committees are one of the most visible forms of the Houses scrutinising the activity of the Executive.

Parliamentary Standing Committee of Public Accounts

5.60 Pursuant to section 6 of the Public Accounts Committee Act 1970[39], this Committee may inquire into, consider and report to the Parliament on any matter referred to the Committee by either House relating to the:

- management, administration or use of public sector finances; or
- accounts of any public authority or other organisation controlled by the State or in which the State has an interest.

5.61 The Committee may also inquire into any:

- matters arising in connection with public sector finances that the Committee considers appropriate; and
- matters referred to the Committee by the Auditor-General.

5.62 The 2008-09 annual budget[40] of the Public Accounts Committee was $6,300.00 and the Committee is supported by a part-time Secretary and the Parliamentary Research Service on a needs basis.

Parliamentary Standing Committee on Public Works

5.63 Pursuant to section 15 of the Public Works Committee Act 1914[41], this Committee is required, upon reference from His Excellency the Governor-in-Council, to consider and report upon every proposed public work (with some exceptions) where the estimated cost of completing such work exceeds $5,000,000.

5.64 The Committee conducts inquiries into works such as the construction of roads; refurbishment of public buildings such as schools and hospitals; and other major infrastructure developments.

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39 *Public Accounts Committee Act* (No. 54 of 1970)

40 Excludes Travelling Allowances and Sitting Fees for Committee Members which are 'Reserved by Law' and paid pursuant to the Parliamentary Salaries, Superannuation and Allowances Act (No. 27 of 1973).

41 Public Works Committee Act (No. 32 of 1914)

5.65 The 2008-09 annual budget[42] of the Public Works Committee was $10,400.00 and the Committee is supported by a part-time Secretary.

Parliamentary Standing Committee on Subordinate Legislation

5.66 Subordinate legislation is the body of Regulations made under the authority of an Act by the Governor-in-Council, that is to say, by the Executive.

5.67 Pursuant to section 8 of the Subordinate Legislation Committee Act 1969[43], the functions of the Committee are:-

(a) to examine the provisions of every regulation, with special reference to the question whether or not –

i. the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it is made;

ii. the form or purport of the regulation calls for elucidation;

iii. the regulation unduly trespasses on personal rights and liberties;

iv. the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions; or

v. the regulation contains matters that, in the opinion of the Committee, should properly be dealt with by an Act and not by regulation; and

(ab) to examine whether the requirements of the Subordinate Legislation Act 1992 have been complied with to the extent that they are applicable to a regulation; and

(b) to make such reports and recommendations to the Legislative Council and the House of Assembly as it thinks desirable as the result of any such examination.

5.68 The 2008-09 annual budget[44] of the Subordinate Legislation Committee is $6,300.00 and the Committee is supported by

[42] Excludes Travelling Allowances and Sitting Fees for Committee Members which are 'Reserved by Law' and paid pursuant to the Parliamentary Salaries, Superannuation and Allowances Act (No. 27 of 1973)

[43] *Subordinate Legislation Committee Act* 1969 (No. 44 of 1969)

a part-time Secretary and a casual research officer as required.

Powers of Parliamentary Committees

5.69 Parliamentary Committees derive their powers from a considerable body of statute and common law. The proceedings of Parliamentary Committees are 'proceedings in Parliament' and as such are principally covered by Article IX of the Bill of Rights 1689[45] which confers protection upon Parliamentary proceedings from being 'impeached or questioned' in any 'court or place out of Parliament'. Such protection offers some of the immunities which are widely recognised under the term 'Parliamentary privilege' and, in respect of the proceedings of Parliamentary Committees, confers immunity to witnesses giving evidence before Committees from defamation for the evidence they give. Such immunity is reinforced by the defence prescribed in section 29 of the Defamation Act 2005[46].

5.70 Apart from protective powers, Parliamentary Committees are empowered with considerable abilities to compel action. This includes the power to summon witnesses and compel the production of documents.

5.71 The importance of the Parliamentary Committee system is recognised in a number of submissions, the following is indicative of how the Parliamentary Committee system is recognised as a vital conduit for involvement by citizens in the work of the Parliament:-

> *The ability for ordinary citizens and persons living in Tasmania to make submissions and be heard - either in public or in camera - through Parliamentary Inquiries and Standing Committees without experiencing any form of reprisal or victimsation, intimidation and duress is essential to safeguarding public confidence in ethical conduct and Open Government.*[47]

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[44] Excludes Travelling Allowances and Sitting Fees for Committee Members which are 'Reserved by Law' and paid pursuant to the Parliamentary Salaries, Superannuation and Allowances Act (No. 27 of 1973)

[45] *Bill of Rights* 1689, (1 Will. & Mar. sess. 2 c. 2)

[46] *Defamation Act* (No. 73 of 2005)

[47] D. Obendorf, Submission 72, p. 6.

Other Parliamentary Oversight

Budget Papers, Annual Reports

5.72 Public sector agencies are obliged to publish certain documents during the year which are tabled in the Parliament to facilitate public scrutiny of their actions.

5.73 Budget Paper No 2 publishes a range of information on each Government department. It includes information on major issues and initiatives as well as detailed financial information. This Budget Paper provides details of the Consolidated Fund appropriations that are included in the Appropriation Bill. It is the basis for Parliament's detailed review of the Appropriation Bill, and proposed agency expenditures.

5.74 Budget Paper No 2 also includes performance indicators for each agency and provides a means of assessing the extent to which areas of an agency are contributing to its overall outcomes.

Annual Reports

5.75 All government departments are required to produce annual reports by virtue of section 36 of the State Service Act 2000 and section 27 of the Financial Management and Audit Act 1990.

5.76 Annually, each head of agency, must prepare a report relating to the performance of the functions and the exercise of the powers of the head of agency under the State Service Act; and the performance of the functions and the exercise of the powers of any statutory officer employed in or attached to that agency and any State authority attached to that agency.

5.77 The annual report must include the financial statements of the department and of any board or organisation over which the agency exercises control. These must be tabled in Parliament within five months of the end of the financial year. Treasurer's Instruction 1111 also specifies certain disclosure requirements related to the procurement information that agencies are required to report in their agency annual reports. Annual reports also report on the performance indicators set in Budget Paper No 2.[48]

[48] Tasmanian Government, Submission 125, pp. 51-55.

Finding

5.78 **The Committee finds that on the evidence received, the mechanisms available to both Houses of the Parliament to scrutinise the actions of the Executive are considerable but entirely dependent upon levels of resourcing provided to the Parliament to perform this fundamentally important function.**

Size of Parliament

5.79 A matter allied to resourcing was the issue of the human resource available in terms of the membership of the Parliament. Such resource is drawn upon to provide members of the Executive; Presiding Officers and other Parliamentary Officers; members of standing and select committees.

5.80 The Committee received a number of submissions which proposed that the reduction in the size of Parliament had negatively affected the standards of government of the State. The issue is a significant one and is of current interest to many in the community. The following extracts summarise the issue:-

> *.... Among other things, the slashing of the size of Parliament has allowed disproportionate power to be wielded by the executive government, and has removed checks and balances which include an effective opposition of sufficient size and strength to be able to adequately "shadow" the government of the day and keep it openly answerable to the electorate; and an adequate government backbench to ensure a culture which encourages (rather than forbids) the canvassing of dissenting views.*[49]
>
> *The parliament-based compliance mechanisms begin with an active and vigilant parliament (the Opposition, backbenches and cross-benches) using the full armoury of parliamentary tactics to protect the public interest (rather than to pursue partisan advantage at any cost). It includes the Legislative Council exercising its powers in plenum as a house of review and in committee fearlessly targeting executive oversight. Lifting the standards of performance in the operation of these vital elements of our parliamentary process is difficult since these cannot be legislatively mandated especially in the face of political party demands for ever greater adherence to executive controlled party whip. In Tasmania's case, however, the executive-focused assault on the Parliament in 1998 to reduce it to a level of impotence can be addressed by legislation. There is a basic incompatibility in retention of the Westminster system in the reduced circumstances since 1998. The basic parliamentary oversight and compliance mechanisms within the parliament*

[49] W. Crawford, Submission 102, p.6.

have been compromised since 1998. The public may not identify these has having been a result of the reduction in the size of the parliament but the evidence on this is clear and recognised by most Tasmanian parliamentarians privately if not publicly. The capacity of the Opposition, length of debates, research for question time, committee service (including the unacceptable practice of Ministers chairing committees) and the like are amongst the accommodations to, or consequences of, the 1998 changes that have undermined the ability of the down-sized parliament to meet its routine, institutional obligations to enforce proper (ethical) restraint on the Crown.[50]

Parliament itself embodies a very large number of mechanisms needed to ensure compliance with ethical standards in public life. Question time, grievance debates, thorough scrutiny of bills, parliamentary committee oversight, parliamentary enquiries, and the like are all essential and routine parliamentary elements of maintaining public trust in an ethical political process. The importance of such trust can be seen in this present joint select committee inquiry. [51]

... 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, (and) what was the Parliament's view on an issue.[52]

...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. [53]

I always thought that when the size of Parliament was cut it was a massive increase in executive power and probably a massive transfer of power away from elected representatives in general. When you cut the size of parliament you are also tending to cut the size of the ministry, which means that more work has to be done outside the ministry by people who are not publicly accountable to the same extent as ministers, nor are they publicly visible to the same extent. So I always saw it as an extremely bad transfer of power away from elected representatives...

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[50] Herr, pp. 3-4.
[51] Ibid, p. 2-3.
[52] R. Herr, Hansard, 11 September 2008, p. 9.
[53] Ibid, pp. 9-10

> *... Politicians are just members of the community. More politicians gives more opportunities for members of the community to actually play a major role in the government of the State and to get involved in that area of public service. We need to look at the positives of this: more politicians equals more opportunities for people to get seriously involved.*
> *...The other thing it did, and I was really worried about it at the time, is that it has gutted the major opposition party. That is why I call it a gerrymander. Perhaps it is the wrong word because it is not your classical, traditional gerrymander which will always favour one party. It tends to favour a reasonably large minor party and the governing party over the major opposition party, which can really find themselves completely cruelled. With Hare-Clark, the fewer people you elect from an electorate, the more skewed and the less fair an electoral system it becomes.*[54]

5.81 **The Committee finds that on evidence received, the issue of the size of the Tasmanian Parliament is worthy of further consideration.**

Budget

5.82 The Committee notes the laudable initiative of the Government in enacting a separate Appropriation Act for: the Parliament; His Excellency the Governor's Establishment; the Auditor-General; and the Ombudsman for the last two financial years which has given appropriate recognition to the fundamental principle of the separation of powers.

5.83 The Committee is of the view that full recognition of the separation of the Parliament from the Executive and its agencies can only be properly achieved by a further level independence in the determination of budgets. Accordingly, the Committee informed itself of alternative mechanisms to achieve an independence of budgetary determination properly reflecting the separation of powers. The processes of the House of Commons of the United Kingdom Parliament and the Senate of the Parliament of the Commonwealth of Australia were considered.

5.84 The House of Commons Commission is comprised of the Speaker (*ex officio*), Leader of the House (*ex officio*) and four other senior members of the House. The Commission is responsible for the administration and services of the House, including the maintenance of the Palace of Westminster and the rest of the Parliamentary Estate.

[54] M. Stokes, Hansard, 10 September 2008, p.6.

5.85 The Commission annually presents to the House of Commons for its approval the 'Estimate for House of Commons: Administration', covering spending on the administration and services of the House for the financial year. The Commission is not responsible for expenditure on Members' salaries, pensions and allowances. These are considered by the Members Estimate Committee, which has the same membership.[55] The Commission is supported by a Management Board.

5.86 A similar process is followed in the Senate. Senate Standing Order 19 provides for the appointment of a Standing Committee on Appropriations and Staffing to inquire into:

- proposals for the annual estimates and the additional estimates for the Senate;
- proposals to vary the staff structure of the Senate, and staffing and recruitment policies; and
- such other matters as are referred to it by the Senate.

5.87 The report of the Senate Committee contains a 'determination' of the figure to be included in the relevant Appropriation Bill to be applied for the services of the Senate.

Findings

5.88 **The Committee finds that in order for the Parliament to properly pursue its role as the principle scrutinizer of the activities of the Executive, recognition of the need for an enhanced level of self determination in resourcing is essential.**

5.89 **The Committee finds that the worthy principle of the separation of powers recognised in the enactment of a separate Appropriation Act for the Parliament and associated Offices is to some degree, potentially weakened by the actual control of the appropriations by the Executive.**

5.90 **The Committee recognises that the Executive, as the manager of the Public Account, must of course be involved in any process where expenditure from the Public Account is considered.**

[55] http://www.parliament.uk/about_commons/house_of_commons_commission_/workinfo.cfm - as sited by the author on 20 April 2009.

5.91 **The Committee finds that there is community concern that the number of Members of the Parliament of Tasmania is insufficient for the Parliament to properly fulfill its roles in:**

- **providing the members of the Executive; and**
- **scrutinising the Executive.**

Recommendation 11 – The Committee recommends that prior to finalising the annual appropriations of Parliament and of independent Statutory Office holders, the Treasurer and/or the Budget Sub-Committee of Cabinet must receive and consider submissions for the annual proposed expenditure for the services of: the Legislative Council; the House of Assembly; Legislature-General; Office of the Ombudsman; Office of the Auditor-General; Office of the Director of Public Prosecutions; and the Tasmanian Integrity Commission (vide Recommendation 29) for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

Recommendation 12 – The Committee recommends that the annual expenditure submissions of Parliament and Statutory Office holders, as submitted to the Budget Sub-Committee of Cabinet, be tabled in each House of Parliament by 30 April each year.

Recommendation 13 – The Committee recommends that in relation to future Consolidated Fund Appropriation (No. 2) Bills, the Clause entitled "Issue, application and appropriation of ..." be drafted to properly reflect that such funds are to be applied for the services of the Parliament and Statutory Offices rather than the current form which states that such funds are applied for the services of the Government.

Recommendation 14 – The Committee recommends that an independent inquiry be conducted into:-

a. whether or not there should be an increase of the number of members elected to the Legislative Council and the House of Assembly;

b. if an increase is recommended, to report on the way such increase should be achieved; and

c. any matters incidental thereto.

6 EXECUTIVE

6.1 The submission of the Tasmanian Government addressed the mechanisms in place regarding Ministers and 'Government Members'. The latter category refers to Private Members of Parliament who are members of the party which holds Government, such a grouping, whilst at odds with the

'textbook definition', does reflect the entrenched usage of the term in the Parliament of Tasmania.

Ministers/Government Members

Ministers are accountable to the Parliament for their actions. The conduct of Ministers and Government members of Parliament is further regulated under other instruments, such as a specific code of conduct, conventions about Cabinet and, in relation to Ministers, specific legislation for which they are responsible. Other general legislative provisions regulating behaviour, such as the Criminal Code, apply to Ministers as they apply to anyone else.

Code of Conduct

In 1998, the former Premier, Jim Bacon, introduced a code of conduct for all Government members of Parliament. The Code was revised in 2006 after the election of Paul Lennon as Premier. All Government members commit to adhere to the Code.

The Code is for the guidance of all parliamentary members of the Government. It sets out principles to assist members in observing the expected standards of conduct in public office and to act as a benchmark against which that conduct can be measured.

The Code includes a reference to the seven principles of public life set out in the first report of the UK Committee on Standards in Public Life.

Accompanying the Code is a policy on the receiving and giving of gifts, which again applies to all Government members. The policy includes provision for the register of gifts received to be tabled annually in Parliament. In addition to Government members of Parliament, the policy applies to the immediate families of Government members of Parliament (ie spouses, partners and dependent children) but only in relation to or consequential on the official duties of the member.

Government Members Handbook

The Department of Premier and Cabinet publishes a Government Members Handbook which provides additional guidance to Ministers and other Government members about:

- *Roles and responsibilities of members;*
- *Application of codes of conduct;*
- *Receipt and giving of gifts;*
- *Official functions;*
- *Caretaker conventions;*
- *Allowances and benefits; and*
- *Ministerial entitlements.*

Cabinet Handbook

In addition to the Government Members Handbook, the Cabinet Handbook produced by the Department of Premier and Cabinet's Cabinet Office provides specific guidance as to the operation of Cabinet and its conventions, such as collective decision making and confidentiality.[56]

Caretaker Conventions

Special rules have been developed which apply to the Executive (covering both the Ministers and their staff, and the public service) during the lead up to an election.

By convention, during the period preceding an election for the House of Assembly, the government assumes a 'caretaker role'. This practice recognises that, with the dissolution of the House, the Executive cannot be held accountable for its decisions in the normal manner, and that every State election carries the possibility of a change of government.

The caretaker period begins at the time the House of Assembly is dissolved and continues until the election result is clear or, if there is a change of government, until the new government is appointed.

During the caretaker period, the business of government continues and ordinary matters of administration still need to be addressed. The role of government agencies remains unchanged, the provision of all normal services continues and statutory responsibilities are not affected.

However, successive governments have followed a set of practices, known as the 'caretaker conventions', which aim to ensure that their actions do not inappropriately bind an incoming government and limit its freedom of action.

While business continues, as it applies to ordinary matters of administration, the caretaker conventions do affect some aspects of executive government. In summary, the conventions are that the government avoids:

- *Making major policy decisions that are likely to commit an incoming government;*
- *Making significant appointments; and*
- *Entering major contracts or undertakings.*

There are also established conventions and practices associated with the caretaker conventions that are directed at protecting the apolitical nature of the State Service, preventing controversies about the role and work of the State Service during an election campaign, and avoiding the use of government resources in a manner to advantage a particular party.

The conventions and practices have developed primarily in the context of the relationship between Ministers and their portfolio

[56] Government, pp.34-36.

departments. The relationship between Ministers and other bodies, such as statutory authorities, government business enterprises and State-owned companies, varies from body to body. However, those bodies should also observe caretaker conventions and practices unless to do so would conflict with their legal obligations or compelling organisational requirements.[57]

6.2 The following submission was received in relation to the Codes:-

The "Code of Conduct for Government Members of Parliament" and in particular the seven principles of public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) are breached on a regular basis and it appears that there is no procedure for punishing members who breach the Code:http://www.dpac.tas.gov.au/govtguidelines/codeofconduct/codeofconduct.pdf

We consider that all members should be formally trained with regard to their duties and responsibilities under the Code. The Code should also be monitored by an independent body and breach of the Code should result in financial penalty/suspension/removal as appropriate.[58]

The code's core principles should also be extended to include all public servants within DPAC together with those executives of Government departments and business enterprises such as the Police and Forestry Tasmania.[59]

6.3 The Government's submission in conclusion made the following observation:-

Induction and training for new Ministers, advisers and electorate staff has traditionally been ad hoc. Following a change of Government, or the appointment of new Ministers or advisers, there is usually some training provided by relevant Government officers, such as the Solicitor-General, about working in a Ministerial Office, but a more structured approach would be beneficial.

The establishment of any new ethical, integrity and accountability system should allow for the development of formal induction training and ongoing support for Ministers and their staff to assist them with appropriate conduct and decision making.

As with members of Parliament generally, Ministers (and their staff) would benefit from the guidance and specific advice that is provided in other jurisdictions by integrity and standards commissioners or similar bodies.[60]

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[57] Government, pp. 44-45.
[58] M. & K. Mars, Submission 21, p. 1.
[59] Ibid., pp. 1-2.
[60] Government, pp. 84-85

Ministerial Staff

6.4 The issue of Ministerial staff received attention in a number of submissions. References centred upon the issues of 'politicisation' of the public service; reduction in the size of Parliament and consequently the size of the Ministry and the concomitant rise in the power and influence of ministerial staff.

6.5 The submission of the Tasmanian Government presented the following overview of the issues associated with this category of public servant and the prescriptions applying to them in relation to ethical conduct:-

> ***Ministerial Staff***
>
> *Over time, ministerial staff have become an increasingly important feature of modern Australian government. Ministerial staff may include advisers in specific portfolio areas or electorate staff. It is now well accepted practice for Ministers to be assisted by these staff who have roles outside of the formal apolitical bureaucratic structures of the State Service.*
>
> *Over the years there has been a growth in the number of ministerial staff, and the seniority and status of some key advisers. Some institutional arrangements exist to support ministerial staff but it is acknowledged that there are gaps.*
>
> *Ministerial staff, who are not permanent State Servants, are appointed by instruments of appointment approved by the Premier. These are known as Crown or Royal Prerogative appointments. Permanent State Servants may also be appointed as ministerial staff. In these cases employees are seconded to ministerial offices via a secondment arrangement made under Section 46(1)(b) of the State Service Act 2000.*
>
> *The instruments of appointment detail a code of conduct for ministerial staff that reflects the wording of the State Service Code of Conduct. Staff are expected to comply with a standard of conduct necessary to ensure that the integrity and ethical standards expected of a servant of the Crown are maintained. This includes that they must:*
>
> - *Behave honestly and with integrity;*
> - *Act with care and diligence;*
> - *Treat everyone with respect and without harassment, victimisation or discrimination;*
> - *Comply with all applicable Australian law;*
> - *Comply with any lawful and reasonable direction given by a person having authority to give the direction;*
> - *Maintain appropriate confidentiality about dealings of, and information acquired;*

- *Disclose, and take reasonable steps to avoid any conflict of interest;*
- *Use Tasmanian Government resources in a proper manner;*
- *Not knowingly provide false or misleading information;*
- *Not make improper use of information gained in the course of employment or of the status, power or authority derived from the employment in order to gain, or seek to gain, a gift, benefit or advantage for themselves or for any other person; and*
- *Declare a gift received in the course of employment or in relation to his/her appointment to their designated manager.*

There is some guidance about current rules for ministerial staff contained in the Government Members Handbook.[61]

Ministerial Advisers

Instruments of appointment for ministerial advisers specify a code of conduct that applies to their employment.

In the past where there has been a change of Government or a number of new advisers appointed there has been some training provided about working in a Ministerial Office, but this has been ad hoc.

Ministerial staffing generally could benefit from a more centralised and formal approach to recruitment, induction and ongoing support. Ministerial staff would benefit from a tailor made set of standards or advisory notes to guide them in their conduct and performance of their duties.

Other public officers

There is no specific training mandated for other public officers such as members of Government Boards and Committees. However, there is guidance in a Corporate Governance Handbook for Government Business Enterprises produced for members of GBE boards by the Department of Treasury and Finance. Often board members of these 'commercial' entities also attend training and workshops arranged by the Institute of Directors. Some agencies also provide other support to boards for which they are responsible.[62]

6.6 An issue which the Committee pursued with relevant witnesses was the rise of contract based employment within the public service. The Committee sought to establish whether such contracts encouraged behaviour which may

[61] Government, pp. 36-38.
[62] Ibid, p. 87.

be viewed as supportive of the Government of the day rather than the traditional non-political approach.

6.7 In response to questioning from the Committee as to whether he had given any consideration to such issue, the Auditor-General indicated that he had referred to the matter in his submission to the Legislative Council Select Committee on Public Sector Executive Appointments. The Auditor-General said:-

> *The notes that I provided to that inquiry, based on the information that I had researched in another jurisdiction, looked into the effect of five-year contracts or contracts for heads of agencies and, I suppose, noted that it could have the effect of what you have just outlined but that they had not, I think, identified any evidence of that.*
>
> *... It (the use of contracts) has become a very common practice. I believe that a five-year contract is a good idea. However, it should be associated with a clear performance agreement with the head of agency and the head of agency should be held to account for that performance. I do not believe that that should in any way, though, reduce the amount of fearless advice they should be giving.*[63]

Findings

6.8 **The Committee finds that on the evidence presented, the Code of Conduct for Government Members; the Cabinet Handbook; Government Members Handbook; Instruments of Appointment of Ministerial Staff; and the Caretaker Conventions provide appropriate prescriptions for the conduct of the targeted office holders.**

6.9 **The Committee finds that on the evidence presented, there is a significant need to formalise compulsory induction and on-going training for Ministers, 'Government Members' and their staff.**

6.10 **The Committee finds that on the evidence presented, there is a significant need for the legislative prescription of appropriate penalties for any breach of the instruments abovementioned.**

[63] M. Blake, Hansard, 7 October 2008, p. 47/12.

7 STATE SERVICE

7.1 The submission of the Tasmanian Government presented the following overview of the issues associated with the State Service:-

> *There are two important forces that have shaped today's public service across Australia. The first is the Westminster ideal that embraces the notions of a merit-based, politically neutral, professional career service. The second are the public sector reform objectives that emerged in the latter part of the 20th century that have included the following objectives:*
>
> - *Efficiency and effectiveness;*
> - *Open and transparent government;*
> - *Internal equity and welfare;*
> - *Responsiveness; and*
> - *Accountability and responsibility.*
>
> *There are a number of mechanisms and guidelines (encapsulated in legislation and codes of conduct) that are designed to ensure ethical behaviour within the public sector.*
>
> *State Service Act 2000*
>
> *In Tasmania, most public sector employees are employed on a permanent basis under the State Service Act 2000.*
>
> *The State Service Act 2000 sets out the way state servants are employed and their expected standards of performance. The principles that underpin the State Service are set out in section 7 of the Act.*
>
> *Most importantly the Act provides for merit protection. This means that employment decisions must be based on an assessment of a person's ability to do the work involved, be objective and fair, avoid patronage and favouritism and unjustified discrimination. The Act requires that actions taken and decisions made in relation to employment are fair and equitable and are taken or made in accordance with sound personnel and management practices.*

7.2 Professor Brian Head made the following submission to the Committee in relation to the State Service Act:-

> *... (the Act) to me represents a fine synthesis of the best kinds of public administration principles and so on. I don't see that as being where there are likely to be major problems.*[64]

7.3 A State Service Code of Conduct is detailed at section 9 of the State Service Act 2000. This establishes standards of behaviour and conduct that apply to all employees,

[64] B. Head, Hansard, 24 November 2008, p. 3.

including senior officers and Heads of Agencies. All State Servants are obliged to:

- Behave honestly, with integrity and to uphold the State Service Principles;
- Treat people with respect;
- Comply with the law;
- Avoid and declare conflicts of interest;
- Not provide false or misleading information or make improper use of information; and
- Declare gifts received.

7.4 The Act (section 17) also establishes the role of State Service Commissioner (the Commissioner's role is discussed in section 5.20 of this Report).

7.5 The Commissioner may issue legally binding directions in relation to any matter relating to the Commissioner's statutory functions. Currently there are 12 Commissioner's Directions (see www.ossc.tas.gov.au). Of particular relevance to ethical conduct are directions concerning the following aspects of public service work:

- Employment decisions in the State Service;
- State Service Principles;
- The investigation and determination of whether an employee has breached the Code of Conduct;
- Reviewing State Service actions; and
- Gifts and benefits.

7.6 In addition to the directions that may be issued by the Commissioner, the Minister responsible for the administration of the State Service Act 2000 may issue Ministerial Directions that relate to the administration of the State Service.

7.7 The Committee was advised, for example, of a current Ministerial Direction of relevance is 'Internet and email use by State Service Officers and employees'. Other directions relate to administrative entitlements, such as leave and travel.

Financial Management

7.8 In its submission, the Government identified the flow of funds associated with the administration of government has

always had the potential to provide opportunity for unethical conduct. Regulation of expenditure and financial audit are important tools in preventing and managing risks of maladministration, misconduct and corruption within government.

7.9 The Financial Management and Audit Act 1990 sets the framework for the flow of funds in the Tasmanian public sector. The Act provides for the management of the public finances of Tasmania in an economical, efficient and effective manner consistent with contemporary accounting standards and financial practices, and for the audit of public finances. The statutory office of the Auditor-General is established by this Act.

7.10 Under the Act, the Treasurer issues instructions about the principles, practices and procedures to be observed in the financial management of all agencies. The Treasurer has issued a range of instructions relating to appropriate procedures related to:

- Procurement and disposal of goods;
- Government contracts; and
- Financial and budget management.

7.11 The Treasurer's Instructions (TI) define ethical conduct in relation to these matters. For example, TI 1101 Procurement Principles: goods and services provides (in part) that:

> *(c) Government buyers must observe the Procurement Ethical Standards detailed below and abide by the Procurement Code of Conduct also detailed below.*
>
> *<u>Procurement Ethical Standards</u>*
>
> *i. All business must be conducted in the best interests of the State, avoiding any situation which may impinge, or might be deemed to impinge, on impartiality;*
>
> *ii. Public money must be spent efficiently and effectively and in accordance with Government policies;*
>
> *"public money" means money, negotiable instruments or securities of any kind for the payment of money collected, received or held by a person for or on behalf of the Crown in right of the State and includes all money forming part of, or payable to, the Public Account (Financial Management and Audit Act 1990);*
>
> *iii. Agencies must purchase without favour or prejudice and maximise value in all transactions;*

iv. *Agencies must maintain confidentiality in all dealings; and*

v. *Government buyers involved in procurement must decline gifts, gratuities, or any other benefits which may influence, or might be deemed to influence, equity or impartiality.*

Procurement Code of Conduct

Buyers must:

vi. *Ensure that all potential suppliers are provided with identical information upon which to base tenders and quotations and are given equal opportunity to meet the requirements;*

vii. *Establish and maintain procedures to ensure that fair and equal consideration is given to all tenders and quotations received;*

viii. *Offer a prompt and courteous response to all reasonable requests for advice and information from potential or existing suppliers;*

ix. *Promote fair and open competition and seek value for money for the Government;*

x. *Be equitable in the treatment of all suppliers of goods and services;*

xi. *Seek to minimise the cost to suppliers of participation in the procurement process;*

xii. *Protect confidential information;*

xiii. *Deal honestly with suppliers;*

xiv. *Keep accurate records to justify the process and any decisions made;*

xv. *Complete a conflict of interest declaration and take steps to avoid involvement in any procurement activity where any conflict of interest (actual or perceived) may arise; and*

xvi. *Abstain from soliciting or accepting remuneration or other benefits from a supplier for the discharge of official duties.*

For all purchases, agencies must ensure that the procurement process meets public sector probity requirements, that value for money is obtained and that the separation of roles and responsibilities between the contractor and agency staff is maintained for the duration of the contract. [65]

Probity Issues

7.12 Probity issues are dealt with in the Department of Treasury and Finance publication Probity Guidelines for Procurement,

[65] Government, pp. 41-43.

which can be found in the Buying for Government section of www.purchasing.tas.gov.au, under Resources (Publications).

> *(d) Agencies must require suppliers to act ethically and in accordance with relevant industrial relations and occupational health and safety legislation."*
>
> *As another example, TI 1106 (about Goods and Services procurement valued at more than $10 000 but less than $100 000) provides:*
>
> - *Agencies must ensure that persons submitting quotations are dealt with fairly and equitably during the quotation process;*
> - *Fair and impartial procedures must be in place in relation to receiving and opening all quotations; and*
> - *Quotations must be fairly and equitably evaluated in a manner that is consistent with the Government's procurement principles. The final decision must be able to withstand public scrutiny.*

7.13 The Committee notes the following recommendations of the Parliamentary Standing Committee of Public Accounts in the report entitled "Inquiry into Television Advertisements by the Tasmanian Greens":-

> *The Committee recommends that:-*
>
> - *A set of guidelines, definitions and instructions applicable to all Members of Parliament and political parties in relation to the appropriate expenditure of public funds be developed and provided to all members of Parliament;*
> - *The Auditor-General be requested to develop such instructions, guidelines and processes...*[66]

Recommendation 15 – The Committee recommends that the development of guidelines, definitions and instructions applicable to all Members of Parliament and political parties in relation to the appropriate expenditure of public funds be expedited and provided to all members of Parliament.

Personal Information Protection

7.14 The Personal Information Protection Act 2004 regulates the collection, maintenance, use and disclosure of personal information relating to individuals. Personal information means any information or opinion in any recorded format about an individual whose identity is apparent or is reasonably ascertainable from the information or opinion.

[66] Public Accounts: Parliamentary Standing Committee of. "Inquiry into Television Advertisements by the Tasmanian Greens", Paper No. 20 of 2008, p.15.

There are a number of principles set out in the Act that set standards and rules for the way information should be collected, used, stored and disposed of. The public sector must comply with these principles. The Ombudsman has the responsibility for overseeing the operation of the Personal Information Protection Act 2004. [67]

Education and Training

7.15 David Obendorf provided the following recommendations in relation to the training of state Servants in ethics:-

> *(1) Begin at the top: All SES personnel receive particular training and awareness in what constitutes ethical conduct, standards and integrity. Such training should be conducted by competent ethicists.*
>
> *(2) The State Service includes ethics training in induction codes for new public servants and defines a charter of ethical conduct, standards and integrity.*[68]

7.16 In terms of existing educative and training mechanisms available to State Servants, the Government's submission indicated that 'as a rule' Government Departments have induction manuals for new staff. It is generally the responsibility of a manager or direct supervisor to go through the induction process with the new member of staff. This may include some discussion about the State Service Code of Conduct and other rules of conduct such as computer or motor vehicle use.

7.17 There may be opportunity for more ethics training to be provided as part of employee induction tailored to the sorts of decisions each employee will be required to make in their work.[69]

7.18 The Department of Premier and Cabinet through the Public Sector Management Office offers a number of programs aimed at raising awareness about ethics and ethical behaviours. These include:

- Introduction to the Public Sector which includes a number of modules such as the structure and functions of government, role of the Auditor General, state service employment and the code of

[67] Government, pp. 38-44.
[68] D. Obendorf, submission 72, p. 8.
[69] Government, p.87.

conduct and an introduction to ethical decision making;

- Codes of conduct in Values Principles in Practice. This is run by the Australian Public Service Commission and examines employee responsibilities, breaches of the Code of Conduct and the legislative framework; and
- Ethical Decision Making. This introduces a reflective model for ethical decision making and highlights ethical implications that flow from decisions in the workplace.

7.19 The Government submitted that there is scope to provide more thorough induction and ongoing training and support to State Service employees, members of Parliament, ministerial staff and other public officers. This may be effectively achieved through an Ethics Commission.[70]

Office of the State Service Commissioner

7.20 The State Service Act 2000 provides for a State Service Commissioner. The functions of the Commissioner include:

- Upholding, promoting and ensuring adherence to the State Service Principles;
- Evaluating the application within agencies of practices, procedures and standards in relation to management of, and employment in, the State Service;
- Evaluating the adequacy of systems and procedures in agencies for ensuring compliance with the Code of Conduct;
- Investigating alleged breaches of the Code of Conduct by Heads of Agencies and to report to the Premier on the results of such investigations; and
- Undertaking reviews of actions related to the selection of a person or an employee to perform duties or of any other State Service action that relates to a person's employment in the State Service.

[70] Government, pp. 88-89.

7.21 In addition, the Minister responsible for the State Service Act 2000 may request the Commissioner to conduct an investigation into any matter which relates to the administration of the State Service.

7.22 The State Service Commissioner also has investigatory powers. Section 19 of the State Service Act provides for the State Service Commissioner to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of the Commissioner's functions under this Act.

7.23 In particular the Commissioner may, for the purpose of carrying out the Commissioner's functions under the State Service Act:

- Summon any person whose evidence appears to be material to any determination of the Commissioner;
- Take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations; and
- Subject to some exclusions, require any person to produce documents or records in the person's possession or subject to the person's control that relate to matters of administration for the purposes of this Act.

7.24 Failure to appear, answer questions or produce material when required to do so by the Commissioner is an offence carrying a fine of up to 10 penalty units.

7.25 There are a range of sanctions (including ultimately dismissal) that may be applied if a State Servant is found to have breached the Code of Conduct.[71]

7.26 The submission of the Commissioner of Police provides further detail:

> *The State Service Commissioner is appointed pursuant to s 17 of the State Service Act 2000. The functions of the State Service Commissioner include promoting adherence to the State Service Principles, evaluating the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct, and investigating alleged breaches of the Code of Conduct by Heads of Agencies and reporting to the Premier on the results of such investigations. In conducting an investigation, the Commissioner has the power to summon a person whose evidence appears to*

[71] Government, pp. 58-60.

be material, take evidence on oath or affirmation and require any person to provide documents or records in their possession.

Commissioner's Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct – provides Heads of Agencies with the power and responsibility to both investigate and determine alleged breaches of the Code of Conduct in their Agency (State Service Commissioner, 2007).

The State Service Commissioner is required to send an annual report to both Houses of Parliament on the performance or exercise of his functions, and may at any time submit a report to the Minister with respect to any matter arising out of the performance or exercise of the Commissioner's functions or powers under the Act.[72]

7.27 In evidence before the Committee, the Acting State Service Commissioner made the following submission:-

In broad terms that office has three roles. One is to perform an advisory role to the employer - the Government and agencies. The second is to be involved in the development of employment policies and practices, recruitment programs and training programs and the third is to perform the independent statutory role that relates to ensuring that things run as they should. In practical terms the way that things are managed is that those more management-type activities have been delegated to the Secretary, Premier and Cabinet, and the State Service Commissioner has only retained the role of the independent statutory function in terms of doing those things that preserve the integrity of the service, evaluate what is happening in the service and undertake reviews of the decisions that are made in the service.[73]

7.28 The importance of the Office of State Service Commissioner was also touched upon by Professor Brian Head

As a former public service commissioner, my view is that public servants need all the help they can get to act independently and with integrity where this is necessary. The only way we can be assured that they will do that is if the political system, particularly the ministerial ranks, exhibit strong actual and symbolic commitments to good behaviour and to independence and integrity and an office like the State Service Commissioner has sufficient stature to give some protection to public servants who do wish to make a stand when they need to and to protect, in effect, good behaviour from political influence.[74]

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[72] Commissioner of Police, Submission 109, p. 19-20.
[73] I. Frawley, Hansard, 27 March 2009, p. 45.
[74] B. Head, Hansard, 24 November 2008, p. 3.

7.29 This view was supported by Professor Malpas who lamented the reduction of the laudable objectives of the State Service Act to a "disciplinary document":-

> *We have a State Service Act which has a code of conduct which sets out various principles - various ethical principles, I emphasise. I was involved in promulgating that legislation within the State Service. It was very clear that that was to be understood at setting out an ethical basis for conduct in the State Service.*
>
> *One of the things that has greatly disappointed me is that it does not seem to have worked in that way. Instead it is seen primarily as a disciplinary document. The commitment to things like the apolitical character of the State Service, which is a value that is enshrined in the act itself, seems to carry very little weight in the way the State Service actually operates. That is not to say that State Service employees do not believe it is important but they find it very difficult to see how that can be carried through. I think that is very worrying. I do not think that it is just characteristic of the Tasmanian State Service; I think that it is true of the Commonwealth public service as well. The apolitical nature of public service advice is supposed to be one of the values to which the service is committed. But in fact it is a commitment that is invariably not realised, not kept.*
>
> *So when I talk about ethics it is about absolutely fundamental things. They are actually the principles and commitments that make possible a functioning society, community and government. Within the private sector this is being recognised more and more. Look at any of the business ethics literature over the last five years or even 10 years and you will see the concepts that have been figuring at the centre of discussions of what counts as good business are increasingly concepts like the concept of trust - which is actually the most important one.*
>
> *There is also the absolute necessity of developing adequate systems of consultation, the building of confidence within organisations, systems that allow people to communicate or to dissent when that is necessary. I actually think that one of the things that we have done within our public service, and to some extent within our political domain, is to cut down on some of those basic commitments. Certainly I think that is so within the State Service.*
>
> *When I talk about ethics I am not talking about quality assurance structures or risk management structures; I am not talking about political correctness. I am talking about the basic commitments that enable us to operate as members of the community, as members of an organisation, as members of a government if that be the case. I think that is an absolutely central point, particularly when one of the issues that ought to be concerning us is how we actually rebuild trust in government. We all know that one of the*

features of public life in societies like ours over the last 20 to 25 years has been that people increasingly say they have less and less trust in government and in public organisations generally.

So I want to put ethics at the very centre of this. I think that it has to be at the centre and I think that it has to be a conception of ethics understood in this fundamental sense. That means this is not just about icing on top of the cake. Ethics is not some luxury you buy in when everything else is satisfied. It is actually at the heart of good and effective government, just as it is at the heart of good and effective business and at the heart of good and effective organisational structure. I am not just saying that on the basis of a philosopher who has his head in the clouds and likes to theorise about these things. I am saying that on the basis of clear empirical evidence that suggests that, for instance, in the private sector the most effective organisations are actually those that maintain high levels of trust internally and high levels of trust externally, and there is a very close relationship between the two.[75]

Findings

7.30 **The Committee finds that on the evidence presented, the prescriptions regarding the conduct of State Servants contained in the State Service Act 2000 are appropriate and require no amendment.**

7.31 **The Committee finds that on the evidence presented, there is a significant need to formalise compulsory induction and on-going training for State Servants.**

Recommendation 16 – The Committee recommends that a principal function of the Tasmanian Integrity Commission (vide Recommendation 29) be to:-

- ***Develop standards and codes of conduct to guide public officials in the conduct and performance of their duties;***
- ***Prepare guidance and provide training to public officials on matters of conduct, propriety and ethics;***
- ***Provide advice on a confidential basis to individual public officials about the practical implementation of the rules in specific instances.***

Recommendation 17 – The Committee recommends that, in order to provide a further level of public accountability, complaints regarding alleged breaches of standards and codes of conduct by State Servants may be made to the Tasmanian Integrity Commission (vide Recommendation 29). Where such complaints are proved but do not amount to criminal conduct, a 'name and shame' process may occur.

[75] J Malpas, Hansard, 11 September 2008, pp. 4-5

8 AUDITOR-GENERAL: OFFICE OF THE

8.1 The Auditor-General is responsible for audits made pursuant to the provisions of Financial Management and Audit Act 1990, the Government Business Enterprises Act 1995, the Local Government Act 1993, and other Acts. The Auditor-General also has responsibilities in respect of Commonwealth grants and payments to the State under Commonwealth legislation.

8.2 The Auditor General is an Officer of Parliament and accordingly reports directly to Parliament. Such mechanism emphasises the independence of the Office and reinforces the role of the Parliament in holding the Government accountable for fulfilling its financial responsibilities.

8.3 In addition to matters pertaining to financial management, the Auditor-General has a role in conducting performance audits. Such audits are designed to test the efficiency, effectiveness and economy of activities of the Government. The results of the Auditor-General's assessments are reported to Parliament and provide a mechanism to identify opportunities for improved performance.

8.4 For the purposes of an audit performed by the Auditor-General he or she is entitled to full and free access at all reasonable times at no cost to inspect:

- All documents and such other information and records which the Auditor-General considers necessary for the purpose of the Act; and
- Public money, other money or money of a public body; and
- Public property or other property;

that is or are in the possession, custody or control of any person.

8.5 The Auditor-General may make copies of, or extracts from, any of those documents or other information or records.

8.6 There are financial penalties for failing to produce material required by the Auditor-General.[76]

[76] Government, pp. 57-58.

8.7 The Committee questioned the Auditor-General as to whether or not he had the power to investigate Ministers, he responded as follows:

> *My mandate is to conduct financial audits. Those are the things that I have to do. My mandate also gives me discretionary power to conduct audits of efficiency, effectiveness and economy. It also enables me to carry out investigations. Again, that is also discretionary, but only in relation to matters that affect the accounts of the Treasurer or of any public body and where it may affect public money or public property. So the advice I was seeking was: how does that relate to a minister in this case?*
>
> *My powers also enable me to seek information and seek documents. I can seek documents from any public servant. I cannot seek documents from a minister. I can, however, require any person to come and see me to talk about an audit that I might be doing. The definition of 'person' is important there. The Solicitor-General has advised me that a person can include a minister, as long as I direct my request to that minister to come and see me in his personal capacity, not in his capacity as a minister or as a member of the Crown or as an officer of any kind. It has to be directed to him in his personal capacity.* [77]
>
> *(as to my power to investigate a Minister) the advice from the Solicitor-General is yes. Can I also qualify that by saying that in discussing something with a minister I can then only do so as it relates to my mandate. So I can only talk to that minister in relation to the mandate I have and that is, in this case, the investigative powers which are in relation to the accounts of the Treasurer or a public body or in relation to public expenditure. If the minister may have done something that was inappropriate but did not involve the expenditure of money, I then could not inquire into that minister.* [78]

8.8 The Committee questioned the Auditor-General as to whether or not he perceived any deficiencies in his statutory power or the resourcing provided for his office. The Auditor-General responded:-

> *The (new) audit bill will solve any deficiencies that are there but even without those changes to things such as my power to investigate a private company I believe that I have not been restricted so far. If I have wanted to do something I have done it.*[79]
>
> *As far as my current resources are concerned, they are adequate. I did put a case together to the Treasurer last year for some extra resources because what I am finding is that the level of requests*

[77] M. Blake, Hansard, 7 October 2008, p. 47/1.
[78] Ibid.
[79] Ibid., p. 47/4.

for me to conduct audits has gone up many-fold since I have been here. I am meeting with the Treasury officials about this very matter this week in response to the Premier's 10-point plan but I had done the work a year ago. What we found was that in the three or fours years leading up to my start here we were looking at about six requests to conduct investigations in a four-year period. That has grown to more than 30 - close to 40 - investigations in the four years since then. I am starting with that workload. [80]

Findings

8.9 **The Committee finds that on the evidence submitted, the new Audit Act provides the most advanced statutory framework in the country.**

8.10 **The Committee finds that "adequate" resourcing for the office of the Auditor-General is critical to enable the full exercise of the powers of that Office particularly in carrying out investigations.**

Recommendation 18 – The Committee recommends that pursuant to Recommendation 11, the Auditor-General furnish the Treasurer and/or the Budget Sub-Committee of Cabinet with advice appropriate to inform the annual formulation of the proposed expenditures for the Office of the Auditor-General for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

9 OMBUDSMAN: OFFICE OF THE

9.1 The Ombudsman is an independent statutory officer reporting directly to Parliament whose functions are prescribed by the Ombudsman Act 1978. The Ombudsman's role is to investigate complaints about public authorities which includes State Government Departments, Tasmania Police, Local Government Councils, Government Business Enterprises and the University of Tasmania. Some persons and bodies are not public authorities for the purposes of the Act, including the Director of Public Prosecutions, the Solicitor-General, the Auditor-General and judges and magistrates.

9.2 The aim is to resolve individual complaints and to promote fairness, openness and good public administration in the state of Tasmania. This service is free, independent and impartial.

[80] Ibid, pp. 47/7-8.

9.3 The Ombudsman also:

- Reviews decisions under the Freedom of Information Act 1991;
- Oversees and investigates disclosures under the Public Interest Disclosures Act 2002;
- Reviews decisions affecting the release of information under the Adoption Act 1988;
- Examines Tasmania Police compliance with the Telecommunications (Interception)Tasmania Act 1999;
- Reviews certain decisions of the Commissioner of Police under the Witness Protection Act 2000; and
- Investigates complaints under the Personal Information Protection Act 2004.

9.4 Pursuant to section 20A(1) of the Act, the Ombudsman may make any preliminary enquiries that he or she considers necessary for the purpose of ascertaining if a complaint should be investigated.

9.5 In accordance with Division 3 of the Act, the Ombudsman may commence an investigation, and pursuant to section 24 of the Act has available to him/her the powers specified in Part 3 of the Commissions of Inquiry Act 1995 (e.g. the power to require persons to appear before him/her to give evidence or produce any document or thing relevant to the investigation).

9.6 A person is not excused from giving information, or producing a record or answering a question, when required to do so by the Ombudsman on the ground that to do so would disclose legal advice furnished to a government department or other authority.

9.7 However, there are some special circumstances in which the Attorney-General may determine that disclosure of the contents of a specified record would be contrary to the public interest.

9.8 If after an investigation the Ombudsman finds evidence of defective administration he or she will prepare a report for the principal officer of the public authority which will include recommendations for action to rectify the situation. A report may also be prepared for the relevant Minister.

9.9 Section 23A(7) of the Ombudsman Act 1978 provides that if during or after an investigation the Ombudsman believes that there is evidence of a breach of duty or misconduct on the part of any member, officer or employee of a public authority, and that in all the circumstance the evidence is sufficient to justify his or her doing so, the Ombudsman is to bring the evidence to the notice of the responsible Minister (if the evidence concerns the principal officer of the public authority) or the principal officer of the public authority (in any other case).

9.10 If the Ombudsman feels that after a reasonable time the public authority has not taken appropriate steps in accordance with his or her recommendations, the Ombudsman may send a copy of the report to the Premier and responsible Minister, and ultimately lay a report concerning the matter before each House of Parliament.

9.11 While the Ombudsman does not have any power to enforce recommendations, it is rare for an authority not to accept the Ombudsman's recommendations.

9.12 The submission of the Ombudsman contained the following in relation to the investigation of actions of Ministers:

> *The controversies which have given rise to the establishment of the Joint Select Committee have mostly involved Ministers of the Crown. When such controversies arise, public comment is frequently made that the actions under scrutiny need investigation for the protection of the public interest. Such investigation may be desirable if only to "clear the air", to give reassurance or to shed light on workings of government that would otherwise be unknown. A good example might be the investigation by the Auditor-General of the payment made to the former Governor, Richard Butler AC...*
>
> *Looking at the list of existing powers of investigation ... the investigating authorities with the strongest powers are a Commission of Inquiry, the police and the Ombudsman.*
>
> *The likelihood of a Commission of Inquiry being established to investigate alleged misconduct by a Minister is low. Commissions of Inquiry are established by the Governor on the advice of the government of the day, and no government is likely to subject itself to the long-drawn-out publicity and unpredictability associated with a Commission of Inquiry when the subject of the inquiry is the conduct of one of its own.*
>
> *The police will naturally become involved in the investigation of Ministerial conduct which may be criminal, where the nature of that conduct is sufficiently known for a complaint or reference to the police to be made. An example of this is the police investigation into the conduct of then Minister Bryan Green in the Tasmanian*

Compliance Corporation affair. However, a police investigation may not shed light on all aspects of a controversy.

What then of alleged or apparent Ministerial misconduct which may deserve investigation in the public interest, but which does not attract or is not addressed by a police investigation?

The actions of Ministers raise particular issues for the Ombudsman, for it will frequently be impossible to describe these as "administrative action taken by or on behalf of a public authority", within the terms of s 12(1) of the Ombudsman Act, recognising that the expression "public authority" is compendiously defined in s 4 of the Act. Section 12(5)(a) also forbids the Ombudsman from questioning the merits of a decision taken by a Minister.

Ministers also create a problem for the full application of the PID Act because the Act only applies to "improper conduct", and the definition of this expression in s 3(1) refers to conduct which, if proved, would constitute either a criminal offence or "reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of a public officer who was, or is, engaged in that conduct". These latter words are inapposite to the situation of a Minister, meaning that the Act can only apply to Ministers in so far as their misconduct would, if proved, constitute a criminal offence.

In contrast, s 9(1)(d) of the ICAC Act has the qualifier that conduct does not amount to corrupt conduct unless "in the case of a Minister of the Crown or a member of a House of Parliament" there has been "a substantial breach of an applicable code of conduct".

To better explain these observations about the PID Act, the Ombudsman only has an obligation to investigate a disclosure under the Act that he has first determined to be a "public interest disclosure" (s 39), and such a determination depends upon the Ombudsman being satisfied, relevantly, that the disclosure shows or tends to show that the relevant public officer "has engaged, is engaging or is proposing to engage in improper conduct in their capacity as a public officer" (s 30(2)). The definition of "improper conduct" is therefore all-important.

It might be thought that the absence of wording in the definition of "improper conduct" in s 3(1) of the PID Act which is equivalent to that in s 9(1)(d) of the ICAC Act is an oversight, but I do not think that this is so. The effect of such an omission is that the Ombudsman can only determine that a disclosure made to him under the Act about the conduct of a Minister is a public interest disclosure if he is satisfied that the disclosure shows or tends to show that the conduct, if proved, would constitute a criminal offence. If the Ombudsman was to come to such a conclusion, he would naturally feel obliged to refer the matter to the police for investigation in accordance with s 41. Hence the obligation of the Ombudsman under the PID Act to investigate a disclosure under the Act which he has determined to be a public interest disclosure will not in practice apply to alleged Ministerial misconduct.

This is compatible with the fact that, as I have explained, the Ombudsman's power under the Ombudsman Act to scrutinise the conduct of Ministers is limited. Presumably the policy view behind both Acts is that Ministers should not be exposed to the potential embarrassment of an investigation by an unelected official such as the Ombudsman, and that if they are accused of misconduct which does not lead to their resignation or police action, their future lies in the hands of the Parliament and with voters when they next face election.

The range of investigative powers that I have listed in the previous section of these submissions does not therefore enable the investigation of alleged misconduct by a Minister which may not be criminal. Faced with an allegation of misconduct which does not appear to involve criminal conduct, a government and the relevant Minister may decide to "tough it out", and wait for the controversy to pass, and the facts of the matter may never be fully known. The end result may be loss of confidence by the community in their leaders.

The central issues for the Joint Select Committee in the present context would therefore seem to be (1) whether Ministerial misconduct should be susceptible to independent investigation, whether or not the government of the day wishes this to occur; and (2) if it is thought that it should, who should instigate it and who should carry it out.[81]

9.13 The submission of the Commissioner of Police detailed the powers of the Ombudsman in relation to inquiries into the Police Service:

Complaints about Police

In accordance with guidelines developed several years ago, complaints to the Ombudsman about Police are initially referred to Police Internal Investigations for a decision about whether the complaint will be investigated at District level or by Internal Investigations, and the Ombudsman monitors the progress of the investigations. Once the investigation is complete, Internal Investigations reports to the Ombudsman who reviews the investigation and may conduct a fresh investigation.

The Ombudsman has stated that 'in the main, the investigations conducted by Tasmania Police under the eye of the Ombudsman have been thorough and fair, and if there have been any concerns about an investigation, these concerns have been conveyed to the Police to be addressed' (Ombudsman, 2007: 19).[82]

9.14 Many of the submissions made to the inquiry mention issues relating to the roles and functions of the Office of the Ombudsman:-

[81] Ombudsman Tasmania, Submission 113, 3-4.
[82] Commissioner of Police, pp. 20-21.

The Ombudsman's office must be put fully beyond influence from the Crown to avoid even the appearance of executive interference. This agency owes its origins to the desire by parliaments to provide relief and redress from unfair or improper executive action. I believe that at least four changes to the current arrangement should be pursued to secure this end. These are:

- *Taking the office out of the executive branch and lodging it within the Parliament;*
- *Renaming the office to demonstrate this change;*
- *Increasing the resources available to the office to do its job; and*
- *Widening the powers of the office to enable early intervention in a matter where warranted.*

The Ombudsman should be brought within the parliamentary structure and the title redesignated as a "Parliamentary Commissioner for Administration" or something similar. I realise that in some quarters of Government these changes, especially in title, might be argued to be merely symbolic. Nonetheless, even if they were, I believe they would help to refocus public appreciation on its independence from the executive branch. And, this in itself would be a desirable objective but I do believe more is at stake. The reassignment of staff to the Parliament would bring a different dynamic to resourcing this vital office and protect it more effectively against executive interference. Certainly, along with a proper mechanism to enable the Ombudsman to treat directly with a supervisory parliamentary committee, would enable the Ombudsman office to more routinely resolve any day-to-day difficulties with the Government over issues of administrative process and probity.

Limitations on the reach of this office ought to be lifted as well. It is arguable that the office is under-resourced. I am not in a position to sustain this concern with "dollars and cents" evidence based on research. Yet, it is a complaint made to me over the years by people within the process whose judgments I respect. In any case, if the office is to extend its reach, it would need additional resources to carry out extra duties I would wish to see incorporated in its sphere of activity. At present, the Ombudsman's office appears largely restricted in intervening in a matter until other avenues of redress have been fully exhausted. This can impose lengthy delays and costly legal manoeuvres on a citizen suffering petty administrative abuse. An early intercession by the Ombudsman office could serve to remind the agency concerned of the need to observe all aspects of administrative propriety and so obviate later, more serious remedial action. It would also reinforce public confidence in the administrative process while, usefully, preventing miscarriages of justice by keeping the process "on the rails".

I believe this idea should be extended more generally to include a mechanism that might be described as a form of integrity

compliance triage. Complaints that are vexatious, mischievous, misconceived or otherwise defective do need to be sorted out through a process that assists the public to retain confidence that their suspicions are not being buried for the convenience of politicians or public servants. On the other hand issues that merit more immediate attention should be addressed expeditiously and by the appropriate agency. Every enforcement or integrity compliance agency will have its own procedure for dealing with matters brought before it even those by self-referral. However, as noted above, not all can intervene as early or directly as some complainants would wish. Moreover, charges of impropriety are not always taken to the appropriate agency by complainants so the moment passes or the opportunity is lost.[83]

The Tasmanian Ombudsman plays a vital role in investigating and resolving the grievances experienced by individuals against particular decisions taken in relation to their affairs. However, the Ombudsman is not empowered, equipped or resourced to deal with corruption and misconduct of public officials.

Since the late 1980s, throughout Australia the complexity of dealing with intentional wrongdoing or misconduct by appointed and elected public officials has contributed to the establishment of additional integrity systems in the form of anti-corruption commissions. The first such commission, namely the Independent Commission Against Corruption (ICAC) was created in New South Wales in 1988. The Fitzgerald Inquiry into possible illegal activities and associated misconduct in Queensland led to the formation of what is now the Crime and Misconduct Commission (CMC) in 1990. The Corruption and Crime Commission (CCC) of Western Australian commenced in 1989 and followed a series of poor and corrupt practices in public administration in that State.

It is submitted that it is not viable to task the Tasmanian Ombudsman's office with the responsibility to tackle the integrity issues which have become apparent in the State in recent times. Firstly, the focus of the Ombudsman is rightly on defective administration rather than corruption or public misconduct. It would dilute the role of the Ombudsman to shift its current focus to the field of corruption and misconduct.

Secondly, and critically, the Ombudsman does not have jurisdiction over the actions of Ministers and Members of Parliament. The recent history of Tasmania is sadly replete with examples of public misconduct at this level, with no existing body being able to adequately investigate the issues raised in the cases which have done so much to erode trust in the institutions of government.[84]

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[83] R. Herr, Submission 45, pp. 5-7.

[84] Cassy O'Connor, Submission 123, p. 6.

> *One would hope that the Ombudsman would fulfil the role of an ICAC but unfortunately this doesn't appear to be the case. The Ombudsman appears to be unwilling/unable to do more that check that the correct procedure has been followed and, if it has, that appears to be the end of the matter regardless of the actual outcome. This does nothing to prevent unethical behaviour if this deeply entrenched within the system.*[85]

9.15 The Committee questioned the Ombudsman as to whether the independence of the Office of the Ombudsman should be made explicit in the Tasmanian legislation. Specifically, whether there should there be a prescription which provides that the Ombudsman is an officer of the Parliament and not subject to direction by any person about the way the Ombudsman performs his functions under this act or the priority given to investigations. The Ombudsman responded:-

> *It is important that the Ombudsman be independent in deciding where his resources go and whether or not he is going to get into a particular matter. I definitely agree with that. The statement that the Ombudsman is an officer of the Parliament and is independent would be very helpful.*[86]

9.16 The Committee drew upon the provisions of the Queensland and New South Wales legislation which both provide for parliamentary committees which deal with the Ombudsman. Whilst section 16 of the Tasmanian Act provides for reference by either House or a committee, joint or single, to the Ombudsman for investigation, and the Ombudsman is required to conduct an investigation and submit a report the Committee sought the view of the Ombudsman as to whether or not he saw any merit in the formalisation of a relationship between the Office of the Ombudsman and a parliamentary committee, much the same as the Public Accounts Committee has with the Auditor-General. The Ombudsman responded:-

> *I definitely do. I think it is important for public perception that the office, although independent, is closely engaged with the Parliament. I think it is important for the Ombudsman to have feedback, for there to be some measure of accountability other than through the annual report. In its way, and this is true of quite a few statutory offices, it can be a fairly lonely position and yet the*

[85] P. Synge, submission 20, p. 2.
[86] S. Allston, Hansard, 27 March 2009, pp. 60-61.

responsibilities are on us, so the more engagement there is with the people to whom the officer is accountable the better.[87]

9.17 The Ombudsman further elaborated upon the work of his office:-

There are two sides to the Ombudsman's work. There is the stuff that everybody knows about, the complaint management work, which is a core function, but the Ombudsman's Act is quite explicit that the power of the Ombudsman is to investigate administrative action by public authorities. Then it goes on to say in what circumstances you do so. It is quite explicit that you do so either from a complaint or on your own motion or on, as you mentioned earlier, Jim, some of those referrals. Own-motion work is a critical part of the function. It is not an add-on and it is not elective. It is something that a person, like myself, has to do.

If I see something that I think should not be happening on a administrative basis - be it inefficient practice, poor practice, breach of human rights, misconduct, corruption - and it falls within my bailiwick then I have to consider whether or not I am going to do it. Obviously I have to do it with a sense of judgment and not waste resources and things of that nature.

At the moment the Department of Treasury, as a result of the Premier's 10-point plan, is reviewing my resources. That review is not complete but it is shaping up as showing that I have adequate resources to carry out my complaint management functions. I do not disagree with that unless suddenly there was some increase in demand that is not anticipated, but the own-motion work is not resourced.

At the moment, as is well known - it is on the public record - I am carrying out an investigation into the management of maximum security at Risdon Prison. My hope was, and I said publicly, that I would have it completed by Christmas. We are now in March and we are some weeks or a couple of months away from having that finalised. Part of the reason for that is that only recently did I finally decide I had to take an officer off line in order to get the work complete, because it is the experience everywhere, including mine, that it is not possible to do a major investigation and do your complaint management work at the same time. It is a constant distraction. That is in a way a practical answer to the question. I have not got to the point of having an investigation team. I have had to do it with the officers who do the complaint management work and that necessarily creates delays. I have a number of things which really beg attention but they just have to be fitted in around what we are doing and I do not think as a result we do as good a job as I would like to do.[88]

[87] S. Allston, Hansard, 27 March 2009, pp. 61-62.
[88] S. Allston, Hansard, 27 March 2009, p. 62.

9.18 In separate correspondence to the Committee subsequent to his appearance, the Ombudsman provided the Committee with additional detail as to the monetary resources available to his office:-

> *I recall you asking whether I have sufficient money to embark upon a significant investigation if that were necessary. My answer was that this would be a problem. At the time I had in mind my recurrent funding, and did not advert to some funding which I presently have in reserve.*
>
> *A significant amount of money was held in a Special deposits and Trust Fund for the office when I was first appointed. This had at the time been earmarked for the anticipated cost of replacing the office's case management system. That system has now been replaced and I am left with a sum of $281,000. This sum is in a trust fund, which I have entitled "Enquiries". I have been reluctant to use these monies until now, because I believe that it is necessary to have some money to call on if a major enquiry is needed. I would not like to be in the position of having to persuade the Department of treasury and Finance of the desirability of a particular investigation in order to obtain funding for it. It is important that, as an independent statutory officer, I have freedom of action in this respect.*[89]

9.19 **The Committee finds that that the Office of the Ombudsman should be appropriately resourced to enable the full exercise of the powers of that Office.**

9.20 **The Committee finds that there is considerable merit in the formalisation of a relationship between the Office of the Ombudsman and a Parliamentary committee.**

9.21 **The Committee finds that there is a need for an enforcement provision to give effect to the recommendations of the Ombudsman.**

Recommendation 19 – The Committee recommends that the Ombudsman Act 1978 be amended as follows:-

1. To establish a Joint Parliamentary Committee with the following functions:-

a) To monitor and review the performance by the Ombudsman of the Ombudsman's functions under the Act;

b) To report to both Houses on any matter concerning the Ombudsman, the Ombudsman's functions or the performance of

[89] Correspondence dated 3 April 2009 from Simon Allston, Ombudsman to the Hon. Jim Wilkinson MLC, Chair, Joint Select Committee on Ethical Conduct.

the Ombudsman's functions that the committee considers should be drawn to the attention of both Houses;

c) To examine each annual report tabled under this act and, if appropriate, to comment on any aspect of the report; and

d) To report to both Houses any changes to the functions, structures and procedures of the Office of Ombudsman the committee considers desirable for the more effective operation of the Act.

e) To inquire into, consider and report upon

(i) a suitable person for appointment to the Office of Ombudsman; and

(ii) other matters relating to the performance of the functions of the Office of Ombudsman; and

(iii) any other matter referred to the Committee by the Minister responsible for the administration of the Ombudsman Act; and

(iv) to perform other functions assigned to the Committee under the Ombudsman Act or any other Act or by resolution of both Houses.

2. To provide for the review of the non-implemented recommendations of the Ombudsman through the Tasmanian Integrity Commission (vide Recommendation 29).

Recommendation 20 – The Committee recommends that pursuant to Recommendation 11, the Ombudsman furnish the Treasurer and/or the Budget Sub-Committee of Cabinet with advice appropriate to inform the annual formulation of the proposed expenditures for the Office of the Ombudsman for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

10 DIRECTOR OF PUBLIC PROSECUTIONS: OFFICE OF

10.1 The Director of Public Prosecutions (DPP) is appointed under the Director of Public Prosecutions Act 1973 and can only be removed from office for cause (incapacity, misbehaviour or bankruptcy). The DPP has complete independence in decision-making but remains accountable to Parliament through an annual report.

10.2 In its submission, the Government acknowledged that "the independence of the DPP is extremely important as it

guarantees that decisions to prosecute are made free of any external influences"[90].

10.3 In the Annual Report of 2006-07, the DPP reports that he and his office undertook the prosecution of all criminal trials, pleas of guilty, breaches of suspended sentences or conditional discharges and bail applications in the Supreme Court. The DPP and his office also conducted lower court appeals and appeals in the Court of Criminal Appeal as well as all civil litigation on behalf of the State of Tasmania. The office also provided representation and advice to Agencies and Departments involved in prosecutions and proceedings in the Magistrate Court and Tribunals and provided representation in appropriate circumstances for officers of Courts and Tribunals and other decision makers whose decision or actions were the subject of review.

10.4 In addition to these activities, section 12 of the Director of Public Prosecutions Act 1973 also allows the DPP to:

- Act as counsel for a person who is not part of the Crown on the request or direction of the Attorney-General; and
- Carry out such other functions ordinarily performed by a practitioner as the Attorney-General directs or requests.

10.5 The DPP has significant discretion in the prosecution of criminal matters and applies a transparent set of criteria in making a decision to prosecute a case. The primary consideration in the exercise of this discretion is whether there is sufficient evidence to justify the initiation or continuation of a prosecution, followed by whether there is a reasonable prospect of securing a conviction. There are a number of other factors that are also taken into account when determining whether it is in the public interest to proceed with a prosecution. These include the seriousness (or triviality) of the crime, the staleness of the complaint, mitigating or aggravating factors associated with the crime. These are set out in the DPP's prosecution guidelines which are available at:-

www.crownlaw.tas.gov.au/dpp/prosecution_guidelines.[91]

[90] Government, p. 60.
[91] Government, 60-61.

10.6 The submission of the Commissioner of Police included the following detail relating to the ability of the DPP to investigate matters other than those referred to that office by the Attorney-General:-

> *Pursuant to s 12(1)(f) of the Act, the Attorney-General may direct or request the DPP "to carry out such other functions ordinarily performed by a practitioner". In July 2006, the DPP received a request and direction from the Attorney-General to direct and supervise an investigation into the formation of an agreement between the former Deputy Premier, Mr Bryan Green, and the Tasmanian Compliance Corporation. As a result of the subsequent investigation conducted by the DPP, charges were laid against Mr Green and Mr John White.*
>
> *As a result of the circumstances in which the Bryan Green – TCC investigation was conducted, it has been suggested that the DPP has the capacity to conduct other independent criminal investigations. However, it is submitted that it is debatable whether the DPP does in fact have the power to conduct an investigation pursuant to a direction from the Attorney-General under s 12(1)(f) of the Act. In fact, in a letter to the Hon N. McKim MHA, the current DPP Mr Tim Ellis SC indicated that he had misgivings that to direct and supervise an investigation would not be a function ordinarily performed by a (legal) practitioner.*
>
> *Whatever the true position at law, it is clear that, as Mr Ellis has since stated, the DPP does not have a general power to investigate matters referred to him by parties other than the Attorney-General.*[92]

10.7 The Committee noted the passing reference made in evidence relating to the appropriate separation of the functions of investigator and prosecutor. Most prosecutions at the summary jurisdiction level are conducted by officers of Tasmania Police. Whilst the Committee is entirely satisfied that such prosecutions are conducted appropriately, it notes the movement in some jurisdictions to consider the separation of the roles of investigator and prosecutor and considers that issue worthy of further consideration.

10.8 The Committee noted the recent Annual Reports of the Director of Public Prosecutions in which he has consistently drawn the attention of the Government to resourcing provided to his office.

[92] Commissioner of Police, pp. 23-24.

Finding

10.9 **The Committee finds that the office of the Director of Public Prosecutions should be appropriately resourced to enable the full exercise of the powers of the Office.**

Recommendation 21 – The Committee recommends that pursuant to Recommendation 11, the Director of Public Prosecutions furnish the Treasurer and/or the Budget Sub-Committee of Cabinet with advice appropriate to inform the annual formulation of the proposed expenditures for the Director of Public Prosecutions for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

11 TASMANIA POLICE

11.1 The Police Service Act 2003[93] establishes a police service in Tasmania. The principal role of the police is to investigate criminal activity and enforce the law.

11.2 Generally, where there are allegations of criminal activity it is the responsibility of Tasmania Police to investigate. In investigating crimes, police have a number of coercive powers provided by way of legislation and common law. The use of these powers is guided by Police Standing Orders and the directions of the Commissioner of Police. Some examples of police powers include the power to arrest, enter property with or without warrants in certain circumstances, seize and secure property, interrogate, bail and bring persons before the courts. These powers are contained in various statutes. In cases of criminal activity allegedly committed by police officers special arrangements exist for those investigations. There is a specific internal investigations unit established within the office of the Commissioner. It is staffed by a commander, inspector and four other police officers who report directly to the Deputy Commissioner. The unit is secure with access restricted to authorised personnel.[94]

Section 7

11.3 Section 7 of the Act received particular attention in evidence presented to the Committee. The focus of such attention was in relation to establishing whether or not the Tasmania Police is statutorily independent of the Executive and

[93] Police Service Act (No. 75 of 2003)
[94] Government, 64-65.

consequently seen to be beyond political influence. Section 7 states:-

> *7. Responsibilities of Commissioner*
>
> *(1) The Commissioner, under the direction of the Minister, is responsible for the efficient, effective and economic management and superintendence of the Police Service.*
>
> *(2) Matters for which the Commissioner is responsible include, but are not limited to, the following:*
>
> *a. determination of the organisational structure of the Police Service;*
>
> *b. determination of the number, type and location of police stations and other buildings and structures used for the purposes of the Police Service;*
>
> *c. determination and allocation of duties within the Police Service;*
>
> *d. performance evaluation;*
>
> *e. discipline within the Police Service;*
>
> *f. training, education and development programs to ensure efficient and effective performance of duties;*
>
> *g. the establishment of internal grievance-resolution procedures.*
>
> *(3) The Commissioner may –*
>
> *a.. issue orders, directions, procedures and instructions for the efficient, effective and economic management and superintendence of the Police Service; and*
>
> *b. do anything else necessary or convenient for the efficient, effective and economic management and superintendence of the Police Service.*

11.4 Argument as to how this section should be interpreted turned entirely on the import given to the words "under the direction of the Minister" and particular whether or not such directions applied to what are generally known as 'operational matters'. The importance of the argument being that political influence may be brought to bear on the conduct or indeed the 'non-conduct' of criminal investigations by the Minister for Police inappropriately directing the Commissioner.

11.5 The submission of the Commissioner of Police gives considerable detail of the case law supporting the argument that the Police Service is independent of the

Executive. Such submission also addresses whether the view of the courts is reflected in practice:-

> *In the final report of the Wood Royal Commission, Wood J expressed concern at the terms of s. 8(1) of the NSW Act which provided that the responsibility of the Commissioner of Police for the management and control of the Police Service is 'subject to the direction of the Minister'. Wood J reports that in the course of roundtable discussions it was said that there is a recognised convention that the Minister is concerned with matters of 'policy' and not with 'operational matters'. He suggests that if this is so, then 'the statute should reflect that situation, defining what is policy and what is operational, and providing for resolution of any overlap' (Wood 1997: 237). Wood J recommends replacing s 8(1) with a provision to the same effect as s. 37 of the Australian Federal Police Act 1979 which specifies the type of directions the Minister can give to the Commissioner, and the type of reports the Minister can request the Commissioner to provide.*
>
> *The relationship between the Victorian Chief Commissioner and the Government was examined in the Ministerial Administrative Review conducted by John Johnson. Johnson points out that the Minister for Police and Emergency Management has almost no formalised role within the Police Regulation Act 1958, although the Minister's responsibility is clearer in relation to financial management of Victoria Police through the Financial Management Act 1994 (Johnson, 2001).*
>
> *Unlike other jurisdictions, such as NSW and Tasmania, the Police Regulation Act 1958 (Vic) does not include a Ministerial direction power. Instead, section 5 of the Act provides that the Chief Commissioner is, subject to the directions of the Governor in Council, responsible for the 'superintendence and control' of Victoria Police.*
>
> *Johnson notes that:*
>
> > *"The 'rule of thumb principle often cited in relation to the respective roles of the Government (Minister) and Victoria Police (Chief Commissioner) is that the Government is responsible for policy and Victoria Police for policing operations or enforcement. While this principle of operational independence is widely accepted, its application in specific instances can be quite vexed and create confusion because it relies on convention and accepted practice rather than legislation" (Johnson, 2001: 4).*
>
> *To address this lack of specificity in terms of the respective roles of the Minister and the Chief Commissioner, Johnson recommended that the Victorian legislation include a Ministerial direction power broadly defined to ensure operational independence. He suggested that:*
>
> > *"Consideration should also be given to incorporating within the proposed Ministerial direction power a non-exhaustive*

list of matters on which the Minister cannot direct the Chief Commissioner including, for example, decisions to investigate, arrest or charge in a particular case; or to appoint, deploy, promote or transfer individual sworn staff members" (Johnson, 20001: 5).

Fleming (2004) examined the relationship between Police Commissioners and Ministers in three Australian jurisdictions: South Australia, Queensland and New South Wales. She suggests that the law in these jurisdictions is ambiguous, and that there is no uniform understanding of what to expect. She also observes that local custom and practice varies between states and over time.

In his PhD thesis titled Police Minister and Commissioner Relationships, Pitman (1998) examines the relationship between various Police Ministers and Commissioners in Queensland and New South Wales from 1970-1995. His findings suggest that in many cases the parties did not have common understanding of their respective roles and responsibilities which in some cases led to irreconcilable differences.[95]

11.6 The Solicitor-General's interpretation of section 7 is as follows:-

... I should make some preliminary comments. The Police Service Act 2003 replaced the earlier act, the Police Regulation Act 1898, and made a number of changes. It established what is called the Tasmanian Police Service and it makes provision for the membership of that service and, in particular, it creates a number of ranks, including, commissioner, assistant commissioner, deputy commissioners, inspectors and the like.

...So it created a disciplined force, if you like, not that there was an undisciplined force before, but the police service was created as a service with the several ranks that are explained and set out in the act. It also created the position of commissioner and the interesting thing about the position of commissioner, when you look at it, is that the act casts upon the person who holds that appointment, responsibilities in addition to the responsibilities that he holds by virtue of his being a police officer.

Section 83 of the Act, provides that a police officer has 'the powers, privileges and duties of a constable at common law or under any other act or law'. Those powers are conferred on every police officer of any rank, including the commissioner. In my view, it is important to understand that as a foundation for understanding the remainder of the act because, in a sense, the Commissioner of Police wears two hats, almost literally. He wears his hat as a police constable but he also wears his hat as an administrative officer, as the Commissioner of Police. As it turns out, in that capacity, he is head of an agency. So he literally does occupy two positions.

[95] Commissioner of Police, pp. 6-8.

It is then useful to look at section 7 of the act, which sets out the responsibilities of the Commissioner of Police. Subsection 1 is really the contentious provision and, in a sense, it is the operative provision. It provides that the commissioner, under the direction of the minister, is responsible for 'the efficient, effective and economic management and superintendence of the police service.' So we see that the commissioner, in his role as commissioner, is responsible for the efficient, effective and economic management and superintendence of the policy service and, in that role, he is under the direction of the minister. There is no question about that.

Where I think I differ from the Director of Public Prosecutions and any others who might have a different view, is that those words, 'under the direction of the minister', extend to the execution of the commissioner's powers, conferred on him by section 83 of the act - that is, his powers of a police officer.

In the view I have taken of the proper interpretation of the act, the commissioner is, in a sense, schizoid. As an administrator, as a bureaucrat, if you like, he is clearly, like every other head of agency, under the direction of his minister in relation to administrative matters or what the act calls, 'the effective and economic management and superintendence of the police service.'

In terms of his execution of his functions as a police constable, he is accountable to no-one other than to the law itself.

I would be the first to acknowledge that there is no bright line that separates those two functions because, for example, necessarily starving the police service of resources affects the sort of operational decisions that a commissioner might make about the deployment of his constables, what he investigates and what he does not investigate.

I acknowledge that there is a capacity for the operational aspects of the commissioner's functions to be affected by those sorts of directions. Where I differ, if indeed I do differ from the DPP, is that as a matter of law it is in my view clear that no minister of the Crown can give a direction to the Commissioner of Police that he should or should not investigate a particular crime or that he should or should not prosecute, not that for the most part the Commissioner of Police any longer has that discretion. As a matter of fact in the case of all offences, the Director of Public Prosecutions has the final say. The Police Prosecution Branch does make decisions about whether or not to prosecute minor offences, as I understand it, without reference to the DPP. So, to that limited extent as head of the Police Service, the commissioner would have ultimate responsibility in relation to a decision to prosecute or not prosecute.

To take the example I gave at the beginning, if the minister were to give a direction or purport to give a direction to the Commissioner of Police that he should not prosecute the Chairman in respect of a

particular traffic infringement that, in my view, would be firstly an unlawful direction and secondly, there is no possibility that the Supreme Court would make a declaration to the effect that the Commissioner of Police was bound to accept that direction...[96]

11.7 The submission of the Commissioner of Police provided some detail of the experience of Tasmania Police to conduct independent investigations. Such argument was illustrated by a précis of a number of politically sensitive investigations which had been conducted by Tasmania Police which, it was argued, provided some level of assurance that 'operational matters', in particular the investigation of alleged criminal behaviour, was conducted entirely appropriately.

11.8 The alternative view was provided by Sir Max Bingham and the Director of Public Prosecutions in their evidence to the Committee. Sir Max submitted that:-

There is no statutory basis for independence of the police. I think to understand that, you need to go back to the origins of the British Police Service. People who talk about independence of constables in their decision-making and so on are basing themselves on the English experience which is of a police service built up on a neighbourhood footing where every citizen is, in effect, a police officer, but only those specially appointed can exercise police powers. It is this sort of chummy family neighbourhood kind of arrangement that has led the English always to resist the creation of a national police force in England and so they have dozens of police services dotted around their countryside.

The Australian model for each of the colonies was based on the British experience in Ireland which was an occupied country in the nineteenth century and it had a police service of a paramilitary kind run by a series of police magistrates around the country. I was a police magistrate in Tasmania and it was not until I took the magistrates out of the public service that word 'police' was dropped out of their title. Historically, the picture is perfectly plain, I think. The police service was an arm of the executive government subject to the direction of the minister like any other department. There has been some confusion of thought about that. Sooner or later there are judicial decisions both ways across the country. Sooner or later the penny is going to drop, I think, and people will recognise that our history is not the English police one but the Irish paramilitary one. So I do not have any difficulty in reasoning that when the act says, 'under the control of the minister', historically it is simply referring to what all the previous acts said, back to the middle of the nineteenth century.

[96] L. Sealy, Hansard, Hansard, 27 May 2009, pp. 2-3.

The AFP has a different provision which endeavours to draw a line between policy matters and operational matters, and it is not bad. I have not been able to improve upon it but I am not a draftsman. But if the committee is interested in this matter then certainly the Australian Federal Police Act ought to be looked at because it does have an attempt to deal with the justice problem.[97]

11.9 The following extract of the submission of the Director of Public Prosecutions summarises his view:-

Were a court to construe s 7(1) of the Police Service Act 2003 it would do so in accordance with principles of statutory construction and the Acts Interpretation Act 1931. It would not start by asking what was the "traditional" role of a Constable (in England) and seeing if that would be able to be fitted into the Act. It is a fact, remarked on recently by the Chief Justice of the High Court, that today the main business of the Courts is statutory construction or interpretation, but that development is not reflected in legal education.[98] *Academics, who tend to never have practiced, have no experience in constructing submissions based on principles of statutory interpretation and are unlikely to have even received any education themselves in such principles. Arguments which seek to enforce common law positions or historical developments onto statutes or as a substitute for the plain words of a statute are incorrect (some of the academic writings I cite in this part themselves suffer from that vice).*

3.2 Statutory construction

Section 8A(1) of the Acts Interpretation Act 1931 is relevant: "In the interpretation of a provision of an Act, an interpretation that promotes the purpose or object of the Act is to be preferred to an interpretation that does not promote the purpose or object." The Police Service Act 2003 has as its stated object "to provide for the establishment and regulation of the Police Service". "Establishment" suggests more than mere continuation, making historical reference to the supposed role of Constables even less appropriate. In terms of regulation, an interpretation which sees the Minister at the pinnacle of command, giving or able to give direction to the Commissioner who is in turn in an hierarchical system in fact follows the scheme, and thus it can be inferred the object, of the Act: s 4 establishes the ranks in the Police Service, s 7(1) places the Minister above the Commissioner in the chain of direction, and ss 9 to 15 provide for the appointment in descending order of other officers, from Deputy Commissioner to trainees and junior constables. (Interestingly, all appointments of commissioned police officers to a rank are by "the Governor", meaning the Governor acting with the advice of the Executive Council – Acts Interpretation Act 1931, s 43.) The total number of officers comprising the Police Service is determined by the Minister

[97] M. Bingham, Hansard, 11 September 2008, pp. 14-15.

[98] The Hon. Murray Gleeson CJ, "Some Legal Scenery", paper delivered in Sydney, 5 October 2007

– Police Service Act 2003, s 4(3). These provisions serve to further emphasise the close connection between the Police Service and Executive Government, and the ascendency of the latter.
"The natural and ordinary meaning of what is actually said in the Act must be the starting point", per Cooke J, Reid v Reid [1979] 1 NZLR 572 at 594. Sometimes referred to as the "Golden Rule" of interpretation is that "in construing statutes ... the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther." (per Lord Wensleydale, Grey v Pearson (1857) 6 HLC 61 at 106. The same principles are expressed in s 8B of the Acts Interpretation Act 1931.
Section 7(1) of the Police Service Act 2003 is, in its ordinary and natural meaning, quite plain. The Commissioner is under the direction of the Minister. "Direction" is also plain. In its ordinary and natural meaning it does not mean "policy direction" or "non-operational direction". In the context of an Act providing an hierarchical chain of command and direction, there is even less reason to imply such an unnatural interpretation. The only proper (and necessary) implication is to imply the term "lawful" as qualifying "direction".[99]

Finding

11.10 **The Committee finds that section 7 of the Police Service Act 2003 is ambiguous and that the divergence of opinion in the interpretation of such section leads to the detrimental perception that operational matters, including criminal investigations, may be directly influenced by members of the Executive.**

Recommendation 22 – The Committee recommends that section 7 of the Police Service Act 2003 be amended to properly reflect the convention that the Executive cannot direct Tasmania Police on matters of an operational nature.

Recommendation 23 – The Committee recommends that guidelines be prescribed by the Government in consultation with Tasmania Police to clarify the difference between policy and operational matters and where any serious doubt exists as to whether a particular direction related to a policy or operational matter the Commissioner of Police may apply to the Supreme Court of Tasmania for a Declaratory Order.

[99] T. Ellis, Submission, pp. 10-12.

Police Service - Ethical Conduct Prescriptions

11.11 The submission of the Police Association of Tasmania detailed the compliance arrangements prescribing ethical conduct within the Police service.

> *Police officers are subject to the National Police Code of Ethics which states:*
>
> > *• Police officers have a duty to their country and to their Police Service to serve the community by protecting life and property, preserving the peace and detecting and apprehending offenders.*
> >
> > *• Police officers should carry out their duties with integrity and honesty and should at all times make every effort to respect the rights of all people in the community regardless of colour, social status or religion, enforcing the law justly without fear, favour, malice or ill will.*
> >
> > *• It is incumbent upon all police officers to keep confidential matters of such a nature which they may learn in their official capacity, unless revelation is necessary for the administration of justice.*
> >
> > *• By their conduct and performance police officers should give high priority to enhancing the reputation of their profession. Police officers should practice self discipline and restraint and should strive to improve their knowledge of the law and contemporary police practice applicable to their community.*
> >
> > *• In the pursuit of their responsibilities, police will resort to the use of force only when strictly necessary and to the extent required for the performance of their duty.*
> >
> > *• Police officers should be aware of these ethics and should accept the desirability of them as an integral part of their personal and professional life.*[100]

11.12 Section 42 of the Police Service Act[101] reinforces this regime:-

> ***42. Code of conduct***
>
> 1. *A police officer must behave honestly and with integrity in the course of his or her duties in the Police Service.*
> 2. *A police officer must act with care and diligence in the course of his or her duties in the Police Service.*
> 3. *A police officer must comply with –*
>
>   *(a) all orders in the Police Manual; and*
>
>   *(b) any lawful direction or lawful order given by a senior officer.*

[100] Police Association of Tasmania, Submission 22, p. 2.
[101] Police Service Act (No. 75 of 2003)

4. *A police officer must maintain appropriate confidentiality about any dealing made and information gained in the course of his or her duties in the Police Service.*

5. *A police officer must disclose, and take reasonable steps to avoid, any conflict of interest in connection with his or her duties in the Police Service.*

6. *A police officer must use the resources of the Police Service in a proper manner.*

7. *A police officer, in connection with his or her duties in the Police Service, must not –*

   (a) knowingly provide false or misleading information; or

   (b) omit to provide any matter knowing that without thatmatter the information is misleading.

8. *A police officer must not make improper use of –*

   (a) information gained in the course of his or her duties in thePolice Service; or

   (b) the duties, status, power or authority of the police officer – in order to gain, or seek to gain, a gift, benefit or advantage for the police officer or for any other person.

9. *A police officer must not access any information to which the police officer is not entitled to have access.*

10. *A police officer must not destroy, damage, alter or erase any official document, record or entry without the approval of the Commissioner.*

11. *A police officer must not, at any time, conduct himself or herself or act in a manner that is likely –*

    (a) to be prejudicial to the Police Service; or

    (b) to bring discredit on the Police Service.

12. *A police officer must not victimise or discriminate against another police officer because that other police officer has reported a breach of a provision of the code of conduct.*

13. *A police officer must comply with any other prescribed conduct requirement.*

The Police Service Act 2003 also provides for methods to investigate breaches of the code of conduct and allows for a range of sanctions if a breach is found to have occurred. Section 43 states:

43. Actions in relation to breaches of code of conduct

1. *The Commissioner must establish procedures for the investigation into any alleged breach of a provision of the code of conduct by a police officer.*

2. *After considering the results of an investigation, the Commissioner must determine whether or not the police officer has breached a provision of the code of conduct.*

3. *If the Commissioner determines that a police officer has breached a provision of the code of conduct, the Commissioner may take one or more of the following actions in relation to the police officer:*

a. direct that appropriate counseling be provided to the police officer;

b. reprimand the police officer;

c. impose a fine not exceeding 20 penalty units;

d. direct that the remuneration of the police officer be reduced within the range of remuneration applicable to the police officer;

e. reassign the duties of the police officer;

f. transfer the police officer;

g. in the case of a non-commissioned police officer, place that police officer on probation for any specified period the Commissioner considers appropriate;

h. in the case of a non-commissioned police officer, demote the police officer;

i. in the case of a non-commissioned police officer, terminate the appointment of the police officer;

j. in the case of a commissioned police officer, recommend to the Minister that the appointment of the police officer be terminated or that the police officer be demoted or placed on probation for any specified period the Commissioner considers appropriate;

k. take any other action the Commissioner considers appropriate.

11.13 The Police Association further submitted that police officers are subjected to integrity tests which may involve acts by the person conducting such tests which would otherwise be unlawful. Section 48 states:-

48. Integrity tests

1. The Commissioner may conduct, or require an authorised person to conduct, a test of the integrity of a police officer if there are reasonable grounds to suspect that the police officer has engaged in, or is engaging in, or is likely to engage in, conduct that –

a. may constitute an indictable offence or any other offence punishable by imprisonment; or

b. is corrupt or seriously unethical.

2. An integrity test may only involve an act or omission that, but for subsection (3), would be unlawful if –

a. it is reasonably necessary for the conduct of the integrity test; and

b. it is authorised by a magistrate.

3. Despite any other Act or law to the contrary and subject to subsection (2), any act done or omission made in conducting an integrity test is lawful.

4. The Commissioner may issue a certificate stating that on a specified date or during a specified period a specified person was authorised to conduct or participate in an integrity test involving a specified act or specified omission.

5. An authorisation under subsection (2) or a certificate issued under subsection (4) –

a. is admissible in any legal proceedings; and

b. is evidence of the matters specified in the authorisation or certificate.

11.14 The Police Association also submitted that Police Officers may also be required to provide financial statements (Section 49) and be tested for alcohol and drugs through the provision of breath, saliva, urine and blood samples (Section 50). In addition it is well established in law that Police Officers do not have a right to silence. Section 46 (3) (a) (ii) states:

"The Commissioner may....direct any police officer to ... provide any information or document or answer any question for the purposes of the investigation (of a complaint)".

The Tasmania Police Manual at Section 13.1.14 – Obligation to answer questions – states:

"Members must answer questions, submit reports and otherwise comply with the lawful directions or orders of a senior officer conducting an investigation into the breach of the Code of Conduct in accordance with Section 46 (3) (a) (ii) of the Police Service Act 2003."

Furthermore, the Procedures Manual – Guidelines for investigation of complaints against police officers states:

• Clause 10.6

"If, during an interview in relation to a possible disciplinary offence, the interviewing member forms the belief that a criminal offence may have been committed by that member, the interviewing member shall properly caution the member under investigation".

• Clause 10.7

"Where, during the course of an investigation into an alleged disciplinary offence, it is considered that a criminal offence may have been committed, an investigating officer may proceed to require the member to answer questions for the purposes of the investigation into the disciplinary offence. A member who fails or refuses to answer those questions should be directed or ordered to do so. A member who fails or refuses to answer those questions when directed to do so should be advised the failure or refusal to respond could constitute a disciplinary offence".[102]

The provisions of the Police Service Act 2003, the Police Manual and the Procedures Manual – Guidelines for investigation of complaints against police officers are reinforced by Court decisions, particularly the case of Commissioner of Police v. Justin 1991 55 SASR 547, and the High Court in Police Service Board v. Morris 156 CLR 397, which ruled unanimously that the relevant regulations excluded the common law privilege against self incrimination even where the answers to questions posed may tend to incriminate the offender of a criminal offence. The court agreed with the decision in Morris' case that "The legislature must have intended that any cause for suspicion touching a members performance of his duties could be the subject of interrogation by a superior officer and that the member would be obliged to answer the questions put to him whether or not those answers would tend to incriminate him".

In general terms it appears that police officers in Tasmania (and for that matter in all other Australian jurisdictions) have no formal right to silence once they have been formally directed to answer a question by the Commissioner or a lawfully delegated officer who is investigating a complaint which has been made against the officer. A refusal to answer any question will inevitably result in disciplinary action.

The PAT contends that not only has a higher standard been set for police officers than any elected/public officials but also that the normal protections of the law available to all other members of the community are not afforded to police officers.[103]

Finding

11.15 **The Committee finds itself in concurrence with the view that Tasmania Police officers work within a regime which holds them to a higher standard of conduct than other public officials. The Committee notes the effective denial for Tasmania Police officers of the fundamental right to silence enjoyed by every other citizen.**

[102] Police Association, pp. 3-7.
[103] Ibid., p. 7.

11.16 The Police Association argues that there exists one weakness in the current structure which again relates to the Office of the Commissioner of Police and section 7 of the Act.

> *Whilst high standards have been set for police officers generally there is a weakness in the process when it relates to the office of Commissioner of Police. The Commissioner is appointed by the Governor (Section 6 Police Service Act 2003), and thus in effect by the Government or more specifically by Cabinet, for a period not exceeding 5 years. It is almost inconceivable that under this process of appointment the Minister responsible would not have significant input.*
>
> *There has been significant recent debate concerning the independence of the office of Commissioner as it relates to the Minister. The Police Service Act 2003 Section 7 clearly states that the Commissioner, under the direction of the Minister, is responsible for the efficient, effective and economic management and superintendence of the Police Service.*[104]
>
> *The Minister arguably has more control over the Commissioner than that stated in Section 7 of the Act. The standards set by the Act as they relate to police officers generally are also applicable to the office of Commissioner. The Act (Part 3 Sections 42 – 52) clearly states that the Commissioner is responsible for establishing procedures for the investigation of alleged breaches of the code of conduct, considering the results of any investigation, and taking action against the officer with a range of options from counseling to dismissal. In this Part of the Act the Commissioner is also responsible for setting procedures concerning complaints against police, conducting integrity tests, requiring financial statements and conducting alcohol and drug testing. The Act at Section 52 then states that:*
>
> *This Part applies to the Commissioner as a police officer and any reference in this Part to the Commissioner is taken to be a reference to the Minister in its application to the Commissioner.*[105]
>
> *The relationship between the Minister and the Commissioner is defined by the Commissioner's appointment on a contract not exceeding five years, (Section 6), the Commissioner working under the direction of the Minister, (Section 7), and the Minister being responsible for investigating complaints, conducting integrity tests, requiring financial statements and testing for alcohol and drugs in relation to the Commissioner. (Section 52). The Minister is clearly responsible for the ethical behaviour of the Commissioner. By the nature of the working arrangements close relationships can develop which have the potential to undermine the requirements*

[104] Ibid., pp. 7-8.
[105] Ibid., pp. 8.

of rigorous accountability. There is clear potential for conflict in this relationship and it relies heavily on both being persons beyond reproach. History has shown that within the Australian context this has not always been the case. With no independent body in place one can only speculate as to how a Minister may handle an allegation of corruption made against a Commissioner of Police.[106]

Tasmania Police is high profile government agency and there can be little argument that it is not regarded as part of the government or, at the very least, as having very strong relations with government, by the majority of Tasmanians.

This view is strengthened by the close public relationship between the Police Minister and the Police Service on a daily basis, particularly in Parliament and the media. Similarly the Police Service commitment to the elected government is reflected in its support for whole-of-government initiatives to current social issues such as family violence, Tasmania Together, and drug abuse and includes joint agency approaches to more traditional policing issues such as crime reduction and prevention.[107]

This is not to say that the relationships between the Minister, the Commissioner, the Government and the Police Service are, of themselves, sinister. It is a well accepted requirement for the public sector to adhere to the mandate of government and to serve the elected government in the implementation of their policy programs. Indeed this is fundamental to public sector/government arrangements. However the PAT believes that it cannot be argued under the current framework that the independence required to conduct investigations into elected officials exists.[108]

In Tasmania the authority to conduct criminal investigations, including the conduct of investigations into political matters potentially constituting corruption, is vested in the Tasmania Police Service which is, of course, accountable to the Commissioner of Police. No independent body, or for that matter dedicated or specialist section of the police service, exists for the purpose of the investigation and prevention of political or public sector corruption in this State.

When allegations concerning elected officials surface, ad hoc arrangements are put into effect whereby officers with the requisite skills are selected from various areas of the service, by the Commissioner, to form a task force to investigate the matters in question. In one inquiry recently officers reported directly to the Director of Public Prosecutions (DPP) who, in effect, had oversight

[106] Ibid., pp. 8.
[107] Ibid., pp. 8-9.
[108] Ibid., p. 9

of their investigations. There was no legal requirement for this to occur.

Whilst these arrangements may be the best that can be achieved under current circumstances, they are, nonetheless, far from satisfactory. The DPP may be well qualified to provide legal advice, however the officers have no recourse to appropriate investigative advice of a tactical or strategic nature.

In cases where technical surveillance or other sophisticated approaches are required, police support services would necessarily have to be involved. The issue of funding from Government could conceivably arise. Other issues include the effect of political considerations on the officers themselves who will return to the police mainstream at the conclusion of the investigation.[109]

The PAT also believes that various problems arise for Tasmania Police from the effects of:

- *being seen as part of the Government;*
- *the public's poor perception of the government's endeavours to fight corruption (whether they have any basis in fact or not);*
- *the potential conflict of interest issues in investigating political corruption under a regime of police accountability to the Minister of Police;*
- *the current unsatisfactory, ad-hoc, investigative arrangements that lack a clear administrative and legislative framework; and*
- *a lack of transparency.*

These are significant issues as they have the potential to erode public support and confidence in police.[110]

11.17 The Committee notes the concern of the Police Association in relation to the appointment process of the Commissioner of Police. The Committee deals later in this report with the issue of senior public appointments.

11.18 The other issue of import was detailed in the submission of the Commissioner and related to the release of information in relation to 'political investigations'. The following detail was given:

The operational independence of the Commissioner of Police means that he or she is under no obligation to provide information to the Minister for Police and Emergency Management, the

[109] Ibid., p. 9.
[110] Ibid., pp. 9-10.

Premier or any other Minister or Member of Parliament, concerning police investigations, particularly those which relate to allegations of misconduct which involve, or could implicate, public sector executives and/or elected representatives.

The main concern in relation to investigations which involve, or could implicate, public sector executives and/or elected representatives, is that early advice to the Police Minister, or another Member of Parliament, about the commencement of an investigation, or its progress, has the potential to compromise the investigation if the advice is subsequently communicated to any party who could be implicated in the allegation of misconduct. These concerns apply equally to the release of information about an investigation to the media.

Where information about a political investigation enters the public domain through the media or in Parliament, it may be necessary for the Commissioner of Police, or his nominee, to authorise the release of limited information about that investigation to the media, or to the Minister or another Member of Parliament, including a member of an opposition party, to minimise the level of media and public speculation, particularly where it has the potential to interfere with the conduct of the investigation, prejudice subsequent criminal proceedings, or damage the reputation of an innocent party.

As an investigation progresses, and there appear to be sufficient grounds for believing that a Member of Parliament and/or public sector executive has committed an offence, it may be necessary in the public interest to inform the relevant Minister and/or the Premier so that steps can be taken to stand down the individual concerned in order to prevent any further misconduct and maintain public confidence in the Government. [111]

11.19 Annexed to the submission of the Commissioner were proposed guidelines drafted to reinforce the operational independence of the police in relation to investigations concerning public sector executives and/or elected representatives. It was submitted that the guidelines recognise that the senior investigator is in the best position to advise the Commissioner of Police whether the release of information has the potential to compromise the investigation by providing early warning to a suspect, or potential suspect.

Finding

11.20 **The Committee finds that the adoption of the guidelines submitted by the Commissioner of Police further would**

[111] Ibid., pp. 8-9.

reinforce the operational independence of the Tasmania Police Service.

11.21 The Committee sought evidence on the process of complaints against members of Tasmania Police.

11.22 The submission of the Commissioner outlined the current procedure:-

> *The role of Internal Investigations is to effectively investigate and resolve complaints against police, including those involving misconduct which amounts to a criminal offence. Allegations of criminal misconduct are referred to the Office of the Director of Public Prosecutions (DPP) for review and prosecution. All Internal Investigation files are subject to independent review by the Office of the Ombudsman.*
>
> *Internal Investigations also has a misconduct prevention focus, by providing annual presentations to District personnel on complaint prevention and ethical awareness, and where possible incorporating a similar presentation into training courses at the Police Academy. This complements the ethics training provided to police recruits.*
>
> *Given that complaints against police are already effectively managed within Tasmania Police with the opportunity for independent review by the Ombudsman or the DPP, and there have been no allegations or suggestions of either individual or systemic police corruption in Tasmania, it is not envisaged that the current process would need to change significantly under the proposed model. However, Internal Investigation files involving allegations of criminal misconduct which the DPP decides not to prosecute would be referred to the Ethics Commission for independent review of the adequacy of the investigation.*
>
> ***What is meant by the term 'Misconduct'?***
>
> *Essentially there are three types of misconduct by public officers in performing the functions of their office or employment which could be the subject of complaints made to the Ethics Commission or Commissioner of Police:*
>
> 1) *Complaints which involve breaches of a code of conduct or other disciplinary matters which do not amount to a criminal offence and do not provide a basis for the termination of a person's position as an elected representative and/or employment;*
> 2) *Complaints alleging serious misconduct which is criminal in nature and amounts to a breach of a provision of the Criminal Code and would justify termination of the individual's position or employment; and*

3) *Complaints alleging misconduct which is criminal in nature and should attract an appropriate court imposed sanction but does not amount to serious misconduct, i.e. does not amount to a breach of any Criminal Code offences or justify termination of the individual's employment. (NB: It is recommended that a suite of simple offences be created to cover this type of less serious criminal misconduct).*

Complaints falling into category 1 would ordinarily be referred by the Ethics Commission to the home agency (i.e. the agency within which the alleged misconduct took place) or another agency (e.g. the Ombudsman or State Service Commissioner) for investigation and/or for appropriate action (e.g. disciplinary measures, ethics training, changes to agency procedures etc.).

Complaints falling into the other two categories would be investigated by the Misconduct Branch and potentially be the subject of criminal proceedings, depending on whether the Director of Public Prosecutions considers there is sufficient evidence and/or it is in the public interest to prosecute.[112]

11.23 The Ombudsman further assisted the Committee in his evidence:-

Complaints against police are a difficult issue. I am the only official in the State who has oversight over the handling by police of complaints. We get complaints against police and it has been the practice in my office for many years under previous ombudsmen that when we get a complaint against police we refer it back to the police in the first instance for them to look at it internally. That is because we do not have the resources really to do the work but it is also because those sorts of investigations are most effectively done by people who understand the police system and who know how police officers work and who are trained criminal investigators.

We would only get in and investigate a matter ourselves if we thought that investigation by the police internally had not been satisfactory and from my experience, and I have been in my role for three-and-a-half years, I have not seen a case where that is so but I would not hesitate to step in and investigate if I thought it was not.

It is not a happy situation and I would have thought the citizen looking at that arrangement would think it is not for police to be investigating police and certainly there is no-one who independently audits those investigations, which I think is probably what is necessary to give comfort that it is done properly. [113]

[112] Ibid., pp. 29-30.
[113] S. Allston, Hansard, 27 March 2009, p. 57.

11.24 When questioned by the Committee as to whether an independent assessment should follow a police internal investigation, the Ombudsman responded in the affirmative.

Recommendation 24 – The Committee recommends that Tasmania Police Internal Investigation files involving allegations of criminal misconduct which the Director of Public Prosecutions has decided not to prosecute should be referred to the Tasmanian Integrity Commission (vide Recommendation 29) for independent review as to the adequacy of the investigation.

12 PUBLIC INTEREST DISCLOSURES ACT 2002

12.1 The Government submitted that the purpose of the Public Interest Disclosures Act 2002 is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection to specific persons (public officers and contractors) who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

12.2 The submission of the Tasmanian Government detailed three key concepts in the reporting system:-

- *Improper conduct;*
- *Corrupt conduct; and*
- *Detrimental action.*

A disclosure can be made about improper conduct by a public body or public officer. Improper conduct means conduct that is corrupt, a substantial risk to public health or safety or to the environment. If proven, this conduct must be serious enough to constitute a criminal offence or reasonable grounds for dismissal.

Under the Act, it is an offence for a person to take any detrimental action against a person in reprisal for a protected disclosure. Strict confidentiality is maintained in relation to any disclosure, even after an investigation is completed. Any information produced by an investigation is exempt from the Freedom of Information provisions.

The Act applies to all public bodies, which for this Act includes all Government departments, statutory authorities, local Government councils, Government appointed boards and committees, state-owned companies, Government Business Enterprises and the University of Tasmania.

The Act does not apply to the private sector.[114]

[114] Government, pp. 63-64.

12.3 The Act gives the Ombudsman a major role in both receiving and investigating disclosures, overseeing the way public bodies manage disclosures, and publishing guidelines to assist public bodies in complying with the Act.

12.4 When a disclosure is made to the Ombudsman, he or she is required to determine whether it is a public interest disclosure. If a matter is determined to be a public interest disclosure, the Ombudsman may investigate the matter or refer it to the Commissioner of Police, Auditor General or a prescribed public body or the holder of a prescribed office for investigation. If the Ombudsman conducts the investigation, he or she has available the powers specified in Part 3 of the Commissions of Inquiry Act 1995. On completion of the investigation, the Ombudsman must report the findings of the investigation to the relevant party and may make recommendations as to the action to be taken as a result of the investigation. If after considering any comments of the relevant party the Ombudsman considers that insufficient steps have been taken to address the recommendations, he or she may provide a report on the matter to each House of Parliament

12.5 Part 9 of the Act specifies the annual reporting requirements for the Ombudsman in relation to disclosures received, referred and investigated. Public bodies required by an Act to produce a report of operations or an annual report must also include information about disclosures. Section 85 of the Act provides that the Ombudsman may at any time cause a report on any matter arising in relation to a disclosed matter to be laid before each House of Parliament.

12.6 From the commencement of the Act in January 2004 until 30 June 2007, thirteen disclosures have been made to the Ombudsman[115]. In 2006-2007, no disclosures were made to the Ombudsman under the Act (Ombudsman, 2007). There have been no referrals of disclosures to the Ombudsman from public bodies, the State Service Commissioner, the President of the Legislative Council, or the Speaker of the House of Assembly.[116]

[115] Collated from the Annual Reports of the Ombudsman for 2004-2005, 2005-2006 and 2006-2007.
[116] Commissioner of Police, p. 22.

Disclosures Concerning Members of Parliament

12.7 Section 7(4) of the Act provides that disclosures concerning a Member of Parliament are to be made to either the Speaker of the House of Assembly or the President of the Legislative Council, depending on which House of Parliament the member concerned is from. The Speaker or President may refer the disclosure to the Ombudsman for investigation. If the Ombudsman determines that the disclosure is a public interest disclosure, he or she must investigate it. On completion of the investigation, the Ombudsman must report the findings to either the President or the Speaker (as the case requires).

12.8 The Commissioner of Police argued that the current provisions of the Act relating to disclosures concerning Members of Parliament are problematic for two reasons.

> *First, a public officer may be reluctant to make a disclosure about a Member of Parliament who belongs to the same political party as the Speaker or President. Second, in the interests of transparency and the integrity of Parliament, it is desirable that an independent party assesses and investigates disclosures relating to members of Parliament. As the Act currently stands, the Speaker and President have a discretion as to whether or not they refer a disclosure about a Member of Parliament to the Ombudsman for investigation.*[117]

12.9 Submissions addressed other aspects of what is generally known as 'whistleblower' legislation:

> *... The deliberate vilification of whistleblowers under parliamentary privilege must be addressed by this committee. The public intimidation of whistleblowers under privilege has the effect of deterring other would-be whistleblowers in much the same way that public humiliation of sexual assault victims has had in the past. Redress is available against whistleblowers who abuse their (all too limited) protection but they have none against the politicians who attack them from the ramparts of coward's castle. The privileges committee needs to pay special attention to this matter and to act aggressively against members who, for whatever, improperly impugn the character, motives or tactics of whistleblowers. In addition, I am persuaded by those who are knowledgeable on the issue, that Tasmanian legislative protection for whistleblowers is deficient and should be extended more generally.*[118]

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[117] Ibid, pp. 22-23.
[118] R. Herr, pp. 4-5.

This Act needs to be re-examined from a number of perspectives. As a statute that is designed to offer 'whistleblower protection' experiences in other jurisdictions show that ordinary citizens making PIDs cannot rely on this mechanism to protect them. Submission through the Ombudsman provide a preliminary assessment of the seriousness and veracity of the allegations made, however, as with general Ombudsman complaints that office has limited resources to initiate independent investigation and usually refers the PID allegation to respondent agency. This is unacceptable approach to investigating PIDs.

In providing background to this ethics inquiry on ABC radio, Jim Wilkinson MLC indicated that: 'You cannot have Caesar judging Caesar.' I would also add that under our existing mechanisms and remarkably powerful system of governance 'what Caesar wants, Caesar gets.'[119]

... I make the observation that the PID Act does not apply to Ministerial advisers (and nor of course does the State Service Act 2000). These are not captured by the definition of "public officer" in s 3(1) of the Act, because they are not employed by an agency, but by the Crown. This is an unsatisfactory state of affairs, given the number of Ministerial advisers now employed, and the influence that they are able to exercise over public affairs. I believe that there is, indeed, a case for extending the cover of the Act to any person employed by the Crown.[120]

The starting point in all whistleblower legislation is that there are internal procedures for reporting such matters and there is an obligation on a manager who receives such information to take things seriously and to be judged in terms of whether they have done the right thing in receiving that information, acting upon it and referring it more broadly. So the starting point is sound internal procedures for providing information about possible problems and infractions, therefore not covering up, not hiding material and not lying about it.

The whistleblower problem arises at a second level where the informant believes that the internal procedures for handling that matter are, in some sense, unsatisfactory or corrupted or they have hit a brick wall of some kind, that no-one is listening. The question then is: what entitlements do they have to further publicise that matter? [121]

12.10 The view of the Ombudsman was unequivocal:-

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[119] D. Obendorf, p. 8.
[120] Ombudsman Tasmania, Submission 113, pp. 5-6.
[121] B. Head, Hansard, 24 November 2008, p. 12.

The best-focused anticorruption legislation we have in the State is the whistleblower legislation. However, it does not give adequate powers in relation to ministers, MPs and ministerial advisers. That seems to me, given the recent history of controversies in this State, the area that needs attention.[122]

12.11 The Ombudsman, in his evidence to the Committee suggested the following amendments to the Act:-

- *the amendment of the definition of "improper conduct" in s 3 of the PID Act to include wording similar to that in s 9(1)(d) of the ICAC Act, ie has the qualifier that conduct does not amount to corrupt conduct unless "in the case of a Minister of the Crown or a member of a House of Parliament" there has been "a substantial breach of an applicable code of conduct".*
- *possibly, the amendment of the PID Act so that a disclosure can be made by any person, not just by a "public officer". Anyone may make a disclosure under equivalent legislation in the ACT, Victoria and WA – see Public Interest Disclosure Act 1994 (ACT), s 15(1); Whistleblowers Protection Act 2001 (Vic), s 5; Public Interest Disclosure Act 2003 (WA), s 5(1).*
- *amendment of the PID Act to provide that the Ombudsman may only investigate misconduct by a Minister with the concurrence of both the Integrity Commissioner and the Auditor-General, and must consult with them on the course of the investigation and on the findings, before they are published. Publication by tabling before the Parliament would be required.*[123]

12.12 The Committee notes the current major review being undertaken by the Government into the Public Interest Disclosures Act 2002 in accordance with the Premier's 'Ten Point Plan'. The objective of the Public Interest Disclosures (PID) Review Project is to explore whether the *Public Interest Disclosures Act 2002*:

- adequately encourages and facilitates disclosures of improper conduct
- by public officers;
- adequately encourages and facilitates disclosures of improper conduct
- by public bodies; and
- protects officers making disclosures against detrimental actions.[124]

[122] S. Allston, Hansard, 27 March 2009, p. 56.
[123] Ombudsman, p. 5.
[124] http://www.justice.tas.gov.au/legislationreview/reviews/pidreview as sited on 18 June 2009

12.13 The Project will recommend, prepare and propose that the Government implement legislative amendments which may result from both the exploration of the Act and a review of the administrative framework supporting the legislation.

12.14 A 'Directions Paper' entitled "Strengthening trust in Government ... the spotlight on improper conduct" has been prepared. The purpose of such paper is to promote discussion in the community about disclosures of improper conduct in the public sector and how this can be encouraged and facilitated.

12.15 The Paper proposes a series of amendments to the *Public Interest Disclosures Act 2002* in order to:

- establish principles within the Act to guide its operations;
- broaden the types of disclosures that would be covered by the Act;
- enhance the handling and investigation of public interest disclosures; and
- expand the functions of the oversight agency.

12.16 The Committee further notes that the Project has also benefited from similar research projects and related discussion occurring around Australia in recent times. Both the New South Wales and Commonwealth Governments have reviewed the operations of their respective legislation and legislative provisions regarding public interest disclosures.[125]

Finding

12.17 **The Committee finds that this specifically targeted review into the Public Interest Disclosures Act 2002 is necessary and awaits its outcome.**

13 COMMISSIONS OF INQUIRY ACT 1995

13.1 The submission of the Government provided the following summary of the Commissions of Inquiry Act 1995[126]:

13.2 The Act provides for the establishment of a Commission of Inquiry into any matter of public importance. It is the highest

[125] http://www.justice.tas.gov.au/legislationreview/reviews/pidreview as sited on 18 June 2009

[126] Commissions of Inquiry Act (No. 70 of 1995)

level of inquiry that may be instigated in Tasmania and is analogous to a Royal Commission. The Act was introduced to ensure that commissions of inquiry are conducted fairly, that witnesses are treated equitably, and that there are sufficient safeguards to prevent the unchecked exercise of the power of inquiry.

13.3 A Commission of Inquiry may only be established by the Governor-in-Council if it is deemed to be in the public interest. The Governor may, by order, if satisfied that it is in the public interest and expedient to do so:

- Direct that an inquiry be made into a matter;
- Establish a Commission to conduct and report on that inquiry;
- Appoint one or more persons as members of that Commission;
- Fix a date for the delivery of the Commission's report; and
- Provide for any other matter in relation to the inquiry, the Commission or the Commission's report as the Governor thinks fit.

13.4 The assessment of the public interest necessarily has regard to the cost of conducting a Commission of Inquiry which will nearly always be significant. It is estimated by the Government that in current dollar values the cost could be likely to be between $1-2 million.

13.5 The Commissions of Inquiry mechanism exists to provide independent investigation of matters of public concern and provide impartial advice on a wide range of matters. Even though they are established on the recommendation of the Executive, Commissions of Inquiry operate independently of the Executive once established.

13.6 In conducting an inquiry into a matter, a commission may hold hearings and receive written submissions. A commission can examine witnesses under oath, and require persons to appear before it to give evidence or produce any document or thing relevant to its inquiry. A commission may apply to a magistrate for a search warrant, but does not have the power to apply to a magistrate for the use of a listening device. On completion of its investigation a

Commission makes a written report and recommendations to the Governor.

13.7 A hearing of a commission is open to the public, unless the commission is satisfied that public interest in an open hearing is outweighed by any other consideration.

13.8 There has only been one inquiry held under the Commissions of Inquiry Act. This was in February 2000 when a Commission was established to inquire into the death of Mr Joseph Gilewicz, presided over by Dennis Mahoney QC.

13.9 There had previously been Royal Commissions from time to time. The last, in 1990, being a Royal Commission, presided over by the Hon W J Carter QC, was established to investigate the events surrounding and to identify those who were involved in, an attempt to bribe a member of parliament to cross the floor in the House of Assembly in Tasmania following the 1989 election.

13.10 At that time the legislation governing Royal Commissions was the Evidence Act 1910. Commissioner Carter expressed concern that there was inadequate legislative support available for the efficient conduct of the Royal Commission, and he requested that amendments be made to certain provisions of the Evidence Act which were enacted prior to the commencement of the Royal Commission hearings in April 1991. Ultimately it was the experience of the Carter Royal Commission that led to the enactment of the Commissions of Inquiry Act 1995.

13.11 Commissions of Inquiry have wide powers available to them. A Commission of Inquiry is not a court of law, even though it has many similar powers and may often be presided over by a member or former member of the judiciary.

13.12 An important difference between a Commission of Inquiry and a court is that Commissions of Inquiry are not bound by the normal rules of evidence. A Commission, for example, may receive hearsay evidence and inform itself on any matter as it considers appropriate. Also, Commissions of Inquiry conduct their business in an inquisitorial and investigative manner rather than the adversarial style characterised by the regular courts.

13.13 A Commission established under the Commissions of Inquiry Act 1995 has the power (section 24) to apply to a magistrate for a warrant to gain access to a document or thing in any

place, building, vehicle or vessel if it considers that document or thing relevant to its inquiry. The Commission may also examine a person under oath.

13.14 A person who fails to produce a document or thing legally sought by the Commission or fails to attend before the Commission is guilty of contempt.[127]

13.15 Section 10 of the Act provides that the commission's report to the Governor in respect of an inquiry is to be in writing, and that a copy of the report is to be tabled in each House of Parliament within 10 sitting days after the day on which it is received by the Governor.

13.16 A commission of inquiry may make a finding of misconduct against a person, provided that the person has been given notice of the misconduct and an opportunity to respond to the notice in accordance with s 18 of the Act.

13.17 The Commissions of Inquiry Act 1995 replaced provisions in the Evidence Act 1910 governing royal commissions as a result of concerns raised by the Hon WJ Carter QC during the Royal Commission established in 1990 to investigate the attempt to bribe a Member of the House of Assembly (Law Reform Institute, 2003).

13.18 In February 2000, a Commission of Inquiry into the Death of Joseph Gilewicz was established. The Commissioner, Dennis Mahoney QC, formed the view that aspects of the Commissions of Inquiry Act 1995, particularly s 18, were problematic. Although the Act was amended, Commissioner Mahoney considered that s 18 was still problematic and he also stated that the Commission's lack of power to apply for a warrant to use listening devices had hindered the Commission's investigations (Law Reform Institute, 2003).

13.19 In March 2002, the Law Reform Institute received a reference from the Attorney-General to examine and report on the operations of the Commissions of Inquiry Act 1995, and particularly to examine the need for any extension of powers and to examine the practical operation of section 18[128]. In August 2003, the Law Reform Institute published a Report on the Commissions of Inquiry Act 1995. In addition to

[127] Government, pp. 65-67.

[128] Tasmanian Law Reform Institute: Report on the Commissions of Inquiry Act 1995 – Final Report No. 3, August 2003, p. 3.

recommending that s 18 be amended, the Law Reform Institute recommended that the Act be amended to enable the commissioner of a commission of inquiry to apply to a magistrate for a warrant to use a listening device (Law Reform Institute, 2003). To date the Act has not been amended in accordance with these recommendations.[129]

Finding

13.20 **The Committee finds that on the evidence presented, the prescriptions contained in the Commissions of Inquiry Act 1995 are appropriate and require no amendment, with the exception of the amendments recommended by the Law Reform Institute.**

Recommendation 25 – The Committee recommends that the Government show cause why the recommendations of the Law Reform Institute Report on the Commissions of Inquiry Act 1995 have not been acted upon.

Recommendation 26 – The Committee recommends that the Commissions of Inquiry Act 1995 be amended to provide that on application of a commissioner of inquiry, a magistrate be granted the power to issue a warrant to use listening devices to a commissioner where the magistrate is satisfied that the commissioner holds a reasonable belief that the use of such devices is necessary and appropriate to obtain evidence in relation to a matter relevant to the inquiry. That such power be restricted by the same restrictions as apply to the granting of such warrants to police officers under the provisions of the Listening Devices Act 1991.

14 FREEDOM OF INFORMATION ACT 1991

14.1 Access to information underpins accountability mechanisms, because the public, the media and non-government members of Parliament can obtain information about government administration and decisions.

14.2 The Freedom of Information Act 1991[130] gives people the right to:

- access personal information about them or their affairs that an agency or Minister may hold; and
- be provided with information held by government agencies and Ministers, unless the information is exempt from release.

[129] Commissioner of Police, pp. 24-25.
[130] Freedom of Information Act (No. 22 of 1991)

14.3 The provisions of the Freedom of Information Act apply to Ministers and the public service, but also local government and other public authorities. Prior to the Act the release of information was largely at the discretion of an agency or Minister.

14.4 The following persons may make decisions under the Act about the release of information:

- Ministers;
- Heads of Agency; and
- Authorised Freedom of Information officers – these are State Servants who have been authorised by a head of agency as a Freedom of Information officer.

14.5 In general, authorised Freedom of Information officers make decisions on behalf of agencies.

14.6 There are exemptions (defined in Part 3 of the Act) to the general right to access information that prevent the release of specific information. These include *inter alia*:

- Executive Council and Cabinet information;
- Personal information about another person;
- Commercial in confidence information and trade secrets;
- Internal working information;
- Law enforcement information that may prejudice an investigation or trial of a matter and security classified information; and
- Information subject to legal professional privilege.

14.7 Some of these exemptions involve considerations of the public interest in the release of the information before a decision is made.

14.8 All states and territories have similar exemption provisions, though the wording may vary between jurisdictions.

14.9 If information is refused or exempted from release by an authorised Freedom of Information officer there is a right to have the decision reviewed by the head of the agency. If

an individual is still dissatisfied there is a right of review by the Ombudsman.[131]

14.10 The Commissioner of Police made the following submission in response to calls to review the legislation in order to restore the principle of a public 'right to know'. Such measures to include limiting the requirement for formal Freedom of Information applications when it is readily within the discretion of administrators to simply release documents, and reversing the current onus on applicants to challenge the non-release of records so that the agency must first make its own successful application for the non-release of records to the Ombudsman.

> *Whilst it may be desirable to review the FOI Act, and consider whether it is possible to increase the transparency of government business by enhancing public access to documents, it is also important to protect the reputation of individuals who disclose information which could be prejudicial to them during the course of an investigation. For example, in some cases individuals will make admissions during the course of a misconduct investigation (which does not involve a criminal offence) and submit themselves to appropriate disciplinary procedures on the condition that their conduct is not made public thereby avoiding any potential damage to their reputation. It is desirable that individuals are not discouraged from making such admissions and therefore some restriction should be placed on the public 'right to know'. Similarly, the release of information which discloses that an individual was subject to an investigation, even if there was no finding of misconduct, has the potential to unfairly tarnish that person's reputation.*[132]

14.11 Professor Richard Herr addresses the issue as follows:-

> *The certainty of public exposure is easily the most important factor in securing voluntary compliance with ethical standards. Freedom of Information (FoI) is critical to securing this certainty. FoI access is currently inadequate from providing satisfactory democratic transparency. More resources for this process are needed while the reach of FoI ought to be extended by reducing the exempted subjects. Two specific areas have been of increasing concern for those troubled by the lack of democratic transparency. The escalating exploitation of cabinet exemption provisions and claims of "commercial in confidence" create barriers to revealing the Government's activities under FoI and must be significantly reversed.*

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[131] Government, pp. 46-47.

[132] Commissioner of Police, pp. 16-17.

The premise on which "commercial in confidence" is based is particularly flawed. It assumes a need for Government to operate according to the competitive operations of the private sector rather than the private sector operating within the rules of the public sector when dealing with Government. The assumption that those mandated to protect the public interest can sacrifice it for the convenience of private interests does not sit well with democratic theory. There will be occasions when the public interest will be served by protecting information but these should be rare and subject to parliamentary oversight not merely decreed by Governmental fiat. The concept of commercial in confidence should be subject to very critical review by this committee with a view to curtail substantially the Government's use of it to evade transparency and thereby accountability.[133]

14.12 The Tasmanian Government submission alerted the Committee to the reviews that have previously been undertaken in Tasmanian and a more recent review undertaken in Queensland:-

Since its inception, there have been a number of 'housekeeping' amendments to the Tasmanian Freedom of Information Act. These include:

- *Removing the exemption that applied to Forestry Tasmania in 2004; and*
- *The abolition of conclusive certificates on Cabinet documents in 1999.*

Queensland has had a recent major review to consider reform of freedom of information legislation. The Australian Law Reform Commission has received a reference from the Australian Attorney-General to inquire in to Freedom of Information laws and practices across Australia. This follows a similar review in 1995.

The Government does not consider that the Tasmanian Freedom of Information Act has fundamental flaws or that it is being disregarded by the public or by agencies. There were more than 1700 Freedom of Information applications made in 2006-07, so it obviously continues to serve a purpose.

One of the reforms considered by other jurisdictions, including the Queensland review, is the time limit placed on the exemption applicable to Cabinet documents. In Queensland these documents are subject to a 30 year rule for release purposes. In Tasmania Cabinet documents can be released after 10 years.

Other jurisdictions are also considering the role of conclusive certificates; but as mentioned these are already abolished in Tasmania for Cabinet information.

The Ombudsman has expressed the view that the Act should be reviewed. He has also indicated that the 30 day period he has

[133] R. Herr, Submission 45, pp.7-8.

under the Act to conduct an external review is not always long enough. This reflects the complexity of some requests and also the sheer volume of material which may be involved.

The Act was ostensibly intended to allow access to specific information about specific issues. However opposition parties, other members of Parliament, academics and journalists use Freedom of Information requests to 'fish' for large numbers of general briefs prepared for specific processes such as:

- *Budget Estimate briefs;*
- *Incoming Government/Minister briefs; and*
- *Question Time briefs.*

This makes it difficult for agencies to manage Freedom of Information requests within the required timeframes.

The Queensland review also examined this issue and recommended that:

- *Incoming ministerial briefing books;*
- *Annual parliamentary estimate briefs;*
- *Parliamentary Question Time Briefs; and*
- *any drafts of those documents*

be exempt from disclosure.

One of the most difficult and contentious issues in Freedom of Information decision making is the application of a public interest test under some exemption criteria. This means in order to refuse access to information the agency must show that access would, on balance, be contrary to the public interest. Defining the public interest is difficult as the matters to be taken into account will vary depending on the nature of the Freedom of Information request.

Freedom of Information officers must strike an appropriate balance between the individual rights of access inherent in the objectives of the legislation and the public interest in protecting the various other interests that may be harmed if information is disclosed. Often reconciling these competing interests cannot simply be done with reference to a list of rules or precise definition of the public interest test. Assessment of the public interest requires the consideration of any number of interests that might have bearing on a particular issue or document.

Clearly this is an area where more guidance and training to Freedom of Information officers would be beneficial. Again the Queensland review devoted a great deal of attention to this issue and ways of improving decision making.

There is merit in reviewing the Tasmanian Freedom of Information Act but given the recent major reviews in other jurisdictions launching another full blown review in Tasmania is not necessarily required.

Time needs to be taken to consider the findings of reviews in the Tasmanian context. This would be more cost effective than embarking upon a new full scale review of Tasmanian Freedom of Information legislation. A new review may not be necessary because many of the issues have already been canvassed in these other recent reviews. Any amendments required to the Freedom of Information Act following consideration of the other reviews could be accommodated in the ordinary course of Government business.

It is also clear that with the increasing volume of Freedom of Information applications and the complexity of Freedom of Information decision making, greater investment in the education, training and guidance of Freedom of Information decision-makers is warranted.[134]

14.13 The Ombudsman made the following submission:-

The terms of reference of the Joint Select Committee include the requirement that it review existing mechanisms currently available to support "open Government in Tasmania". In this respect, and as the person responsible for reviewing decisions under the Freedom of Information Act 1991, I observe that this Act needs review so as to ensure that its stated objects are being met, both in the operation of its terms and in its administration by agencies and prescribed authorities. The Act is now quite dated, and has received very little amendment since it first commenced. Its provisions are also frequently difficult to apply....[135]

14.14 The Committee notes the current major review being undertaken by the Government into the Freedom of Information Act 1991 in accordance with the Premier's 'Ten Point Plan'.

14.15 A 'Directions Paper' entitled "Strengthening trust in Government... everyone's right to know" has been prepared. The purpose of such paper is to promote discussion in the community about the right to know and about a new direction for sharing information with the Tasmanian Community.

14.16 The paper has been developed following a period of consultation and therefore proposes one model for consideration, however it is hoped that responses to the paper will comment on the appropriateness of the model, or suggest alternative models.

14.17 Recommendations in the Paper include:

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[134] Government, pp. 90-91.
[135] Ombudsman, p. 6.

- replacing the current Act with a Right to Information Act
- greater proactive release of information by Government
- an overarching public interest test
- a reduced period of exemption for Cabinet information
- clearer language to explain exemptions
- increased powers for external review and monitoring

14.18 The Committee further notes that the Project has also benefited from an examination of the international experience. The recommendations abovementioned were resolved after the analysis of the Freedom of Information laws of 70 countries.[136]

Finding

14.19 **The Committee finds that this specifically targeted review into the Freedom of Information Act 1991 is necessary and awaits its outcome.**

15 CRIMINAL CODE ACT 1924

15.1 The Criminal Code applies to all public officers, whether elected Parliamentary representatives or servants of the State, and regulates the most serious of potential unethical conduct.

15.2 The Criminal Code includes a number of offences that apply specifically to the behaviour of members of Parliament and also individuals who may interfere with the office of a member of Parliament. References include:

- Section 69 - interfering with an executive officer (Governor or Ministers);
- Section 70 - interfering with parliament or unlawfully influencing a member of Parliament; and
- Section 71 - receiving or soliciting a bribe as a member of Parliament.

15.3 In addition, Chapter 9 of the Criminal Code deals with Corruption and Abuse of Office and relates to corruption of or extortion by a public officer.

[136] http://www.justice.tas.gov.au/legislationreview/foi_act_1991/foireview as sited on 18 June 2009

15.4 There are a number of specific provisions of the Criminal Code that apply to the conduct and behaviour of public servants and to those trying to influence the performance of a public officer's duties. These include:

- Section 83 - corruption of public officer;
- Section 84 - extortion by public officers;
- Section 85 - knowingly hold a direct or indirect interest in a contract by or on behalf of the Crown;
- Section 86 - corruption of a valuator or arbitrator;
- Section 88 - unlawfully administering an oath;
- Section 110 - disclosure of official secrets;
- Section 111 - bargaining for public office;
- Section 115 - omitting to perform duty as a public officer;
- Section 235 - unlawfully dealing with a public register or record required to be kept by statute;
- Section 241 – blackmail;
- Section 265 - false accounting by a public officer;
- Section 266 - secret commissions;
- Section 282 - falsifying or permitting the falsification of a register or record that is required to be kept by statute; and
- Section 283 - procuring unauthorised status or fraudulently misrepresenting status.[137]

15.5 The submission of the Commissioner of Police is that many of the provisions of the Criminal Code are ambiguous.

> *This means that cases involving individuals charged with these offences can involve complex legal argument and be difficult to prove. An integrity system which is supported by a complicated and poorly understood set of misconduct offences concerning public officers which are rarely utilised because they are difficult to prove is unlikely to inspire public confidence. The Criminal Code offences concerning Members of Parliament and public officers should be reviewed and where appropriate either replaced with new provisions or reworded to remove any ambiguity.*

[137] Government, pp.47-48.

What is also currently lacking in Tasmania is a suite of clear and unambiguous simple offences which cover misconduct by public officers in performing the functions of their office or employment which is criminal, but less serious in nature and could be dealt with by the Magistrates Court. Individuals convicted of such offences would ordinarily be permitted to remain in their position, but could be required to undergo ethics training or to take other remedial action.[138]

15.6 The submission of the Tasmanian Government also goes to consideration of the need for review:-

... most of Tasmania's law in relation to corrupt conduct by public officials is covered in the Criminal Code Act 1924.

The Act was intended as a codification of the criminal law which existed at the time it was drawn up and the origins of some of its provisions go back considerably before 1924. It is obvious that much has changed since then including the way our political institutions operate.

In common with much of the Code the sections dealing with corrupt conduct are difficult for non-lawyers to understand. This may be unavoidable because of the potentially wide category of conduct which may lead to a charge of this type. However, as very few persons have ever been charged, courts have had limited opportunities to consider and clarify the meaning of the relevant sections of the Code.

The most recent opportunity was the case of Tasmania v Green, Nicholson and White [2007] TASSC 54. In that case the then Chief Justice spent considerable time in his judgment dealing with submissions by prosecution and defence lawyers about the proper meaning of section 69 of the Code (Interference with Governor or Minister). It has been suggested that this complexity contributed to the failure of two juries to reach a verdict.

However there is no indication in the Chief Justice's judgment that he was in any doubt about the way the law should be applied, neither did he make any suggestions for amendments to the section. His Honour did make some comments about Parliament's intentions in enacting the various sections in the way they did which could usefully be considered in thinking about whether the provisions are adequate for today's circumstances.

The other aspect of the current law is whether it extends to all those people who might fall into the category of 'servants of the State'. [ministerial staff etc]. At a minimum these definitional issues require consideration.

So far as the technical aspects of the law it is likely that specialist expertise would be required to develop viable alternative provisions to those which currently exist in the Code and other

[138] Commissioner of Police, pp. 18-19.

places. This might include reference to the relevant work of the national Model Criminal Law Officers Committee.[139]

15.7 The Committee invited Greg Melick SC to give evidence and it questioned him on, amongst other things, whether the Criminal Code or Police Offences Act had the scope to encompass corruption or unethical/immoral conduct. Mr Melick responded:-

> *I have some problems with the Criminal Code. Bear in mind it is an amalgam of both the Stephen and Griffith codes, it was enacted in 1924 after a whole series of parliamentary discussions, and because it is an amalgam of two codes, we have serious criminal offences which have no real mental element. The Bryan Green-John White matter is an example.*
>
> ***...*** *there are certain offences in the code which, when you look at the drafting of the code, were down as minor offences and not intended to have (inaudible) consequences. The code has, as you know, mental elements in sections (3) and (4), and then later in the parts of the code there are other mental elements and concepts of wilfulness grafted on which makes life very difficult. There are in our code paths to (inaudible) offences not involving any specific mental element and one of the classic examples is, of course, 157(1)(c). It is one of the few places in the world where you can be convicted of murder without having, what is regarded in most jurisdictions as representing intent.*
>
> ***...*** *It was because Stephen talked about unlawful object and gave an example of terrorists blowing up a train, the object being the blowing up of the train for terrorists purposes. Therefore, it was quite appropriate that he should also be responsible for the deaths of people that flowed therefrom. But, for some unknown reason, the act, instead of putting the word 'object' put the word 'act'. So that is where the problem of 157(1).(c) comes in.*
>
> *(as to corruption, immoral activity) I think the way the code is drafted at the moment is inappropriate because it does allow people to be subjected to lengthy jail sentences without a direct mental element. As a lawyer I find that anathema. But bear in mind that this commission should not just be looking at crime, it should also be looking at inappropriate behaviour.*[140]

Finding

15.8 **The Committee finds that there is a need for a review of the Criminal Code Act. Notwithstanding the amendments made to the Act, the original statute was enacted in 1924 and the**

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[139] Government, pp. 89-90.

[140] A. G. Melick, Hansard, 16 March 2009, pp. 38-39.

Committee concurs with the view that much has changed since that time.

Recommendation 27 - The Committee recommends that the Attorney-General initiate a review of section 69 of the Criminal Code Act 1924 to ascertain its current applicability or the need for an amendment to remove any ambiguity or perceived ambiguity.

Recommendation 28 – The Committee recommends that the Attorney-General request the Tasmania Law Reform Institute to examine and report upon the Criminal Code Act 1924 with a view to proposing recommendations for any necessary legislative change. Such review to be adequately funded by the Government.

16 OTHER REVIEW MECHANISMS

16.1 The Tasmanian Government submission provides detail of further statutory review mechanisms: the Judicial Review Act[141] and the Magistrates Court (Administrative Appeals Division) Act[142] as follows:

16.2 The former provides for review of decisions of an administrative character made, proposed to be made, or required to be made, under a statute, the Judicial Review Act.

16.3 Such Act authorises the Supreme Court to review the official actions of executive branches of government and examine whether there has been an improper exercise of power.

16.4 Section 20 states that an improper exercise of power is taken to include:

- *Taking an irrelevant consideration into account;*
- *Failing to take a relevant consideration into account;*
- *An exercise of power for the purpose other than a purpose for which the power is conferred;*
- *An exercise of a discretionary power in bad faith;*
- *An exercise of a personal discretionary power at the direction of another person;*

[141] Judicial Review Act (No. 54 of 2000)
[142] Magistrates Court (Administrative Appeals Division) Act (No. 72 of 2001)

- *An exercise of a discretionary power in accordance with a rule without regard to the merits of the case;*
- *An exercise of a power that is so unreasonable that no reasonable person could so exercise the power;*
- *An exercise of a power in such a way that the result of the exercise of the power is uncertain; or*
- *Any other exercise of a power in a way that is an abuse of the power.*

16.5 Judicial review provides oversight of government action and executive power and a number of the criteria above are relevant to questions of ethical conduct. However judicial review only occurs if an individual who has been aggrieved by a decision applies for a review.

16.6 The Magistrates Court (Administrative Appeals Division) Act 2001 provides a specific appeal mechanism for decisions made under a large number of Acts. This Act consolidated a number of statutory rights of appeal to one body, namely the Magistrates Court. It also imposed a statutory duty for decision makers to give reasons for decisions and to advise of review rights.

16.7 An essential element of good administration is the need to ensure that reasons are given for administrative decision. Giving reasons ensures that decision makers are accountable for their decisions. Individuals affected by decisions are able to see the reasons for a decision and seek reviews if they feel it is necessary.

16.8 Where a matter is reviewed by the Administrative Appeals Division the matter is dealt with as a hearing de novo. The court essentially hears the matter afresh and may exercise all the functions of the original decision maker. The court may affirm the original decision, vary it, set it aside and make a new decision or even remit the matter to the original decision maker with directions.

16.9 In determining an application for a review of a reviewable decision, the Court must give effect to any relevant Government policy in force at the time the reviewable decision was made except to the extent that the policy is contrary to law or the policy produces an unjust decision in

the circumstances of the case. This provides for a degree of oversight of government policy as well as specific actions.[143]

Finding

16.10 **The Committee finds that on the evidence received, the prescriptions contained in the Judicial Review Act and the Magistrates Court (Administrative Appeals Division) Act are appropriate and require no amendment.**

17 NEED FOR AUGMENTATION

17.1 Having undertaken a review of the existing mechanisms as detailed above, the Committee formed the view that 'augmentation' was needed. Therefore, it was essential that an assessment of organisations and/or Offices which exist elsewhere and the role such entities play within the broader structure of government in those jurisdictions needed to be undertaken. The jurisdictions most often referred to in evidence to the Committee and anecdotally were: Queensland; and New South Wales. Accordingly, the Committee devoted its attention to developing its understanding of the operations of the Crime and Misconduct Commission (CMC) and the Independent Commission Against Corruption (ICAC).

17.2 The Committee also noted the research Paper authored by Dr Zoe Gill entitled "Corruption and Integrity Systems Throughout Australia"[144]. Such paper provided a comparative analysis of the structure of systems existing in other jurisdictions.

Queensland model

17.3 The CMC is the principal anti-corruption body in Queensland and was established pursuant to the Crime and Misconduct Act 2001. The CMC is the second generation body in Queensland, created with the merger of the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) merged to form the new organisation.

17.4 The CJC had been established by the Criminal Justice Act 1989, to help restore confidence in public institutions after the revelations of the 1987–89 Fitzgerald Inquiry which

[143] Government, pp. 61-63.
[144] Z. Gill, Corruption and Integrity Systems Throughout Australia, Research Paper No 2 of 2007, South Australian Parliament Research Library, pp. 4-7.

revealed ingrained corruption within Queensland's police and the Bjelke-Petersen Government more generally.

17.5 The CMC has jurisdiction over three areas:-

• *Misconduct jurisdiction-*

The CMC has jurisdiction to investigate official misconduct in units of public administration. These units of public administration include State government departments, most statutory bodies, schools, universities, TAFEs, local government councils, (state and private) prisons, the police, and elected officials in both the Queensland Parliament and local councils. However, in regards to elected officials only conduct that could possibly involve a criminal offence can be investigated. Further, most complaints of official misconduct are referred to the relevant agency to address under the monitoring of the CMC.

The CMC's misconduct functions are (a) to raise standards of integrity and conduct in the Queensland public sector and (b) to ensure that any complaint which involves or may involve misconduct is dealt with appropriately. In fulfilling the second of these functions, the CMC must adhere to a number of principles set out in the Crime and Misconduct Act (s34), which are:

> *Cooperation. To the greatest extent practicable, the CMC and units of public administration should work cooperatively to prevent and deal with misconduct.*
>
> *Capacity-building. The CMC plays a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately.*
>
> *Devolution. Subject to the other principles, action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit.*
>
> *Public interest. The CMC has an overriding responsibility to promote public confidence in the integrity of units of public administration and, if misconduct does happen within a public sector agency, in the way it is dealt with.*

• *Crime jurisdiction*

The CMC works with the police and other law enforcement agencies to fight major crime, encompassing organised crime, paedophilia and other serious crimes. The CMC has special investigative powers in this regard. These powers include requiring the production of records, entering and inspecting premises and seizing records, using surveillance devices (other than telephone interception devices), and summonsing persons to attend hearings and give evidence. The search, surveillance and seizure powers require approval from a Supreme Court judge.

• *Witness protection jurisdiction*

The CMC administers Queensland's witness protection program, ensuring protection for people eligible under the Witness Protection Act 2000 (Qld).[145]

17.6 The CMC has the following functions prescribed by the Crime and Misconduct Act:-

- *fighting major crime*
- *raising standards of integrity and conduct in the public sector*
- *ensuring that any complaint about misconduct in the public sector is dealt with appropriately*
- *undertaking research*
- *helping to prevent crime and misconduct*
- *gathering and analysing intelligence*
- *confiscating the proceeds of crime*
- *protecting witnesses.*[146]

17.7 The CMC has the following powers:-

- *require a person to produce records or other things relevant to a CMC investigation*
- *enter a public sector agency, inspect any record or other thing in those premises, and seize or take copies of any record or thing that is relevant to a CMC investigation*
- *apply to a magistrate or judge for a warrant to enter and search premises*
- *apply to the Supreme Court for a surveillance device (note: the CMC does not have the power to use telephone interception devices)*
- *summons a person to attend a hearing to give evidence and produce such records or things as are referred to in the summons.*

The CMC's 2006 annual report notes that the CMC does not have telephone interception powers.

Limits on powers

While the CMC has the power to investigate crime and misconduct, it does not have the power to determine guilt or implement disciplinary action. Rather, the CMC refers reports to prosecuting bodies to consider pursuing prosecution, or to agencies to consider implementing disciplinary action or changing agency processes. The only exception is in circumstances where the CMC lays charges for offences under the CMC Act. The CMC can, also, publish reports on their investigations.

Furthermore, the CMC cannot investigate:

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[145] Ibid, pp. 5-12.
[146] Ibid.

• private sector matters, unless they arise out of dealings with the public sector

• issues arising in other states or territories

• federal parliamentarians, departments or agencies

• State parliamentarians and local councillors, unless their conduct could amount to a criminal offence.[147]

17.8 The CMC is a statutory body, independent of the government of the day. However, it is accountable to the Parliamentary Crime and Misconduct Committee (PCMC). The PCMC is established under the Crime and Misconduct Act 2001, and has the following functions:

•to monitor and review the performance of the functions of the Crime and Misconduct Commission (CMC);

•to report to Parliament on matters relevant to the CMC; and

•to participate in the selection of Commissioners of the CMC.

The PCMC is assisted in its functions by the Parliamentary Crime and Misconduct Commissioner, who can act under instruction from the PCMC.[148]

17.9 The Sub-Committee met with officials in relation to the Queensland jurisdiction and was provided with an overview of the operation of the CMC by the Chaiperson and CEO, Mr Robert Needham:-

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

We (perform our role) in a couple of ways. The most public way of course is our investigations in the serious matters. I might say we

147 Ibid.

148 Ibid, pp. 5-12.

get 3 800 or 4 000 - it varies a little bit from year to year - complaints each year. About 1 200 or so of those are matters that are really not within jurisdiction or do not need any further work, but of all those others, most of them we send back to the agencies to investigate themselves. We investigate only about 100 matters each year ourselves.

We do that for those very high-profile public matters, say an allegation against a premier or against a minister or against a senior public servant, or a serious allegation of corruption within a unit of public administration, or a matter that is of great public interest that we should do, or a matter that suggests there is a systemic problem within an organisation. We do those matters because in many ways it's in the public interest or alternatively we can get the biggest bang for our buck in doing those.

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

*We have a training arm that does seminars. We will go into the organisation if it's a big enough one and conduct training seminars within the organisation on dealing with conflicts of interest, setting up fraud corruption control plans - those sorts of th*ings. *All those aspects...*[149]

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

[149] R. Needham, Hansard, 24 November 2008, pp. 38-39.

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

We assess it to see whether it is a matter that we should investigate or whether we should send it back to the department. If we send it back to the department, the very lowest level matters, we will tell them that we want outcome advice only. They know that when we are sending it back we're not saying, 'You have to investigate it'. It might be a matter that you can deal with by way of informal resolution. If it is a management matter you don't need to investigate, you just need to get in and do your management role. It might be a matter that's best to go to mediation - those sorts of issues. That is up to the department as to how they handle it. The more serious ones we will say to them, 'You investigate or you deal with it, but we want you to give us a report before you finalise it.' If we think we need to keep an eye on how they're going to do it or check that they've done it correctly or don't need to do more, we might do that. A more serious one will require them not only to report to us before they finalise it but also to report to us on an interim basis on the way through as to what steps they are taking and how they are proposing to investigate it. So there are those various ways that we deal with it. Then we have a monitoring area that monitors their investigations. These reports that come back to us, we check their investigation to see if we are happy as to how they have done it and we can require them to do more work on it or whatever. If we are really unhappy, and we do this on a number each year, we take the matter over and complete it ourselves. On top of that, we also do audits into the departments. Every now and again a department will be audited. We go in and take a selection of their files and audit how they have dealt with a particular matter. We also do audits of just checking their systems to see that the systems they have in place to deal with the matters are appropriate. We don't just leave the departments alone; we do all these things on top of it. That is becoming a larger and larger part of our role.[150]

17.10 The Committee questioned Mr Needham as to what level of resourcing was devoted to the investigation of crime by the CMC. The following exchange took place:-

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

CHAIR - Is there any duplicity with that? One could argue in a small jurisdiction like Tasmania that if there was a matter that went

[150] Ibid, p. 49.

before the commission in the first instance that appeared on initial investigation as a criminal matter not involving the police then the matter should be handed over to the police for investigation.

Mr NEEDHAM - Exactly.

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

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

Part of the rationale is that if you have serious-enough organised crime it is virtually inevitable that there will be some linkages between that organised crime and police corruption. We do occasionally, but only occasionally, strike some links that way and we have had operations that our crime area is doing with our misconduct area working in with them because there is a linkage through to suspected police misconduct. That is not the norm, it is more unusual but the two do work in well together. For us it also works well in scale, in that having a surveillance and technical unit there would be times when we would not have the need for that in the particular investigations we were doing in misconduct but they can always be utilised effectively and well by our crime area. There is no down time because they can always be working on the crime area. There is continuing demand for their services from that area.[151]

And later:-

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

Part of the rationale is that if you have serious-enough organised crime it is virtually inevitable that there will be some linkages between that organised crime and police corruption.[152]

[151] Ibid, p. 39.
[152] bid, pp. 39-40.

17.11 The Committee invited Mr Needham to summarise the strengths of the CMC. His evidence was instructive:-

> *The strengths are the fact that we are large enough to have a dedicated team of investigators who can build up their expertise. We have sufficient complaints come through of a serious nature that do warrant investigation by the CMC, so that we can effectively maintain that body of investigators and continue to occupy their time. I would be a little worried in Tasmania as to whether you would have that...*
>
> *In Queensland we have about 250 000 of just public servants in Queensland and then, on top of that we have all the local government and I have often heard it said that the budget for the Brisbane City Council is about the same size as that for Tasmania. So it would be in effect, I would imagine, as if it was an organisation just oversighting the Brisbane City Council, except of course that it would be bigger in that it would have an educative role and other things that in Queensland are done by the State Government and not just the council.*
>
> *I would be a little bit concerned as to whether you would have sufficient to keep them going all the time to be building them up and maintaining that body of expertise. It is no good having investigators unless they know what they are doing. You would certainly want to have them not just investigating, you would want to have them doing this prevention work as well and the capacity building into the agencies, which would occupy a fair bit of their time. We have that in Queensland. We have that scale but even there we have problems at times because we have just over 300 staff. In the misconduct area alone, from memory, we have about 90 to 100. Then we have all the corporate support and the surveillance and everything that goes on top of it. Even there, at times, we have difficulty with the planning and bringing people through with the expertise to head it.*
>
> *It is very difficult to bring people in from outside to head these investigative teams and everything so to have the experience to be able to do it, we have to basically build ours and we still find that very difficult, even with the number we have.*[153]

17.12 The Committee was aware of instances of reputational harm to individuals resulting from the conduct of inquiries by anti-corruption bodies effected either by leaks from within the organisation or by a 'trial by media' where the existence of an allegation, whether or not ultimately substantiated.

17.13 Evidence was received that such bodies may be likened to 'star chambers', staffed by 'Elliott Nesses' with enormous

[153] bid, pp. 40-41.

powers and the potential to misuse such power to cause political embarrassment.[154]

17.14 The Committee considered the protection of reputation as being an area of particular concern and questioned Mr Needham as to whether he shared such concern and if so, what steps were taken to minimising the issue. Mr Needham responded:-

> *The ways of overcoming it are a difficulty. We find that if we have a big investigation, which is going to be of some public interest, if it goes on for any period of time it is inevitable that at some stage it is going to leak out. You cannot really avoid that because you are going out and interviewing people. You are interviewing witnesses. You are getting files from public service offices. You are doing all these sorts of things and you are speaking with people who do not have bounds of confidentiality, and they can then go and tell other people and it will go on and the media will eventually get it and it will be out there.*
>
> *When it does, we try to minimise any harm. We generally will only confirm we are doing an investigation. If there are factual inaccuracies; if they are printing things that are disadvantageous to the reputation of the person and it is totally inaccurate, we will correct the record. Otherwise we try to avoid any comment, but it is inevitable that will happen and it will get out there…*
>
> *If we call witnesses to closed hearings we can put obligations of confidentiality on them, but we do not call all witnesses to closed hearings. There are a lot of peripheral witnesses that we just interview in the normal way. As I say, when we are getting files from public service offices they then know that there is an investigation into this particular matter and it will eventually get out.*[155]

17.15 As previously mentioned, one characteristic common to many submissions was the need for parliamentary oversight of the operation of any corruption body. The importance of the role of the Parliamentary Committee on the Crime and Misconduct Commission was outlined in the following evidence:-

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

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[154] G. Barns, Hansard, 7 October 2008, pp. 66-69.
[155] Needham, p. 45.

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

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

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

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

Mr HOOLIHAN - Yes, we do.

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

Mr HOOLIHAN - Yes.

Mr McKIM - Could you subpoena documents from the CMC?

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

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

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

Mr FINNIMORE - And not in my time. The power to go and look for documents and things does not allow for you to go right into what might be called 'operational' material, and that was part of the reasoning for the establishment of the Office of the Parliamentary Commissioner. Again, in 1998 he or she - currently a he - does

have full power to go and examine records at the CMC and with some restrictions does have royal commission powers.

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

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

Mr McKIM - And he has those powers?

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

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

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

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

Mr FINN - Those hearings are recorded, so there's a transcript of the hearings. In that situation, if there was a particular inquiry operation that I was concerned about, we drill down to the questions. Obviously if you're sitting in a room you can't necessarily answer everything, you don't have everything at your fingertips, so speaking personally, I'd say, 'I'm really not happy with the way this is going, we want a report to the committee for our next meeting on what your plan is for that investigation in terms of what the issue

might be, timeliness or other detail. We will ask the research people of the parliamentary committee to liaise with us so you can get us as much information as possible to consider it there.' So we would follow up if we had concerns in that way.[156]

New South Wales model

17.16 The Independent Commission Against Corruption (ICAC) is the principal anti-corruption body in New South Wales and was established pursuant to the Independent Commission Against Corruption Act 1988 and commenced operation in March 1989.

17.17 The ICAC was established in order to fulfill an election campaign commitment by the then Premier, Hon. Nick Greiner. The following matters were cited by Mr Greiner as the basis for such commitment:-

> *In recent years, in New South Wales we have seen: a Minister of the Crown gaoled for bribery [Rex Jackson]; an inquiry into a second, and indeed a third, former Minister [possibly Laurie Brereton, John Ducker, or even Wran himself] for alleged corruption; the former Chief Stipendiary Magistrate gaoled for perverting the course of justice [Murray Farquhar]; a former Commissioner of Police in the courts on a criminal charge [Merv Wood]; the former Deputy Commissioner of Police charged with bribery [Bill Allen]; a series of investigations and court cases involving judicial figures including a High Court Judge [Lionel Murphy]; and a disturbing number of dismissals, retirements and convictions of senior police officers for offences involving corrupt conduct.*[157]

17.18 The ICAC has the authority to investigate any matter involving public sector corruption in NSW. This includes allegations of corruption against public servants, local government employees, magistrates, judges and politicians. Allegations of police corruption are investigated by the Police Integrity Commission, but the ICAC retains responsibility for advising the police service on corruption prevention. The ICAC does not investigate private sector corruption or criminal activity, unless public sector corruption is also involved. The ICAC cannot prosecute individuals, but it can make recommendations regarding prosecution to the Director of Public Prosecutions.[158]

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[156] P. Hoolihan/S. Finn, Hansard, 24 November 2008, pp. 21-23.
[157] Gill, pp. 5-12.
[158] Ibid.

17.19 The ICAC also has a role in corruption prevention through the provision of advice to, and the promotion of an ethical climate in, the public sector.

17.20 The powers of the ICAC are defined in the Independent Commission Against Corruption Act 1988 (NSW). These include the power to:

- *make findings, form opinions and formulate recommendations from the results of its investigations (s 13(2), (3))*
- *establish task forces (s 15)*
- *seek a warrant under the Listening Devices Act 1984 (NSW) (s 19(2))*
- *require a public authority or official to produce information (ss 21, 22)*
- *enter and inspect public premises (s 23)*
- *apply for an injunction from the Supreme Court to prevent conduct which may impede an investigation or cause irreparable harm (ss 27, 28)*
- *conduct compulsory examinations (s 30) and public inquiries (s 31)*
- *summon a person to appear at a compulsory examination or public inquiry (s 35) and to issue a warrant for the arrest of that person if they fail to appear (s 36)*
- *apply for or issue search warrants (s 40) and to execute them (s 41)*
- *provide protection for witnesses (s 50).*

In addition to these and other specific powers, the ICAC has the general power to do all things necessary for the execution of its functions (s 19(1)).

17.21 The ICAC operates independently from the NSW Parliament, the Government and the judiciary. It is not responsible to a Government Minister, but rather is responsible to the NSW Parliament through the Parliamentary Committee on the Independent Commission Against Corruption.

17.22 The Sub-Committee met with officials in relation to the New South Wales jurisdiction. The ICAC Commissioner, Hon Jerrold Cripps QC provided the Committee with the following overview of the operations of the ICAC:-

Most of us think we've reached a stage in Australia where there has to be some form of standing commission to deal with the problems associated with corruption. New South Wales started that, you may recall, because they'd had a nasty decade before

that when a minister of the Crown had gone to jail and a magistrate had been charged with perverting the course of justice and was sent to jail. So everyone thought they had to do something to clean it up and they brought in the commission. It is often likened to the Hong Kong ICAC, but except the name we have nothing in common with the Hong Kong ICAC. The Hong Kong ICAC is a specialised branch of the Hong Kong police force devoted to corrupt conduct. We are not doing that; we are mainly concerned with exposing corrupt conduct and leaving to other authorities as to how they respond to that.

... In New South Wales the function of dealing with the police was hived from the ICAC. I've never quite understood why that happened. It's obviously something ICAC didn't do properly, or people thought that they didn't do properly. I've only been here four years and when I tried to find out why it is, people from ICAC really have no idea why it happened. But they have separated it. I think it may have been a bit precipitous - because Queensland have it; they keep it under one roof and so does Western Australia. Anyway, that's the system in New South Wales; they separate the police from all other branches.

Having said that, I think every State has to make up their own mind. I'd be surprised if there was a State, even Tasmania, that was less corrupt than other States. Once you get human beings occupying a space, you get corruption.

... in our legislation (corruption) is defined. It's defined by reference to people behaving dishonestly or partially, or behaving in a way that would amount to official misconduct, or people who misapply information or material that they're given in the course of their duties - that's how it is defined. However, it is then qualified; that's one limb of it. Once you find there has been one of those things then the next limb is that no finding of corruption can be made unless if what is alleged is true could amount to a crime or a disciplinary offence. That raised somewhat of a problem when ICAC was investigating members of parliament. Their conduct amounted to the definition of corruption but was not criminal because there were no disciplinary offences against members of parliament. So the parliament had a code of conduct for members, the breach of which amounted to disciplinary proceedings. So if a parliamentarian had engaged in corrupt conduct as defined, and that was in breach of the code, then you could make a finding of corrupt conduct. But there are a lot of problems associated with that. For example, the members' code of conduct is so broad that they say things like you should not take bribes. If you've got to say that to members of parliament then you've probably lost the battle. Then they have a ministerial code of conduct, which is much more detailed but they won't include that in the ICAC legislation.[159]

[159] J. Cripps, Hansard, 25 November 2008, pp. 1-2.

17.23 The Committee questioned the witnesses as to why such a definition was made. The following submissions were made:-

> *Mr CRIPPS - I'm not sure. .... There's no doubt if you just look at what, in the first instance, could be corrupt conduct - dishonesty, partiality, misusing information - all those are capable of catching misconduct that nobody would dream of. For example, if you were late for work and you said you were at your grandmother's funeral, that is dishonest but nobody would really think that was corrupt conduct.*
>
> *Mr WALDON - I think it really is an issue of seriousness, to make sure that findings of corrupt conduct aren't being made on a very narrow technical basis but that the findings are based on serious misconduct.*
>
> *Mr CRIPPS - I did a part inquiry into ICAC before I became the commissioner. I stopped when I became the commissioner and it was carried on by somebody else. Many of the civil liberty groups, the Bar Council and the Law Society all claimed that the definition of corruption was too wide and ought to be redefined to make it accord with what ordinary people would believe corruption to be - like the taking of money to get certain favouritism. I then asked each one of them to give me a definition but every one they gave had more problems than the one we had. I also invited them to give me an illustration of when there had been these findings of corrupt conduct but the conduct was such that ordinary people in the community would not think was corrupt. They couldn't or didn't give me one. So I thought to just leave it and wait and see. To date I cannot think of an occasion where the commission or my predecessors have made a finding of corrupt conduct that ordinarily people would not think was corrupt.*[160]

17.24 The function of the ICAC was succinctly described as follows:-

> *Mr WALDON - .... Our function is to investigate and expose, not to prosecute. Others may or may not do that. It would depend on a whole lot of issues as to whether there is admissible evidence or not.*
>
> *...We are required under our act to make a statement as to whether or not we are of the opinion that consideration should be given to the taking of prosecution action and we specify what that action will be. That then goes to the Director of Public Prosecutions and he assesses the initial evidence and then makes a final determination as to whether or not there should be a prosecution. You can understand of course that the evidence on which we base a corrupt conduct finding may not necessarily be evidence that is going to be admissible in court, so there are a different considerations which apply there.*

[160] J. Cripps/R. Waldon, Hansard, 25 November 2008, pp. 1-2.

... matters can come into us from members of the public. Chief officers of public authorities are required to report matters to us that they reasonably believe may involve corrupt conduct. We can commence an investigation on our own initiative. Matters that come in from members of the public or from principal officers of public authorities are assessed at our assessments unit. They write up the material that has been provided. Sometimes they might make some inquiries in order to clarify issues that are not initially clear. That then comes to an assessment panel, which is composed of the Executive Director of Investigations, the Deputy Commissioner, myself and the Executive Director of Crime Prevention Education. We look at the reports and make a determination. Sometimes it is quite clear that a matter is not within jurisdiction. Sometimes it is quite clear that it may possibly involve corrupt conduct but it does not look as if it is serious or systemic. It may be a matter that we do not want to look at ourselves but we have the power to refer it back to another agency and request that agency to investigate and, if necessary, report back to us. So we are really looking at matters which are serious and or systemic. Sometimes we make a decision and it is hard to tell - the allegations, on the face of it, might be serious and it might look as if it involves systemic corrupt conduct, but there may not be a lot of information behind that to indicate whether that allegation can be corroborated, in which case we might decide to conduct a preliminary investigation.

So we can still use our statutory powers, but the purpose of the query or the investigation is really in order to clarify whether there really is an issue of substance there or not. Sometimes we conduct a criminal investigation and at the end of the day, we determine that there is really not anything there of substance so we close that off. On occasions of course when you conduct a preliminary investigation you find more evidence, and it can then become a full investigation.

Within the commission we have a group made up of our senior management called the Strategic Investigations Group, and every matter that is the subject of a preliminary investigation gets reported to that group on a regular basis which oversees the conduct of the investigation and determines whether investigations should continue or not.

Mr CRIPPS - I am not on this panel; this panel only comes to me to see whether we go forward or do anything is if there is a split in the panel. If there is a disagreement I have to let Parliament solve it, but you have to see this in the context of the powers we have and one of those is to get people to come forward and they must answer all questions that are asked of them. It is a criminal offence not to do so and it also means however that if they object to answering questions, as the law now stands, their answers

cannot be used against them in criminal, civil or disciplinary proceedings.

At the present time I am trying to persuade the Parliament that they ought to get rid of the privilege and disciplinary aspects in civil proceedings, but obviously keep it for criminal proceedings because of the privilege against self-incrimination. That is what it is at the present time and that is what I think Roy was referring to when he said that on the face of it we had no problem about finding that corrupt conduct has been engaged in. If all the evidence we get comes from an admission made by somebody in a public inquiry that cannot be used in a criminal trial.[161]

17.25 The Committee sought to know what processes were in place to protect the reputations of those under investigation. The following submission were received:-

Mr CRIPPS - It was a concern of the Parliament because originally when this legislation was brought in it was said that when the commission decided to investigate, and the question was whether they had a public investigation or a private one, prima facie it should all go public.

That did lead to a number of complaints by people who said that, even though they'd been cleared in the public investigation, they remained smeared by the allegation. So they then changed the legislation and said when the decision was made to have a public inquiry or not, one thing to take into account was the effect this could have on people's reputations that shouldn't be there.

Generally speaking, that is what I think we do. The legislation sets out the things - they say, for example, 'You may take the view that this has to be aired in public even though there are some problems with reputations'. Other times, you may think, 'The reputation is so important here and what has to be aired in public is not that important', so you don't do it. I have a wide discretion as to whether I will order an inquiry to be done in public.

Generally speaking, that works this way. We have the site to investigate, we then have a compulsory examination to investigate them in private, when people have to come and answer questions - exactly like a public inquiry except the public are excluded. At the end of that time - this is the general way - we look at it and say, 'Well, what has emerged here?', and the answer is a fairly clear case of corruption. So this will probably have to move to a public inquiry for two reasons. One, to explain to the public why it is we have come to this conclusion, and we are doing it not behind closed doors but in public. The second one is, in effect, to give the people against whom these allegations were made a good, public opportunity to rebut.

[161] R. Waldon, Hansard, 25 November 2008, pp. 4-5.

So, generally, we have taken the view, not that we haven't got a closed mind about it, but we think, 'There is a pretty powerful case here so that's the best way to do it'. I have never had to do it yet but there could be a case where public confidence in the system would demand you could not really resolve this otherwise than in public without everybody being very suspicious about your motives for what you'd done in private, even though you know that you're going to blacken someone's character and probably, unjustifiably, you would not know who. You might have to go public. It would probably happen if you started to investigate a given case. It is when politicians start making use of it that you can get into trouble.

CHAIR - That should be in the discretion, should it not?

Mr CRIPPS - Yes, it is. There always was a discretion but the discretion was 'don't do it in private unless you really have to', whereas they have now said to us, 'Do more in private than you do in public. Go public when you think you have to'.

Mr MARTIN - Do you agree with that?

Mr CRIPPS - Yes, I do.[162]

17.26 The Committee heard that something in the order of 2500 complaints of corruption were received by ICAC each year of which 70 progressed to the level of preliminary investigation with four or five eventually giving sufficient cause to initiate a full investigation.

17.27 Mr Frank Terenzini MP provided the following insight into the evolution of the operations of the ICAC in NSW:-

Where we have got to now with ICAC is that the public hearing side of it is very much at the end of the line, and only when there is sufficient evidence to go to a public hearing. What happens now at ICAC is that they gather admissible evidence along the way and they are much more likely to be able to quickly give a brief to the DPP. As a matter of fact, one of the main problems of ICAC is waiting for the DPP to get back to them to see whether or not they are going to charge someone with an offence. So it has moved a long way since the beginning and the simple public exposure side of it; it is now more of an investigative body to gather admissible evidence to result in charges and it works very well in that regard.

In Tasmania ... you are going to have to decide what level of corruption you have to see if it is worth setting up this commission for investigative and educational purposes. If you feel that there is a perception in the community and the Government feels it is at a

[162] Cripps, pp. 13-14.

level where it is a significant problem, setting up a permanent commission is one way to go about it. I think what you should do is look at the way ICAC in New South Wales has travelled over the last 20 years, how it has gone from that emphasis to the new emphasis, and look at that. If you are going to have a permanent commission, which is really a permanent royal commission at the end of the day with the powers it has, I think the way the current commissioner runs it is probably the way to go.

They do about six or seven reports a year. We have reports of Railcorp, for example, who feature regularly in ICAC about corruption in the contracting out of services that would never be detected by the police. This has cost us millions and millions of dollars a year but they would never be investigated by the police if it wasn't for people reporting it. They do investigate very important matters within their resources, but they look at many things that would not ordinarily be detected. I think they do perform a role but if you are going to go that way, to form a commission commensurate with the size of your problem, I would look at that history because it could save you a fair bit of trouble.

The way it was operating 20 years ago, it was really a case of getting people out there, dragging them out in public and exposing them and whatever the collateral damage was so be it, but now it has very much changed to a gathering of information first and then proceeding to a public hearing if necessary.[163]

Establishment of a new body in Tasmania

17.28 There was considerable support for the establishment of a new body in Tasmania to ensure the ethical conduct of public officials. There were essentially two schools of thought: one calling for the establishment of an anti-corruption body in the style of the CMC or ICAC body; and the other for an ethics commission.

17.29 In many submissions, the argument for the former was that such bodies 'had teeth' as opposed to ethics commissions which were 'watered down' and lacked power. Such submissions did provide value in alerting the Committee to the importance of nomenclature in the community's perception of, and consequently, confidence in, any new body.

17.30 The Committee considered the evidence received as to whether there was a need for a new body and what form it should take. The following extracts are samples of evidence received by the Committee to assist in such deliberations:-

[163] F. Terenzini, Hansard, 26 November 2008, pp. 26-27.

The reactive approach to corruption is essentially a structured series of systems and processes that address already occurring and identified misconduct and corruption. However, a reactive approach, no matter how effective, will never address corruption in an encompassing, effective, or cost efficient manner. Such an approach addresses symptoms after the disease has already spread. From a prevention viewpoint such systems are predicated upon a false assumption – namely that corruption is essentially a problem of the individual. The data is clear, longstanding and unambiguous on this issue. The so called 'rotten apple in the barrel' approach is false and there is even evidence to suggest that its continued promulgation among some organisations is, of itself, an indicator of a corruption tolerant culture. Both Wood (1997) and Lusher (1981) urged that anti-corruption strategies should never be built around the rotten apple approach. Reactive, and even the proactive investigation and detection of corrupt police officers is largely predicated upon the assumption that all that has to be done is to find and remove the rotten apples. At best, rotten apples in an organisation are visible symptoms of a larger malaise; they are indicators of a problem, but they are not the fundamental problem itself, merely the visible tip of the iceberg. Therefore any tendency to focus in this area is obfuscatory, inefficient and misguided.

This individual, reactive approach is historically understandable for it is traditional policing turned inward upon the organisation itself. The apparent plausibility of this model disappears when we recognise that the organisation's role in relation to its members is akin to that of the community as a whole, rather than that of the police role in the community. Therefore the approach should include policing approaches to corruption but only as part of a larger canvas. The reactive approach is essentially a short-term, but ongoing problem-solving approach.

An effective preventative approach to corruption requires a different emphasis altogether. It requires culture change and monitoring, involving employee consultation, marketing and communication, training and education. Corruption should be understood as an organisational problem practiced by individuals, rather than an individual problem practiced within an organisation. [164]

…. Values management rather than activities risk management is the key.

The point applies generally. Any government or corporate strategy should be values driven, rather than compliance driven. Addressing an activity, via a compliance approach is of course appropriate when the activity in question is the problem: Such an approach is perfectly appropriate for dealing with one-off separate incidents. That is, when the activity itself causes the

[164] Holliday, p. 6.

problem. However, when the activity is merely a symptom rather than a cause, as is the case with misconduct and corruption, an emphasis on particular activities is essentially futile, as the behaviours and activities will simply multiply and change. It is only by addressing values that prevention can occur[165]

"The time and resources spent preventing ethical compromise through credible instruction and pro-active supervision are infinitely less than those required to conduct internal and criminal investigations, convene investigative commissions or restore community trust and repair police/community relations." (Gilmartin and Harris 1998.) [166]

The same point applies to ethics and integrity within the government sector. It is dependent upon the values of those within it, not on the strength of an anti-corruption watchdog[167]

Formal codes of conduct and guidelines for public officials have been promulgated by a variety of bodies in Government. What has been lacking is continued updating, promulgation and training about the standards of conduct outlined in these various instruments over time. Some jurisdictions, such as the UK and Queensland, have formal bodies in place to advise parliamentarians and public servants on ethical conduct. The UK has the Standards on Public Life Commission which produces guidelines for public officers and Queensland has an Integrity Commissioner who provides advice on conflict of interest issues.

Skilling up the decision makers and advisers of the Executive in ethical practice and behaviour will improve ethical performance and behaviours and encourage a strong ethical culture across all levels of Government.

One of the major advantages of a standing integrity or ethics body is the educative and support functions it provides. In other jurisdictions these include:

- *Developing or providing advice about the development of guidelines and codes of conduct;*
- *Training;*
- *Producing resources for Government; and*
- *Civic education to schools, interest groups and the public.*

Training is generally focused on:

- *Recognising improper behaviour;*

[165] Ibid, pp. 9-10.
[166] Ibid, pp. 11-12.
[167] Ibid, p. 12.

- *Identifying and managing conflicts of interest; and*
- *Preventing corruption.* [168]

Because there is frequently a very thin line between seriously unethical conduct and criminality, an ethics agency would sometimes need to work closely with police and be empowered to either refer a matter directly to the DPP or (less satisfactorily) to recommend to the Attorney General that he refer a matter to the DPP. If the latter, the ethics agency should retain the right to disclose that it had made such a recommendation. There is clearly a school of thought which favours an avoidance of any investigative role for a new agency, but in the present political climate a total avoidance would weaken the level of public confidence in the new body.[169]

The Commission's educative functions should be three-fold: to help draft or refine codes of conduct for public sector employees and to provide training programs where appropriate (though too much emphasis on the latter can waste resources and generate cynicism). For the community at large the new agency should aim to explain what standards is reasonable to expect from government and why.[170]

In undertaking its educative functions the new agency should not place too heavy a reliance on out-sourced academic assistance. Academic ethicists are not always capable of understanding the real-life circumstances in government which can give rise to ethical problems or dilemmas, but I would recommend that Commission members (if "Commission" it is to be) give particular emphasis to explaining the ethical framework of Westminster-style parliamentary government. A preoccupation with legal formulae and the drafting of codes on the one hand, or the proclamation of abstract philosophical principles on the other, would be a recipe for failure.[171]

I endorse the suggestions made by Sir Max Bingham, former Tasmanian deputy premier, attorney-general, police minister, and former member of the National Crime Authority (NCA) and chairman of the Queensland Criminal Justice Commission (CJC); and Jeff Malpas, the Professor of Philosophy at the University of Tasmania and an international authority on ethics.

They have suggested an "ethics commission" which would be

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[168] Government, p. 86.
[169] P Boyce, Submission 44, p. 2.
[170] Ibid., p. 2.
[171] Ibid, p. 3.

much smaller and more compact than any of the anti-corruption bodies which have been established in other states.

It would have the role of training people in public life and the public service on matters of ethics, on recognising conflicts of interest and how to resolve or avoid them when they arise; plus a small investigative unit to bring individuals to account if they breach these conflicts of interest.

It would report directly to Parliament and be able to investigate complaints (by MPs or from the electorate) of breaches of the Code of Ethical and Racial Conduct set out under Standing Orders (a code to which all Members must subscribe but which is not enforced); and conflicts of interest under the Parliamentary Disclosure of Interests Act.

Breaches of the code are theoretically dealt with by reference to the Privileges Committee, but such references are virtually unheard of. In any event, it is simply bad practice for MPs to set themselves up as the judges of one another's behaviour – an independent judgement would both <u>appear</u> and <u>be</u> far preferable.

On an associated matter, theoretically the register of pecuniary interests is a public document, but in practice it can only be accessed by application to the Clerks of the Council and the Assembly. At the very least it should be available on the Internet for public scrutiny; and should be administered by a Tasmanian Ethics Commission rather than by MPs themselves, as at present.

A Tasmanian Ethics Commission would, by comparison to ICAC-style bodies in other states, be "miniscule" in size and could -- under the Bingham/Malpas proposals -- make use of existing resources including the Centre for Applied Philosophy and Ethics (CAPE) at the university, which is headed by Professor Malpas and which, among other things, already teaches a course in ethics for Tasmania Police.

Sir Max has said Tasmania Police -- the best educated, trained and cleanest service in the country thanks largely to former commissioner Richard McCreadie and his former deputy and now successor Jack Johnston -- could allocate personnel as needed to pursue any investigations. I would suggest it could also call on the resources of "beefed-up" existing offices such as the Auditor-General, Ombudsman and Director of Public Prosecutions whose resources, powers and independence should be boosted.

An Ethics Commission as envisaged would have just one full-time chairman (perhaps a retired judge or someone of similar status) and two part-time members, respected and trusted members of the community. This would go several steps further than, for example, the ACT Assembly which recently appointed an Ethics Adviser to help MPs navigate the ethical minefield; and even the House of Commons which has appointed a Parliamentary Commissioner for Standards responsible for advising MPs on the registration of their financial interests, and also for investigating

complaints from other MPs and the public about failures to register pecuniary interests or otherwise abide by the Code of Conduct for MPs.

But it would go nowhere near as far as a powerful, unwieldy (perhaps to the point of being unmanageable) and costly ICAC-style body which – while no doubt necessary in larger states where organised crime flourishes -- would not only be excessively expensive for a small state like Tasmania, but would run the risk of becoming so powerful that it could supplant the authority of the elected Parliament and existing independent watchdog bodies.[172]

I see value also in making such an ethics commission available to assist members of the news media in matters of ethical behaviour, and also to bring to public attention cases where the media allows its ethical standards to fall short or founder. The news media is as much a part of the overall process of government as are the parliament and the public service. But even a free press should not be exempt from scrutiny and criticism.[173]

Finding

17.31 **The Committee finds that it would be beneficial for members of the media to appraise themselves in matters of ethical behaviour and processes.**

Support for the adoption of an anti-corruption body

17.32 The Committee considered the evidence for each type of body, when it was provided. The principal arguments in support of an anti-corruption style of body are illustrated in the following extracts.

17.33 The Leader of the Opposition, Hon. Will Hodgman MP, provided the following evidence:-

The DPP ... wrote: "The State of Tasmania lacks any independent investigative body".

Clearly, there is a need for such a body.

The Tasmanian Liberals believe that an Anti-Corruption and Ethics Commission should be established in Tasmania and that that body should have the power to initiate an investigation into an allegation of corrupt behaviour.

The Commonwealth Ombudsman, Professor John McMillan, recently said

[172] W. Crawford, submission 102, pp. 4-6.
[173] Ibid, p. 7.

A key to the success of these permanent commissions is the special investigation powers they have been given by statute. These powers are necessary to penetrate the web of secrecy and cunning that can thwart the detection of corruption.[174] [175]

17.34 The submission of the Honourable Member for Denison, Cassy O'Connor MP, contained the following proposal:-

... What Tasmania needs is an addition to the governance structures of the State which will provide a mechanism which allows instances of corruption and misconduct to be investigated and dealt with.

An Ethics Commission or Office will not of itself address the fundamental and manifest weakness in the current governance arrangements of Tasmania.

For this reason, I submit that the principal recommendation of the Committee should be the establishment of the Tasmanian Integrity Commission. This Commission would:

- *have a statutory foundation to provide for its independence,*
- *report to the Parliament,*
- *be oversighted by a Parliamentary Committee created for the purpose,*
- *have jurisdiction to investigate and report on issues of corruption and misconduct in public administration within Tasmania, inclusive of the operation of the Parliament and the Executive, in a contemporary as well as retrospective capacity, and;*
- *foster an ethical culture in public administration within Tasmania.*

Dual role and functions

A possible model for the Tasmanian Integrity Commission would embody two divisions. The first centres upon public sector integrity and be responsible to identify, investigate and expose instances of corruption and misconduct in public administration. This would, like the jurisdiction of ICAC, CCC and CMC, cover the Executive government, Parliamentarians and the public service.

The second division of the Integrity Commission would be responsible for the promotion of ethical conduct across the Parliament and Executive and would incorporate a role similar to that performed by the Queensland Integrity Commissioner and the Committee on Standards in Public Life in the United Kingdom.

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[174] Address to Anti-Corruption Seminar, Tianjin, China – 26 May 2008.
[175] W. Hodgman, Submission 107, p. 4.

The full development of the model could be allocated to the Tasmanian Law Reform Institute at the University of Tasmania; however, some key principles to be embodied would include:

> *• independence from the Executive, with principal reporting and accountability directly to the Parliament,*
>
> *• security of tenure for the Head of the Integrity Commission,*
>
> *• adequate resourcing, with relative freedom of the Commission to set its own priorities within a triennial budget allocation,*
>
> *• oversight of the Commission by a Parliamentary Committee with selection of the Commission's head on the recommendation of the Parliamentary Committee,*
>
> *• investigative powers broadly equivalent to a Commission of Inquiry established under the Commissions of Inquiry Act 1995.*[176]

17.35 The Committee received a *pro forma* submission from a number of people. Such submissions were in the following form:-

We … call on the Joint Select Committee to establish an independent anti-corruption body with:

- *at least one mainland appointment*
- *an independent and guaranteed budget indexed to the CPI*
- *reporting to Parliament, not to government*

That such a body should include both an ethics education component and significant investigative capacity, including the ability to engage in retrospective investigation where there is a continued impact on public policy, subject to statutes of limitations.

We believe it should also include adequate mechanisms to maintain the confidentiality of investigations, that protects both individuals raising allegations, and individuals subject to allegations, including:

- *whistleblower protection*
- *the ability to conduct hearings in camera to maintain the confidentiality of investigations*[177]

17.36 An encouraging aspect of many such submissions was the recognition of the separation of powers and specifically the fundamental importance of the role of the Parliament in

[176] C. O'Connor, Submission 123, pp. 6-7.
[177] A. Layton-Bennett & J. Donnachy, Submission 29, p. 2.

scrutinising the Executive. The inclusion of provisions for any new body to report to Parliament and/or have oversight by a Parliamentary Committee was almost universal. Independence of budget also was predominant.

Opposition to the adoption in Tasmania of an anti-corruption body

17.37 The Committee received evidence which opposed the adoption of a body similar to the ICAC and CMC.

> *Calls for a standing independent crime and corruption commission (ICAC) are often based on the rather simplistic argument that a number of other states have one. It is important to note that Tasmania has not had the level of corruption or criminal activity that these other states have experienced.*
>
> *Historically there have been two main reasons for setting up an anti-crime corruption authority or similar body. The first has been the need for special powers to combat organised crime, especially its involvement in the drug trade. The second is a demonstrated inability of existing structures to cope with long term, structural corruption within traditional law enforcement agencies.*
>
> *Neither of these situations applies in Tasmania…*
>
> *… Taken in combination Tasmania's existing arrangements are quite cost effective in comparison with the establishment and running on a standing entity, such as an Ethics Commission or ICAC. However we do need to weigh up any additional cost against the benefit of having a more robust integrity framework and investigatory mechanisms to both prevent unethical behaviour and investigate instances of it should it occur.*
>
> *…Moreover one criticism which has been levied against permanent commissions which can unilaterally investigate any matter within wide terms of reference is the risk of inappropriate use of coercive powers. This criticism has resulted in the establishment and funding of additional watchdog agencies to oversee these ICAC type bodies.*[178]
>
> *It is submitted that the expense of establishing a body like the ICAC or CCC in a small jurisdiction like Tasmania cannot be justified, particularly when it would necessitate the duplication of resources, skills, expertise and legislative powers already available within Tasmania Police.*[179]
>
> *I have now worked within the Tasmanian State government for 19 years, in positions which have given me the opportunity to view the workings of government at very close quarters. I have been the*

[178] Government, pp. 93-95.
[179] Commissioner of Police, pp. 31-32.

State Ombudsman for 3 years, and prior to that was a senior adviser, for much of the time Principal Crown Counsel, in the Office of the Solicitor-General. During my time in the latter position, I acted as Counsel Assisting to the Royal Commission into the death of Joseph Gilewicz (2000), a Royal Commission which was established to look into allegations of police misconduct with respect to that death, but which also came to receive other allegations of misconduct against police. In all of these roles, I have been given no cause to believe that entrenched corruption exists in the police force or public service in this State. (I here use the term "public service" generically, to include people employed or engaged in the service of the public, whether in State or local government.) If it did, an ICAC-type body would be justified. Since I do not believe it does, I believe that the creation of such a body would be an excessive response to the public concern which apparently exists. It would in my view involve the duplication of existing functions performed by others and undue expense for a small State. The body would also very likely simply not have enough to do.[180]

Although valuable insights can be gained from the experiences of the three interstate anti-corruption agencies, I would not envisage a replication of any of these for Tasmania, partly because the state has so far been spared the rise of a criminal underworld and partly because the roots of much of the unethical conduct in Tasmania's public sector (real or perceived) can be attributed to local cultural and institutional factors, including the size of parliament, the increasingly blurred distinction between the responsibilities of department heads and ministerial advisers, an unusually heavy reliance on a small number of corporate players in the state economy, and the prevalence of conflict-of-interest situations for public sector employees in a small community.[181]

... I do <u>not</u> recommend Tasmania establish a body such as NSW's Independent Commission Against Corruption, or the similar bodies which have been formed in Queensland and Western Australia. Apart from the fact that these bodies seem to wield sometimes frighteningly excessive power to the point of being able to ruin people's reputations at merely the investigation stage, the cost of maintaining them has become prohibitive. NSW's ICAC employs 120 staff and costs about $18 million a year; the WA equivalent body employs 125 and costs $28 million a year; and the Queensland Criminal Justice Commission costs an exorbitant $35 million a year and employs in excess of 300 staff.

Given the extent of corruption uncovered in politics and law enforcement in those states, it was necessary to establish bodies with considerable power and resources to deal with the cancer

[180] Ombudsman Tasmania, p. 1.
[181] P. Boyce, Submission 44, p. 1.

and virtually rebuild the systems. But the evidence is not available that the situation in Tasmania has become anywhere near as grim. Here it is more a matter of ethical standards being allowed to drop because of government arrogance and hubris which has bred cronyism and cover-up.[182]

Let me say that the question of this State taking on the establishment of a permanent anticorruption watchdog investigative body - whatever you want to call it - with the permanent powers of a royal commission in my view is just not necessary. First of all, it would be difficult to justify from a cost point of view. You would need to point to a rampant level of corruption. I no longer have the privilege of being the DPP but from my perspective it is just not there. I was first appointed the State DPP in 1986. In 23 years, sure, there are issues that have arisen but neither in number nor magnitude that would justify the State contemplating the cost of establishing an independent commission against corruption or something like that.

The mandate you have is to look at the questions of integrity and the ethics of the State's electoral representatives and the State's employed representatives. You first of all look at it and say, 'What is in place already? Is it working or is it capable of working?' Secondly, if it is not then what do we need to do to make it more effective, to give reassurance and to create those elements of transparency and accountability which the previous speakers have mentioned. [183]

Alternative entity

17.38 An alternative structure was proposed by the Government as follows:-

A suitable body is an Ethics Commission as described in this section...

Roles

The Commission would have three roles:

Education and advice

One role of the Commission would be to:

- *Develop standards and codes of conduct to guide public officials in the conduct and performance of their duties;*
- *Prepare guidance and provide training to public officials on matters of conduct, propriety and ethics;*

[182] Crawford, pp. 3-4.
[183] D. Bugg, Hansard, 27 March 2009, p. 34.

- *Provide advice on a confidential basis to individual public officials about the practical implementation of the rules in specific instances.*

Investigation

The Commission's responsibilities would allow it to receive and investigate complaints about public officials who have allegedly engaged in unethical conduct.

Referral and Recommendation

Following an investigation the Commission would have powers to:

- *Recommend a course of action; or*
- *Refer the complaint to another body for sanction and/or other action.*

An additional role of the Commission would be to recommend legislative reforms arising out of its education, advisory or investigation activities.[184]

There are three groups of public officials that should come within the scope of an Ethics Commission.

Group A – Ministers and their staff

The scope of the Ethics Commission would cover Ministers and their staff to ensure proper conduct and maintain good governance and standards within Government.

In this role the Commission could:

- *Develop standards to guide Ministers and their staff in the conduct and performance of their duties;*
- *Prepare guidance and provide training (including a formal compulsory induction) for Ministers and their staff on matters of conduct, propriety and ethics; and*
- *Provide advice on a confidential basis to individual Ministers or their staff about the practical implementation of the rules in specific instances.*

The Government will insist that all Ministers and their staff undertake a properly designed formal induction program within 30 days of their appointment.

Group B – Parliament

The Commission would also cover all elected members and parliamentary staff.

In this role, the function of the Commission would be to:

- *Provide education and training to members of Parliament and their staff on ethical conduct,*

[184] Government, pp. 98-99.

standards and integrity in undertaking their role and public administration generally;

- *Publish guidelines, codes, formal advice or recommendations for use by members of Parliament and their staff; and*
- *Provide advice on a confidential basis to individual members of parliament or their staff on specific issues or the interpretation of any codes or guidelines that are developed.*

The Commission's responsibilities could also include the following:

- *Overseeing the maintenance and monitoring the operation of the Register of Members' Interests;*
- *Receiving and investigating complaints about members who are allegedly in breach of the Code of Conduct or guidelines and reporting findings to the relevant Privileges Committee.*

In Tasmania, some of these functions or similar tasks, such as maintaining a register of interests under the Parliamentary (Disclosure of Interests) Act 1996, are currently undertaken by the Clerk of each House of the Parliament. Each House also has a standing Privileges Committee that can inquire and report into complaints about possible breaches of parliamentary privilege.

In the UK House of Commons, the Parliamentary Commissioner for Standards is an officer of the House and investigations into the application of the members Code of Conduct is a matter for the Commissioner and the Committee on Standards and Privileges.

Group C – Public Sector

The Ethics Commission would have coverage of the officers and employees of State Service agencies and other public officers. Public officers would include statutory office holders, and members of Government Boards and Committees.

Public officials excluded

Under the Constitution Act 1934 (section 10), the Governor is part of Parliament. The Governor's staff, appointed under the Governor of Tasmania Act 1982, are not part of Parliament. The Governor and his staff are covered by a number of existing accountability mechanisms such as the Financial Management and Audit Act, Treasurer's Instructions, and scrutiny by the Auditor-General and parliamentary Estimates Committees, and the Government considers they should not fall within the scope of the Ethics Commission.

Local Government

The Government considers that Local Government should be consulted by the Joint Committee on the desirability of this tier of government coming under any new Commission.

Conduct covered

The scope of conduct or behaviours covered by the Ethics Commission is that shown diagrammatically in the diagram in section 3.2, that is:

- *Maladministration;*
- *Misconduct; and*
- *Corruption.*

Though, corrupt activity (involving or likely to involve criminal conduct) is likely to be dealt with by existing mechanisms, either investigation by the Police or a Commission of Inquiry established for that purpose.

Investigatory powers

In order to investigate complaints thoroughly the Ethics Commission will need a range of investigatory powers. These may be similar to the powers of inquiry of other statutory bodies and officers, for example the Ombudsman or could even be similar to law enforcement bodies.

... it is proposed that the Ethics Commission would require powers to:

- *Search and seize with a warrant and without a warrant in cases where it is highly likely that evidence may be destroyed or tampered with;*
- *Enter property including commercial and domestic property;*
- *Interview and take statements from witnesses;*
- *Obtain information from other institutions for example, authorised deposit taking institutions or private business records;*
- *Make recommendations and refer complaints to other bodies for action or sanction; and*
- *Deal with refusal or failure to provide information, or false statements.*

It would be preferable that if a complaint of unethical behaviour is categorised as criminal activity then it should be referred to the Police for investigation. The Police have specialised skills and experience in conducting complex investigations and they also have access to a range of stronger investigatory powers, subject to appropriate authorisation and oversight, such as surveillance, arrest and use of force.

The Police may also prosecute matters or refer indictable matters to the Director of Public Prosecutions for further action.

Referral and recommendations

Following an investigation where unethical behavior has been established or is considered to have been likely, the Ethics

Commission should have power to make recommendations about how the issues raised should be dealt with. This may involve referral to existing statutory bodies such as the State Service Commissioner or Ombudsman or, in less serious cases, take the form of the recommendation to a Head of Agency to rectify maladministration. In the case of the most serious or systemic complaints the Ethics Commission could make a public recommendation to the Government that it advise the Governor to establish a Commission of Inquiry to inquire into and advise on these matters.

As already mentioned above, an additional role of the Commission would be to recommend legislative reforms arising out of its education, advisory or investigation activities.[185]

17.39 Support for an alternative to an ICAC style body was forthcoming:-

Whatever the details of their constitution, such bodies play an important role in promoting and maintaining high levels of governmental and administrative propriety and effectiveness. In Tasmania such a body could be established, as we have argued previously, with a minimum of resources (and at minimum cost) drawing on existing structures and expertise and constituted as a small (perhaps three-person) commission that would manage and direct both educative and investigative functions. The Commission would draw on outside expertise for its educational and training programmes (Sir Max's suggestion is that the Centre for Applied Philosophy and Ethics and the Tasmanian Institute for Law Enforcement at the University of Tasmania would be the most appropriate bodies to assist with these aspects of the Commission's work), with other staff seconded as required from the public service or from the State or Federal Police. The investigative aspect of the Commission's work would be directed not towards 'corruption' so much as towards a more clearly defined notion of 'official misconduct' similar to that set out in the Queensland Criminal Justice Act 1989, 32.[1] (special note should be given to the role played here by the notion of a 'breach of trust').

A Commission for Ethics in Government would thus have a positive role in promoting ethical practice as well as investigating cases of unethical practice (as that might be defined through the notion of official misconduct) on the part of both the State Government – the Commission would provide an avenue for supporting ethical practice within the State Service at all levels of the Service and particularly as already articulated through the existing State Service Act – as well as local Government bodies, and with respect to all members of the Parliament. Such a Commission ought to be viewed, not as a commission against corruption, but a commission for ethics. As such, it would be a body with the positive task of promoting ethics in government, as well as investigating

[185] Government, pp. 100-105.

cases of ethical impropriety. Not only would such a body be likely to have a positive effect in improving the effectiveness of government in Tasmania, but it would also be likely to assist in promoting and supporting ethical culture and leadership across Tasmanian society, providing a stronger framework for business as well as government.[186]

Outline Structure for a Commission for Ethics in Government

1. *Membership – a full-time chairman who is qualified to be a judge and two part-time commissioners representative of substantial community interests*
2. *Functions –*
    a) *to provide education and training to officers of state and local government so as to minimise the incidence of official misconduct*
    b) *to receive, and as appropriate, investigate, complaints of official misconduct*
3. *Powers – as for royal commissions and boards of inquiry plus:*
    a) *power to require answers to questions and the adduction of evidence*
    b) *power to request, with the consent of a judge, electronic surveillance*
4. *Staff – to be appointed as required by secondment or otherwise from the public service and Tasmania Police*
5. *Hearings – as for royal commissions and boards of inquiry*
6. *Supervision – by a parliamentary committee with members from both houses*
7. *Reports (to be tabled in parliament)*
    a) *annually*
    b) *on each investigation*

Definition of 'official misconduct' (as taken from Queensland Criminal Justice Act 1989, 32.[1]):

b) *conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or*

c) *conduct of a person while the person holds or held an appointment in a unit of public administration—*

[186] J. Malpas & M. Bingham, Submission 120, pp. 2-3.

a) *that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial; or*

b) *that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration; or*

c) *conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person.*[187]

17.40 Another option to augment existing arrangements was provided by the Commissioner of Police:-

The existing mechanisms to support ethical and open Government in Tasmania could be augmented through the formation of a dedicated Misconduct Branch within Tasmania Police, oversighted by an Ethics Commission. The proposed model takes into account Tasmania's size, the existing capacity of Tasmania Police to investigate allegations of misconduct, and the need for an oversight body to review investigations, provide prevention advice and restore public confidence.

Misconduct Branch

Complaints alleging misconduct by public officers (including elected representatives) in performing the functions of their office or employment would be made to the Commissioner of Police or the Ethics Commission and then referred to the Misconduct Branch of Tasmania Police for assessment and possible investigation. The proposed Misconduct Branch of Tasmania Police would report directly to the Commissioner of Police and be staffed on a permanent basis by an Assistant Commissioner, a lawyer, an investigator and an administrative assistant. Initial assessments of alleged misconduct involving public officials would be carried out by the Misconduct Branch. If the alleged misconduct was considered to amount to a criminal offence a recommendation would be made to the Commissioner of Police that the matter should be investigated. The Commissioner of Police would then authorise the formation of a specialist investigation team with the relevant skills and experience to investigate the matter. The benefit of this approach is that it enables the investigation team to be tailored to the nature of the alleged misconduct and the type of investigation required, utilising individuals who have developed

[187] Ibid, p.4.

specialist skills and expertise in the investigation of particular types of crime (e.g. fraud, sexual offences, drug offences, computer crime). Completed investigation files would be forwarded to the Director of Public Prosecutions to determine whether criminal proceedings should be instituted against any individuals.

Existing legislative provisions enable Tasmania Police in appropriate cases to conduct telephone intercepts. It is also anticipated that Tasmania Police will soon have access to other special powers which are available to interstate anti-corruption bodies e.g. to install surveillance devices, use assumed identities and conduct controlled operations. The Misconduct Branch should also be able to make application to the Ethics Commission, or a judge or magistrate, to authorise the use of additional special powers (e.g. requiring a person to produce documents or other things, or to hold a hearing to examine a witness), where this is necessary to progress an investigation. Where the Misconduct Branch makes a successful application to the Ethics Commission, or a judge/magistrate, for a hearing to obtain evidence from a witness, it is envisaged that the Ethics Commission, or judge/magistrate would appoint a hearing officer for the purpose of examining the witness and receiving the evidence.

<u>Ethics Commission</u>

The proposed Ethics Commission would be an independent body staffed by one part-time Ethics Commissioner and two part-time Assistant Ethics Commissioners supported by one or more full-time staff members as appropriate. The Ethics Commissioner and the Assistant Ethics Commissioners should be eminent members of the community who will inspire public confidence. The Ethics Commissioner should have served as, or be eligible for appointment as, a Supreme Court Judge (or a Judge of the Federal Court or the High Court), and at least one of the Ethics Commission staff members should have legal qualifications.

The functions of the Ethics Commission would include:

- *Misconduct prevention and public education, including the provision of ethics training and assistance with the development of codes of conduct and/or guidelines for appropriate behaviour;*
- *Receiving complaints alleging misconduct by public officers and forwarding them through the Commissioner of Police to the Misconduct Branch of Tasmania Police for assessment;*
- *Reviewing assessments and investigations conducted by the Misconduct Branch of Tasmania Police, and the outcomes of any prosecutions;*
- *Referring matters to the home agency (i.e. the agency within which the alleged misconduct took place) or another agency (e.g. the Ombudsman or State Service*

Commissioner) for investigation if the alleged misconduct does not amount to a criminal offence;

- *Monitoring investigations conducted by home agencies;*
- *Making recommendations in relation to the prevention of misconduct, including the establishment of codes of conduct and/or provision of ethics training;*
- *Making recommendations in relation to disciplinary action and/or changes to agency processes;*
- *Providing advice to individuals and agencies – e.g. in response to queries in writing, via phone and email;*
- *Considering applications for the use of special powers by the Misconduct Branch of Tasmania Police, and conducting hearings where required; and*
- *Monitoring the implementation of recommendations.*

Similar to the Ombudsman, the Ethics Commission should be required to report to both Houses of Parliament on an annual basis, with the power to provide a report at any time to both Houses of Parliament where deemed necessary to address matters of particular concern (e.g. the failure of an agency to implement recommendations concerning the prevention of misconduct).[188]

Findings

17.41 **The Committee finds the following areas of concern exist in the mechanisms currently available to support ethical and open Government in Tasmania and the capacity to conduct independent investigations:**

17.41.1 **The development of standards and codes of conduct is currently *ad hoc* and organisationally based – there is clearly a need for uniformity of approach across the entire public sector.**

17.41.2 **Training and professional development in relation to ethical conduct is similarly of an *ad hoc* nature. The lack of ongoing training for new public officers was of particular concern to the Committee.**

17.41.3 **There is a need for the co-ordination of training for all public officers including a community outreach program.**

[188] Commissioner of Police, pp. 26-31.

17.41.4 **There is a need for a dedicated research function to support the continual development of standards and codes of conduct.**

17.41.5 **There is a need for an authority to provide confidential advice to public officers in relation to the conduct of their duties.**

17.41.6 **The current mechanisms for the investigation of complaints-based breaches of the law are appropriate. There is clearly a need for the ability to investigate and expose conduct by public officers that whilst not illegal is nevertheless contrary to the public interest and necessarily constitutes a breach of public trust.**

17.41.7 **The Committee is persuaded by the argument that there is a need for a 'triage' function to be performed by a oversight body – to receive; assess; and either refer or investigate complaints received. There is clearly a need for the formalisation of a 'networking arrangement' between the Statutory Officers examined by the Committee: Director of Public Prosecutions; Ombudsman; Auditor-General and State Service Commissioner.**

17.42 **The Committee considered the possible allocation of these functions to the Offices of the Auditor-General and the Ombudsman. Whilst obviously possible by legislative means, the Committee found that such a distribution of tasks may be detrimental to the conduct of the discrete functions of those Offices.**

17.43 **The Committee finds that the need for a new body clearly exists to address the identified deficiencies in the existing system of governance.**

18 TASMANIAN INTEGRITY COMMISSION

Recommendation 29 – The Committee recommends that legislation providing for the creation of the Tasmanian Integrity Commission be drafted.

The objectives of the Commission are to:-

1. ***improve the standard of governance in Tasmania;***

2. ***enhance public trust that misconduct, including corrupt conduct, will be investigated and brought to account; and***
3. ***elevate the quality of, and commitment to, good governance by adopting a strong, symbolic and educative role.***

The Commission will achieve these objectives by:-

1. ***educating public officials in Tasmania on integrity;***
2. ***investigating allegations of corrupt or inappropriate behaviour made against public officials in Tasmania; and***
3. ***making findings in relation to those investigations and taking the appropriate action.***

Recommendation 30 – The Committee recommends that the matters detailed in paragraphs 18.1 to 18.21 of this report be included in the draft legislation.

Recommendation 31 – The Committee recommends that pursuant to Recommendation 11, the Executive Commissioner of the Tasmanian Integrity Commission furnish the Treasurer and/or the Budget Sub-Committee of Cabinet, with advice appropriate to inform the annual formulation of the proposed expenditures for the Tasmanian Integrity Commission for inclusion each year in the Consolidated Fund Appropriation (No. 2) Bill.

Constitution

18.1 That the Tasmanian Integrity Commission (the Commission) consist of:-

18.1.1 a person appointed by the Governor on the advice of the premier following nomination by the Joint Standing Committee on the Tasmanian Integrity Commission (the Committee) who is the Chairperson of the Commission and the Executive Commissioner;

18.1.2 the following *ex officio* Commissioners:-

18.1.2.1 Auditor-General;

18.1.2.2 Ombudsman; and

18.1.2.3 State Service Commissioner.

18.1.3 a community representative nominated by the Committee.

18.2 The rationale of the Commission is to provide a group of experts across relevant disciplines who each bring distinct intellectual capacities and experiences. [189] It is envisaged the Executive Commissioner will convene meetings of the Commission as required but at least quarterly.

18.3 A person is not eligible to be appointed as the Executive Commissioner if that person is, or has been in the period of 5 years immediately preceding the date on which it is proposed to appoint that person –

18.3.1 a Member of a House of Parliament of the Commonwealth or a State or Territory; or

18.3.2 a member of a party that is registered under the Electoral Act 2004 or under an Act of the Commonwealth or another State or a Territory as a political party or a member of a similar organisation.

Joint Standing Committee on the Tasmanian Integrity Commission

18.4 As previously stated, the majority of witnesses supporting the establishment of a new body regarded Parliamentary oversight as essential.

18.5 The Committee recommends that a Joint Standing Committee consisting of eight members should be appointed to oversee the Commission, of whom four shall be members of the Legislative Council and four shall be members of the House of Assembly. In the case of the members of the Committee on the part of the House of Assembly, at least one member of any party consisting of four or more members in the House of Assembly shall be represented.

18.6 Such Committee should have the following functions:-

18.6.1 to monitor and review the performance of the Commission's functions;

18.6.2 to report to both Houses, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Parliament's attention:-

[189] D. Williams, Hansard, 5 November 2008, p. 1/30.

18.6.2.1 matters relevant to the Commission;

18.6.2.2 matters relevant to the performance of the Commission's functions or the exercise of the Commission's powers;

18.6.3 to examine the Commission's annual report and its other reports and report to both Houses on any matter appearing in or arising out of such reports;

18.6.4 to report on any matter relevant to the Commission's functions that is referred to it by the Legislative Council or House of Assembly;

18.6.5 to participate in the selection of either the Executive Commissioner or the Community Representative and the removal from office of such Commissioners as required;

18.6.6 to review the activities of the Commission at a time near to the end of 3 years from the appointment of the committee's members and to table in both Houses a report about any further action that should be taken in relation to the Act establishing the Commission or the functions, powers and operations of the Commission;

18.6.7 to issue guidelines and give directions to the commission as provided under this Act; and

18.6.8 to refer a matter to the Commission for inquiry.

18.7 The necessary powers to properly execute such functions should be prescribed.

18.8 The Committee is mindful of evidence it received in relation to the possibility that decisions of a Committee of this nature may be partisan in nature. Accordingly, a majority of the members of the Committee, irrespective of the House by which they are appointed, should constitute a quorum of the Committee, but no report; recommendation; or referral to the Commission should be made unless the same is approved at a meeting at which a majority of the members appointed by each House to serve on the Committee is present.

Definitions

18.9 The Committee considered the definitions contained in the Crime and Misconduct Act of Queensland to be an appropriate template as follows:-

> ***conduct*** *means—*
>
> *(a) for a person, regardless of whether the person holds an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of—*
>
> > *(i) a unit of public administration; or*
> >
> > *(ii) any person holding an appointment; or*
>
> *(b) for a person who holds or held an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves—*
>
> > *(i) the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or*
> >
> > *(ii) a breach of the trust placed in the person as the holder of the appointment; or*
> >
> > *(iii) a misuse of information or material acquired in or in connection with the performance of the person's functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.*
>
> ***hold an appointment*** *means hold an appointment in a unit of public administration.*
>
> ***Official misconduct*** *is conduct that could, if proved, be—*
> *(a) a criminal offence; or*
> *(b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.*[190]

18.10 The proposed legislation will need to address the issue of the application of 'official misconduct' to the conduct of Ministers and other Members of Parliament.

Functions

18.11 The Committee recommends that the Commission should have jurisdiction over the following categories of public officials:-

> 18.11.1 Members of Parliament;

[190] Crime and Misconduct Act 2001 (Queensland)

18.11.2 Ministers;

18.11.3 Ministerial staff;

18.11.4 Staff of all Members of Parliament;

18.11.5 State Servants;

18.11.6 Police;

18.11.7 Local Government elected officials and staff;

18.11.8 Members of Boards and employees of State Owned Companies and Government Business Enterprises.

18.12 The Committee recommends that the proposed Commission should have the following functions: Education and Prevention; and Complaints and Investigation.

Education and Prevention

18.13 The Committee considers the development of the education role as being largely at the discretion of the Commission but it is of the view that the following tasks form the basis for the education and prevention function:-

18.13.1 Initial review and rationalisation of existing codes of conduct and guidelines for ethical conduct and if necessary recommend the drafting of a comprehensive Public Sector Integrity Act;

18.13.2 Develop, in consultation with external bodies such as the Centre for Applied Philosophy and Ethics and the Tasmanian Institute for Law Enforcement at the University of Tasmania:-

- a Charter of Ethical Conduct
- guidelines and codes of conduct;
- training courses;
- resources for Government; and
- civic education to schools, interest groups and the public.

Complaints and Investigation

18.14 The Committee regards the following matters as forming the basis for the complaints function of the Commission:-

18.14.1 to receive complaints made in relation to alleged misconduct by public officials (such complaints are to be made by way of Statutory Declaration to deter the submission of vexatious complaints);

18.14.2 'triage' function whereby complaints are assessed and dealt with in the following ways:-

18.14.2.1 refer complaints, where appropriate, to the subject public body for investigation and report back (except as provided in 16.14.4); or

18.14.2.2 refer complaints, where appropriate, to a relevant Statutory Officer (e.g. Auditor-General or Ombudsman) for investigation (see below) and report; or

18.14.2.3 initiate an inquiry by the Commission itself for matters which are serious or systemic.

18.14.3 Where serious complaints are received relating to the conduct of a head or deputy head of a public body, an investigation should not be carried out by their own organisation, such inquiries shall be conducted by the Commission.

18.14.4 Referral of breaches of any law shall be made to the Director of Public Prosecutions;

18.14.5 The prescription that a mandatory notification system be provided to ensure that as soon as any public body identifies a serious misconduct or corruption issue, it reports immediately to the Commission; and

18.14.6 The Commission shall report to both Houses the result of all inquiries including those in which non criminal conduct is found to be proven.

18.15 The Committee recommends that the Commission have the ability to initiate its own inquiries without the need for the receipt of a complaint.

18.16 The Committee recommends that the Commission have the powers of a Commission of Inquiry as prescribed by the

Commissions of Inquiry Act 1995[191] in so far as its ability to conduct investigations.

18.17 The Committee recommends that for the purposes of conducting any inquiry, the Commission have the power to second from other public bodies including Tasmania Police or a police service of any other State of the Commonwealth of Australia or the Australian Federal Police, relevant expert personnel to support such inquiry.

18.18 The Committee recommends that for the purposes of conducting any inquiry, the Commission be given the discretion to conduct investigations into a matter or matters that occurred at any time.

18.19 The Committee recommends that on the application of the Executive Commissioner, a magistrate be granted the power to issue a warrant to use listening devices to the Executive Commissioner where the magistrate is satisfied that the Executive Commissioner holds a reasonable belief that the use of such devices is necessary and appropriate to obtain evidence in relation to a matter relevant to an inquiry. That such power be restricted by the same restrictions as apply to the granting of such warrants to police officers under the provisions of the Listening Devices Act 1991

Miscellaneous Matters

18.20 The Committee is of the view that the protection of reputation is paramount and accordingly, any proposed legislation must provide for the 'default position' for the conduct of investigations of the Commission to be in private. Such confidentiality provisions are to be reinforced with relevant contempt provisions which should include unauthorised publication of matters under publication.

18.21 The Committee does not recommend the abrogation of a witness's right to silence in respect of inquiries conducted by the Commission however the Commission may make adverse findings in relation to such action.

[191] Commissions of Inquiry Act 1995 (No. 70 of 1995).

19 OTHER MATTERS

Elections Disclosure

19.1 The Committee pursued a line of questioning throughout the inquiry which concerned the disclosure of sponsors of advertisement campaigns conducted during election campaigns.

19.2 The following examples illustrate the evidence received in response to such questioning:-

> *I certainly don't think it should be permissible to campaign without disclosing the source or identity. With regard to funds, I think the political funds issue is one of about a dozen issues that affect the quality and ethical standard of government in Tasmania, so they should be looked at together. Just as the size of parliament issue is related to questions of accountability, so I think political donations should also be covered.*[192]

> *I think disclosure laws are a very good idea. The public really has a right to know who is donating to political parties and how much. That should be just a matter on public record because there is always the perception, and it usually is a perception, that there may be strings attached or favours done in return. Therefore, people need to know who is donating.*
>
> *On the other question, public funding of political parties is a little bit problematic. There are two ways you could do this. You could have public funding supplementing private donations or you could have across-the-board public funding.*
>
> *(as to to public funding linked to either a ban or a very low cap on donations to political parties and candidates) ...the real problem with that, of course, is that if you want to create a new political movement, it can be very difficult to fund a campaign.*
>
> *It depends on what the threshold is for that. Other question arise over interest groups who are not political parties but who may want to run an advertising campaign close to or during an election campaign.*[193]

Findings

19.3 **The Committee finds that sufficient evidence was received to support the proposition that the law relating to donor disclosure should apply equally to any person or**

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[192] P. Boyce, Hansard, 11 September 2008, p. 9.
[193] M. Stokes, Hansard, 10 September 2008, pp. 4-5.

organisation conducting a promotion of a political nature during electoral campaigns.

19.4 **The Committee finds that sufficient evidence was received to support the proposition that a review be conducted into the desirability or otherwise of public funding of political parties in Tasmania.**

Recommendation 32 – The Committee recommends that a review of the Electoral Act 2004 be conducted to provide for the disclosure of the identity of sponsors of political advertising conducted by persons or organisations other than political parties during election campaigns

Statutory Officers Committee

19.5 The issue of the appointment of senior public servants, including the Commissioner of Police, was the subject of some discussion during the inquiry. Insufficient evidence was received by the Committee to make any finding.

19.6 The Committee did note what evidence was received as follows:-

> *I think the second way you would do it (to break up the existing cultural corruption) is to set up an independent body which appoints people to various boards and commissions and you make that body answerable to the Parliament and not to the Government and you empower the Parliament to have some form of oversight of that body to make sure it is doing its job. That is the second way you do it.*[194]

> *I do not have any quarrel with (the suggestion that there was a need for parliamentary involvement in the appointment of statutory officers such as Ombudsman, Director of Public Prosecutions or Auditor-General, whether directly by resolution of both Houses or by an existing committee or a new statutory officers committee). I would only observe that one would have to design it with a view to efficiency. I have seen situations, both in South Australia and in New Zealand, where the involvement of parliamentary committees in the appointment of such an officer has been long drawn out with unsatisfactory effects for the administration of the jurisdiction.*[195]

19.7 The Committee wishes to note the existence of a committee of the Parliament of South Australia as follows:-

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[194] G. Barns, Hansard, 7 October 2008, p. 70.
[195] S. Allston, Hansard, 27 March 2009, 60.

Part 5C—Statutory Officers Committee

Division 1—Establishment and membership of Committee

15G—Establishment of Committee

The Statutory Officers Committee is established as a committee of the Parliament.

15H—Membership of Committee

(1) The Committee consists of six members of whom—

(a) three must be members of the House of Assembly appointed by the House of Assembly (of whom at least one must be appointed from the group led by the Leader of the Opposition and at least one must be appointed from the group led by the Leader of the Government); and

(b) three must be members of the Legislative Council appointed by the Legislative Council (of whom at least one must be appointed from the group led by the Leader of the Opposition and at least one must be appointed from the group led by the Leader of the Government).

(2) The members of the Committee are not entitled to remuneration for their work as members of the Committee.

(3) The Committee must from time to time appoint one of its Legislative Council members to be the Presiding Member of the Committee but if the members are at any time unable to come to a decision on who is to be the Presiding Member, or on who is to preside at a meeting of the Committee in the absence of the Presiding Member, the matter is referred by force of this subsection to the Legislative Council and that House

will determine the matter.

Division 2—Functions of Statutory Officers Committee

15I—Functions of Committee

(1) The functions of the Statutory Officers Committee are—

(a) to inquire into, consider and report—

(i) on a suitable person for appointment to an office under an Act vacancies in which are to be filled by appointment on the recommendation of both Houses; and

(ii) on other matters relating to the performance of the functions of that office; and

(iii) on any other matter referred to the Committee by the Minister responsible for the administration of any such Act; and

(b) to perform other functions assigned to the Committee under this or any other Act or by resolution of both Houses.

(2) Matters disclosed to or considered by the Committee for the purposes of determining a suitable person for appointment to a statutory office must not be made the subject of public disclosure or comment.

(3) In considering matters relating to the performance of functions of a statutory office, the Committee must not engage in a review of any particular decision of a person occupying the office. [196]

19.8 **The Committee finds that the establishment of a Statutory Officers Committee is a reform worthy of further inquiry by the Legislative Council and the House of Assembly.**

Lobbyists Register

19.9 The issue of a register of lobbyists was very briefly touched upon in evidence by way of passing comment. A register was included in the Premier's "Ten Point Plan" as follows:-

"5. The development of a Register of Lobbyists, including a code of conduct for lobbyists.

Register of Lobbyists. This will include, those seeking to register will be required to adhere to the lobbyists code of conduct or code of behaviour.

This will be developed and administered by the Department of Premier and Cabinet, and I have asked the Secretary of the Department to report back to me within three months on a potential appropriate model for Tasmania.

This will include guidelines and rules pertaining to the ability of former members of parliament and senior government officials to engage in lobbying activities related to the previous roles in Government.

This is also something that we can start work on now."[197]

19.10 The concept of a lobbyist register has been supported by both the Tasmanian Greens and Liberal Party.

Recommendation 33 - The Committee recommends the establishment of a Lobbyists Register and calls upon the Government to progress its commitment to develop such a register.

[196] Parliamentary Committees Act 1991, section

[197] Ten Point Plan Press Release, David Bartlett, Tuesday, 19 August 2008

20 CONCLUSION

20.1 The Committee is of the view that its recommendations, if implemented, will significantly strengthen the existing structures in place to ensure an open, fair and equitable system of government in Tasmania.

20.2 The positive emphasis for many of the recommendations is to promote consistency of ethical conduct as the appropriate behaviour, as the model that people will respect and want to replicate. Standardisation of codes of conduct and the strong emphasis on education and training will enhance the ability of public officers to exercise appropriate judgment in their decision making.

20.3 When this is not exercised, the establishment of the Tasmanian Integrity Commission will provide an avenue for appropriate complaints to be pursued and public officers held to account either by the vigorous pursuit of charges when the law is broken, or when lesser misconduct is proven, by a 'name and shame' regime.

20.4 The recommendations relating to the reform of the budgeting arrangements for the Parliament, Ombudsman and Auditor-General will afford an amplification of the tension between the Executive and the Parliament which is fundamental to the Westminster system of Parliamentary democracy.

20.5 The Committee received evidence suggesting that many citizens felt that the voices of powerful interests have been heard disproportionately to their own. In many cases, it was obvious to the Committee that its hearings appeared to be the only forum in which these people had had an opportunity to be heard. That observation and the facts of the cases themselves were cause of concern to the Committee.

20.6 The Committee records its thanks to those citizens of Tasmania and those invited by the Committee who made submissions.

20.7 The recommendations provide the restorative measures to rebuild confidence and trust in the existing mechanisms of Tasmania's system of government, where needed, and will close the gap between appearance and reality in the operations of public office.

20.8 Further, the recommendations reinforce the fundamental principle that governmental power should be exercised in the public interest – a principle recognised by the creed 'A public office is a public trust'[198].

Parliament House
HOBART
23 July 2009

Hon. J. S. Wilkinson M.L.C.
CHAIRMAN

[198] U.S. *Senate Code of Official Conduct*, cited in G. Carney, *Members of Parliament: law and ethics*, Prospect Media Pty Ltd, St Leonards, 2000, p. 249. Such creed also attributed *inter alia* to Edmund Burke in *Reflections on the Revolution in France*, 1790.

21 APPENDICES

APPENDIX 'A'

1 Dallas Williams – Submission dated 20 June 2008

2 Philip Lowe – Submission dated 26 June 2008

11 John Forsyth – Submission undated

15 Residents of Elliott Road, Glenorchy – Joint Submission dated 9 July 2008

16 Allan Garcia, Local Government Association Tasmania – Submission dated 9 July 2008

19 Robert Patterson - Submission dated 13 July 2008

20 Patrick Synge – Submission dated 16 July 2008

21 Malcolm and Karen Mars – Submission dated 18 July 2008

22 Randolph Wierenga, President, Police Association of Tasmania – Submission undated

23 Hon Terry Martin MLC – Draft Independent Commission Against Corruption Bill 2008

24 Robert Edwards – Submission dated 18 July 2008

25 Wendy Edwards – Submission dated 18 July 2008

26 Emeritus Professor Stuart McLean, School of Pharmacy, University of Tasmania – Submission dated 23 July 2008

27 Peter Godfrey – Submission dated 23 July 2008

28 Mike Bolan – Submission dated 24 July 2008

29 Anne Layton-Bennett & John Donnachy – Submission dated 25 July 2008

30 Corey Peterson – Submission dated 26 July 2008

31 Helen Thyne – Submission dated 24 July 2008

32 John Hayward – Submission dated 26 July 2008

33 G. H. Chandler – Submission dated 26 July 2008

34 Diana Nunn – Submission dated 24 July 2008

35 William Mooney – Submission dated 27 July 2008

36 Professor W. J. Spence – Submission dated 27 July 2008

37 Dave Groves – Submission dated 28 July 2008

38 Mark Rickards – Submission dated 27 July 2008

39 John O'Dell – Submission dated 28 July 2008

40 Karl Stevens – Submission dated 26 July 2008

42 Gerri Rantall-Sykes – Submission dated 24 July 2008

43 Jacqueline & Philip Crouch – Submission dated 28 July 2008

44 Emeritus Professor Peter Boyce, School of Government, University of Tasmania – Submission dated 24 July 2008

45 Prof Richard Herr, Honorary Research Associate, University of Tasmania – Submission undated

46 Jennie Herrera, Tasmanian Quaker Peace & Justice Committee – Submission dated 21 July 2008

47 H.M. Blake, Auditor-General – Submission dated 23 July 2008

49 Jonathan Bedloe – Submission dated 28 August 2008

50 Kenneth R. Harris – Submission dated 27 July 2008

51 Barbara Daly – Submission dated 25 July 2008

52 D. J. Le Fevre – Submission dated 28 July 2008

53 Duplicate of Submission 43

54 Jack Lomax – Submission dated 28 July 2008

55 Professor John Biggs – Submission dated 28 July 2008

56 Annie Zon – Submission dated 28 July 2008

57 Simon Paul – Submission dated 28 July 2008

58 John O'Dell – Submission dated 25 July 2008

59 Mark Rickards – Duplicate submission 38

60 Alister Mills – Submission undated

61 Mr Karl Stevens – Submission dated 29 July 2008

62 Jo McRae – Submission dated 29 July 2008

63 Peter Pullinger – Submission dated 28 July 2008

64 Leonie Pullinger – Submission dated 29 July 2008

65 Marrette Corby – Submission dated 28 July 2008

66 Arnold Rowlands – Submission dated 29 July 2008

67 James T. Graham – Submission dated 28 July 2008

68 Melanie Stone – Submission dated 27 July 2008

69 Dr Torsten Hartmann – Submission dated 30 July 2008

70 Serena Rule – Submission dated 30 July 2008

71 Deborah Drinkell – Submission dated 30 July 2008

72 Dr David Obendorf – Submission dated 30 July 2008

73 Lucia Ikin – Submission dated 30 July 2008

74 Les C. Cartledge – Submission dated 30 July 2008

75 Andrew Holliday – Submission undated

76 Elizabeth Perey – Submission dated 30 July 2008

77 David Mazengarb – Submission dated 26 July 2008

78 Alan Matfin – Submission dated 25 July 2008

79 Peter A. Elkin – Submission dated 30 July 2008

80 Benedict Bartl, Hobart Community Legal Service Inc. on behalf of Rodney Nichols – Submission dated 31 July 2008

81 Dr Frank Nicklason – Submission dated 31 July 2008

82 Dr Elizabeth Smith – Submission dated 31 July 2008

83 Jess Wright, Environment Tasmania Inc. – Submission dated 31 July 2008

84 Clive M. Stott – Submission dated 30 July 2008

85 Brian Sampson, New Town Community Association Inc. – Submission dated 31 July 2008

86 Cathran Bowyer – Submission dated 31 July 2008

87 Ula Majewski, Still Wild Still Threatened – Submission dated 31 July 2008

88 Karl Stevens – Submission dated 31 July 2008

89 Susan Austin, Social Alliance – Submission dated 30 July 2008

90 W. Peter Meadley – Submission dated 31 July 2008

91 Tim Douglas – Submission dated 31 July 2008

92 Sven Wiener – Submission dated 31 July 2008

93 Michael Noble – Submission dated 28 July 2008

94 Jacob Knevett, Waimea Heights Primary School – Submission undated

95 Michael Ahrens, Transparency International Australia – Submission dated 31 July 2008

96 O.V. & P.A. Taylor – Submission dated 1 August 2008

97 Andrew Ricketts, The Environment Association Inc. – Submission dated 1 August 2008

98 Marion Nicklason, Tasmanians for a Healthy Democracy – Submission dated 1 August 2008

99 The Wilderness Society (Tasmania) Inc. – Submission dated July 2008

100 Marion Nicklason – Submission dated 29 July 2008

1A Sandra & Peter Hunter – Submission dated 1 August 2008

2A Wayne Crawford – Submission dated 1 August 2008

3A Susan F. Gunter – Submission dated 4 August 2008

4A James Ingles – Submission dated 1 August 2008

5A Bruce Scott - Submission – Submission dated 1 August 2008

6A T.J. Ellis S.C., Director of Public Prosecutions – Submission dated 30 July 2008

7A Hon Will Hodgman MP, Leader of the Opposition – Submission dated 1 August 2008

8A P. G. Holloway – Submission dated July 2008

9A J. Johnston, Commissioner of Police – Submission dated 1 August 2008

10A Maureen A. Murray – Submission dated 29 July 2008

11A E. Pugh – Submission dated 30 July 2008

12A Gwenith P. Trueman – Submission dated 30 July 2008

13A Simon Allston, Ombudsman – Submission dated 4 August 2008

14A James Ingles – Submission dated 1 August 2008

15A Paul Davis – Submission dated 1 August 2008

16A Mrs Jane MacDonald, Save Ralphs Bay Inc – Submission dated 1 August 2008

17A Liila Hass, Convener, Future Tasmania – Submission undated

18A Dr/Ms Wynne E. Russell – Submission dated 8 August 2008

19A Peter Brownscombe – Submission dated 8 August 2008

20A Jeff Malpas, Professor of Philosophy, University of Tasmania – Submission dated 8 August 2008

21A Dr Andrew Vidor – Submission dated 8 August 2008

22A Michael Stokes, Senior Lecturer, Law School, University of Tasmania – Submission undated

23A Cassy O'Connor MP – Submission dated 11 August 2008

24A Kevin Lindeberg – Submission dated 18 August 2008

25A Tasmanian Government Submission – Submission dated 22 August 2008

27A George and Jennifer Ettershank – Submission dated 20 August 2008

28A Suzanne Lockhart – Submission dated 1 September 2008

29A Andrew Paul, General Manager, Clarence City Council – Submission dated 8 September 2008

30A Suzanne Lockhart – Submission dated 5 September 2008

32A Estelle Ross – Submission dated 28 July 2008

33A Julian Whayman – Submission dated 5 October 2008

APPENDIX 'B'

3 Alwyn Johnson – Submission dated 1 July 2008

4 Alwyn Johnson – Submission dated 2 July 2008

5 Alwyn Johnson – Submission dated 4 July 2008

6 Alwyn Johnson – Submission dated 6 July 2008

7 Alwyn Johnson – Submission dated 5 July 2008

8 Alwyn Johnson – Submission dated 5 July 2008

9 Alwyn Johnson – Submission dated 6 July 2008

10 Alwyn Johnson – Submission dated 6 July 2008

12 Alwyn Johnson – Submission dated 8 July 2008

13 Alwyn Johnson – Submission dated 8 July 2008

14 Alwyn Johnson – Submission dated 9 July 2008

17 Alwyn Johnson – Submission dated 14 July 2008

19 Robert Patterson – Annexures to Submission

48 John Hawkins – Submission dated 23 July 2008

80 Benedict Bartl, Hobart Community Legal Service Inc. on behalf of Rodney Nichols - Annexures to Submission

5A Bruce Scott – Annexures to Submission

26A Geraldine Allan – Submission dated 18 August 2008

31A J. Knowles & E. J. Geale – Submission dated 10 September 2008

34A M. Murtagh – Submission dated 10 October 2008

35A Glenn Lennox – Submission dated 8 March 2009

36A Darren Davey – Submission dated 10 March 2009

APPENDIX 'C'

41 Anonymous submission dated 24 July 2008

APPENDIX 'D'

"Things we share in Common" by Kirby, J. 13/3/08 Sydney;
"The Nation in a Room – Turning Public Opinion Into Policy" by James S. Fishkin;
"Public Accountability Commission" by Michael Stokes;
Copy of correspondence dated 2 September 2008 from H. M. Blake, Auditor-General to Mr L. Sealy, Solicitor-General entitled 'Power of the Auditor-General to investigate actions of Ministers';
Copy of advice dated 8 September 2008 from Leigh Sealy S.C., Solicitor-General to Mr H. M. Blake, Auditor-General entitled 'ADVICE Re: Power of the Auditor-General to investigate actions of Ministers';
Copy of document entitled 'Procurement and GVM project';
Correspondence dated 7 October 2008 from Hon *Will Hodgman* MP, Leader of the Opposition to the Hon *Jim Wilkinson* MLC relating to public ethics and accountability bodies of other jurisdictions;
"Tasmania Ethics and Values Education Centre – A Supplementary Proposal for the Joint Select Committee on Ethical Conduct";
Donor Annual Return Financial Year 2005-06 from the CFMEU Forestry and Furnishing Products Division;
Copy of an email from Russell Madeley to Mark Wapstra dated 12 April 2002;
Copy of an email from Russell Madeley to Mark Wapstra dated 26 April 2002;
The Gunns Dossier: Pulp Mill Smoke and Mirrors – Tasmanians Against the Pulp Mill (TAP) Inc. Research;
Address to the Joint Select Committee on Ethical Conduct in Parliament – G. H. Chandler;
Amended Submission to Joint Select Committee on Ethical Conduct – Estelle Ross;

The Land Swap between Forestry Tasmania and the State Government – John Hayward;
Copy of correspondence dated 12 June 2008 to Mr Peter Rowlands, District Forest Manager from Clive M. Stott;
Web page printout – www.cleanairtas.com/photos.htm (4 pages);
Copy of correspondence dated 29 August 2008 to the Chief Forest Practices Officer from Clive M. Stott;
A further Web page printout – www.cleanairtas.com/correspo.htm (4 pages);
and
Copy of a circular from Ian Cawthorn, District Officer – Tamar, Tasmania Fire Service and Ian White, Rosevears Vineyard Hospitality & Functions Manager.
Environmental Ethics Policy Document Draft December 2004; and

APPENDIX 'E'

Correspondence dated 2 April 1998 (Le Fevre);
Miscellaneous additional information (Holloway);
A piece of correspondence (Witness 'A');
Joint Select Committee on Ethical Conduct – Summary and Supporting Documentation Outline Misconduct from Government Officials and Denial of Natural Justice (Maria Cecylia Borkowski & Eva Karja Gutray-Bukoven);
Additional submission dated 6 November 2008 (Wendy Edwards);
Additional submission dated 6 November 2008 (Robert Edwards);
Correspondence dated 6 November 2008 from J. B. Hawkins to the committee entitled "Forestry Exempt ALL Heritage Legislation" together with 17 annexures
Extract from the Oxford English dictionary.
Tasmania Ethics and Values Education Centre – A Supplementary Proposal for the Joint Select Committee on Ethical Conduct – Dallas Williams.
'Addendum to my submission of the 28th July 2008 to the Joint Select Committee on Ethical Conduct' – J. Lomax;
Tasmania v John Charles White – Comments on Passing Sentence, 10 December 2007, Underwood CJ;
Extract of Erskine May's Parliamentary Practice – 20th Edition – page 343; and
Correspondence dated 3 April 2009 from Simon Allston, Ombudsman to Hon Jim Wilkinson MLC, Chair, Joint Select Committee on Ethical Conduct.

APPENDIX 'F'

Correspondence dated 8 May 2007 from S. P. Estcourt QC to Mr T. J. Ellis SC entitled 'The State of Tasmania v Bryan Alexander Green';
Extract of the document entitled "Commonwealth Director of Public Prosecutions – Prosecution Policy of the Commonwealth – pages 3 to7;
Extract of 'The Mercury' of 16 April 2008, page 28.
Document commencing 'History';
Copy of correspondence dated 6th November 1958;
Copy of correspondence dated 8 September 2003;
Correspondence dated 1 March 2009;
Copy of correspondence dated 21 March 2009;
Document Entitled "Qualified Advice";
Miscellaneous documents relating to Local Government matters;
Document entitled "Affidavit.

TUESDAY, 17 JUNE 2008

The Committee met in Committee Room 2, Parliament House, Hobart at 1:00 p.m.

MEMBERS PRESENT:
Mr *Best*
Mr *Hall*
Mr *Martin*
Mr *McKim*
Mr *Llewellyn*
Mr *Rockliff*
Mr *Wilkinson*

APOLOGIES
An apology was received from Ms *Thorp.*

ORDER OF THE HOUSES READ
The Secretary took the Chair and read the Order of the Legislative Council and the House of Assembly appointing the Committee.

ELECTION OF CHAIR
The Secretary called for nominations, Mr *Llewellyn* nominated Mr *Wilkinson*, who consented to the nomination.

There being no other candidates nominated, the Secretary declared Mr *Wilkinson* elected as Chair.

Mr *Wilkinson* took the Chair.

ELECTION OF DEPUTY CHAIR
The Chair called for nominations, Mr *Hall* nominated Mr *Rockliff*, who consented to the nomination.

There being no other candidates nominated, the Chair declared Mr *Rockliff* elected as Deputy Chair.

PARLIAMENTARY RESEARCH OFFICER
Resolved, That unless otherwise ordered Officers of the Parliamentary Research Service be admitted to the proceedings of the Committee whether in public or private session. (Mr *Wilkinson*)

The Director of the Parliamentary Research Service, Dr Stait was admitted.

HIS EXCELLENCY THE GOVERNOR
The Chair acquainted the Committee with a conversation he had recently had with His Excellency the Governor concerning the initiation of the Committee in which His Excellency had an expressed his interest in inviting the Committee to lunch to discuss the inquiry.

CHAIR TO BE THE SPOKESPERSON
Resolved, That the Chair be the spokesperson in relation to the operations of the Committee. (Mr *Wilkinson*)

REPORTING DATE
Resolved, That the Committee seek an extension of the reporting date for the report of the Committee until Tuesday, 28 October next. (Mr *Martin*)

ADVERTISEMENT
The draft advertisement having been previously circulated by the Secretary was taken into consideration by the Committee.

The Committee deliberated.

Amendments were proposed (Mr *Llewellyn*) by leaving out "11 July" and inserting "18 July" and by leaving out "The Committee is required to finalise its report by 26 August 2008."

Which amendments were agreed to.

A further amendment was proposed (Mr *McKim*), by inserting the following new paragraph:-

"Persons who wish to give confidential evidence to the Committee should contact the Secretary and request that the Committee hear their evidence in private."

Which amendment was agreed to.

Advertisement, as amended, agreed to with such advertisements to be placed in newspapers on Saturday, 21 June next.

ADDITIONAL RESEARCH SUPPORT
The Committee undertook to consider the need for research support.

INVITATIONS FOR SUBMISSIONS TO THE COMMITTEE
The Committee considered the question of whether organisations and individuals should be directly invited to provide submissions to the Committee.

Ordered, That Committee members provide the Secretary with the names of individuals or organisations to be so invited. (Mr *Hall*)

INQUIRY FUNDING
Ordered, That the Secretary inform the Committee of the budgetary considerations for the inquiry.

STANDING ORDERS
Resolved, That unless otherwise ordered the Standing Orders of the Legislative Council be adopted as the Standing Orders of the Committee. (Mr *Martin*)

At 2:08 p.m. the Committee adjourned until a date to be fixed.

TUESDAY, 3 JULY 2008

The Committee met in Committee Room 2, Parliament House, Hobart at 1:10 p.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall* (via telephone)
Mr *McKim*
Mr *Llewellyn*
Mr *Rockliff*

APOLOGIES
Apologies were received from Mr *Martin* and Ms *Thorp*.

CORRESPONDENCE
The following correspondence was received:-

a. Correspondence dated 25 June 2008 from Marion Nicklason, Convenor - Tasmanians for a Healthy Democracy to the Chair;
b. Email dated 1 July 2008 from a person to the Secretary requesting that their evidence be heard in private;
c. Email dated 2 July 2008 from Michael Ahrens, Executive Director of Transparency International Australia to the Secretary; and
d. Email dated 3 July 2008 from Rick Snell, Senior Lecturer in Law, University of Tasmania to the Secretary.

ISSUES PAPER/REPORTING DATE
The Committee deliberated upon requests from members of the public which sought an extension of the reporting date and that an 'Issues Paper' be prepared.

Resolved, That:-

1. The deadline for submissions to the Committee be extended until Friday, 1 August next.
2. An issues paper not be commissioned but that interested persons be directed to the following papers to inform their understanding:-
    a. "What price integrity? Funding Australia's integrity systems" by A. J. Brown and Brian Head, Key Centre for Ethics, Law,

Justice and Governance, Griffith University;

b. "Ombudsman, Corruption Commission or Police Integrity Authority? Choices for Institutional Capacity in Australia's Integrity Systems" by Dr A. J. Brown and Prof Brian Head, Key Centre for Ethics, Law, Justice and Governance, Griffith University. Referred paper presented to the Australasian Political Studies Association Conference, University of Adelaide, 29 September – 1 October 2004; and

c. "Corruption and Integrity Systems Throughout Australia" by Dr Zoë Gill with assistance from Alex Grove, research Paper No. 2 of 2007, 24 October 2007, South Australian Parliament Research Library.

3. The Committee does not necessarily endorse the views and comments contained in such papers.
4. The Secretary is authorised to supply copies of such papers upon request.
5. The Secretary is to advise relevant correspondents to the Committee of this resolution and amend the website information accordingly.
6. The Chair issue a Media Release advising the extension of the submission date. (Mr *McKim)*

INVITATIONS FOR SUBMISSIONS TO THE COMMITTEE

The Committee further considered which organisations and individuals should be directly invited to provide submissions to the Committee.

The Chair tabled the following correspondence:-

Correspondence dated 16 June 2008 from Martyn Hagan, Executive Director of the Law Society of Tasmania to the Chair.

Ordered, That the following persons and organisations be invited to provide a submission:-

- Ian Temby QC, former head of NSW ICAC;
- Murray Wilcox QC, former Federal Court Judge, currently a delegate of the Victorian Office of Police Integrity;
- Tony Fitzgerald QC, author of the "Fitzgerald Report";
- Dr Darren Palmer - Convenor, Criminology and Police Studies, Deakin University;
- Len Roberts-Smith RFD, QC, Commissioner of the Corruption and Crime Commission of Western Australia;
- Gerard Cripps QC, Current head of NSW ICAC;
- Dr Alexander Brown, Senior Research Fellow, Socio-Legal Research Centre, Griffith University;
- Prof Brian Head;
- Rick Snell, Senior Lecturer in Law, Law School, UTAS;
- Prof Kate Warner, Tasmanian Law Reform Institute;
- Law Society of Tasmania;
- Tasmanian Bar Association;
- Independent Bar;
- Tasmanians for a Healthy Democracy;
- Ombudsman;
- Auditor-General;
- Director of Public Prosecutions;
- Premier;
- Leader of the Opposition;
- Leader of the Tasmanian Greens;
- Sir Max Bingham;
- Tasmanian Chamber of Commerce and Industry;
- Local Government Association of Tasmania;
- Michael Ahrens, Executive Director of Transparency International Australia;
- Prof Aynsley Kellow, UTAS School of Government;
- Dr Richard Herr;
- Crime & Misconduct Commission, Queensland;
- Greg Mellick SC;
- Tom Baxter, UTAS Law School;
- Prof Geoff Malpas, UTAS; and
- Prof Don Chalmers, UTAS.

EVIDENCE NOT TO BE PUBLISHED

The Committee took into consideration the email dated 1 July 2008 from a person to the Secretary requesting that their evidence be heard in private.

The Chair and the Attorney-General, being acquainted with the subject matter of the case, briefed the Committee.

The Committee deliberated.

Resolved, That:-

1. The evidence of this person be heard in private and not published;
2. Such decision be communicated to the person by the Secretary; and
3. The Secretary enquire of the person as to whether anonymity is requested. (Mr *Wilkinson*)

At 1:56 p.m. the Committee adjourned until a date to be fixed.

FRIDAY, 5 SEPTEMBER 2008

The Committee met in Committee Room 2, Parliament House, Hobart at 2:00 p.m.

MEMBERS PRESENT:

Mr *Wilkinson* (Chair)
Mr *Hall* (via telephone)
Mr *Martin*
Mr *McKim*
Mr *Llewellyn*
Ms *Thorp*

APOLOGIES
Apologies were received from Mr *Best* and Mr *Rockliff.*

CONDUCT OF THE INQUIRY
Receipt of Submissions & Parliamentary Privilege

The Committee discussed the receipt of submissions and the application of Parliamentary privilege to the same.

Resolved, That:-

1. the members of the Committee consider before the next meeting the submissions as circulated by the Secretary; and
2. at the next meeting of the Committee, the receipt of each submission would be individually considered. (Mr *McKim*)

Interim Report

The Chair brought up a draft report.

Ordered, That consideration of the draft report be adjourned until the next meeting. (Mr *Wilkinson*)

Witnesses

The Committee further deliberated upon whom should be invited to appear and give evidence.

Resolved, That:-

1. every submitter of a submission, which has been received by the Committee, be invited to appear before the Committee; and
2. a time allocation of 30 minutes be given for each such witness. (Mr *Wilkinson*)

Other Jurisdictions

The Committee discussed the prospect of visiting New South Wales and Queensland to meet respectively with officers of the Independent Commission Against Corruption (ICAC) and the Crime and Misconduct Commission (CMC) and the relevant Parliamentary oversight Committees.

Resolved, That the Committee, or a Sub-Committee of the Committee, travel to New South Wales and Queensland for such purpose. (Mr *Hall*)

Research Assistance

The Committee discussed the need for additional research assistance.

Resolved, That:-

1. Mr Tom Wise be engaged to produce a draft final report of the Committee; and
2. other research assistance for the inquiry process be obtained as required by the Secretary. (Mr *Wilkinson*)

CONFIRMATION OF MINUTES
The Minutes of the meeting held on 3 July last were read and confirmed.

WITNESSES
The following witnesses appeared and made the Statutory Declaration:-

- Professor Jeff Malpas, Professor of the School of Philosophy, University of Tasmania; and
- Sir Max Bingham.

No evidence was taken.

At 3:40 p.m. the Committee adjourned until Wednesday, 10 September next at 10:00 a.m.

WEDNESDAY, 10 SEPTEMBER 2008

The Committee met in Committee Room 2, Parliament House, Hobart at 10:08 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*

Officers of the Parliamentary Research Service Dr Stait and Miss McPherson were present.

APOLOGIES
Apologies were received from Mr *Hall*, Mr *Llewellyn* and Ms *Thorp*.

CONDUCT OF THE INQUIRY
Receipt of Submissions

The Committee further considered the receipt of submissions 1 to 129.

Resolved, That:-

1. Submissions 1 and 2 be received and reported.
2. Submissions 3 to 10 be received and not reported.
3. Submissions 12 to 14 be received and not reported.
4. Submission 16 be received and reported.
5. Submissions 17 be received and not reported.
6. Submission 18 be considered after authorship verification.
7. Submission 19 be received and reported and the annexures thereto be received and not reported.
8. Submissions 20 to 40 be received and reported.
9. Submission 41 not be received as it was anonymous.

10. Submissions 42 to 47 be received and reported.
11. Submission 48 be received and not reported.
12. Submissions 49 to 58 be received and reported.
13. Submission 59 noted as being a duplicate of submission 38.
14. Submissions 60 to 79 be received and reported.
15. Submission 80 be received and reported and the annexures thereto be received and not reported.
16. Submissions 81 to 104 be received and reported.
17. Submission 105 be received and the annexures thereto be received and not reported.
18. Submissions 106 to 125 be received and reported.
19. Submission 126 be received and not reported.
20. Submissions 127 to 129 be received and reported. (Mr *Wilkinson*)

Resolved, That further consideration of submissions 11 and 15 be adjourned. (Mr *McKim*)

INTERIM REPORT
The draft Interim Report was further considered.

Ordered, That consideration of the draft report be adjourned until the next meeting. (Mr *Wilkinson*)

WITNESS
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Timothy Ellis S.C., Director of Public Prosecutions.

Mr Ellis tabled an amended submission.

Mr Ellis tabled a document headed "'Things we share in Common' by Kirby, J. 13/3/08 Sydney".

The witness withdrew.
Ordered, That:-

1. the order of the Committee to receive the original submission of the Director of Public Prosecutions be rescinded;
2. the amended submission be received and taken into evidence to be reported; and
3. the original submission be withdrawn and copies returned to the Secretary for destruction. (Mr *Wilkinson*)

PUBLIC COMMENT
The Committee discussed the ability of members of the Committee to publicly discuss evidence made in public hearings of the Committee.

Members acknowledged the importance of maintaining the integrity of the Committee process.

SUSPENSION
Suspension of Sitting – 1:10 p.m. to 2:05 p.m.

WITNESSES
The following witnesses appeared, made the Statutory Declaration and were examined by the Committee in public:-

- Marion Nicklason, Convenor, Tasmanians for a Healthy Democracy; and
- Wynne Russell, Parliamentary Liaison, Tasmanians for a Healthy Democracy.

The witnesses tabled a document entitled "The Nation in a Room – Turning Public Opinion Into Policy" by James S. Fishkin.

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Wayne Crawford.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Michael Stokes, Senior Lecturer, Faculty of Law, University of Tasmania.

Mr Stokes tabled a self-authored document entitled "Public Accountability Commission".

The witness withdrew.

DOCUMENTS
Ordered, That the documents tabled this day be received and taken into evidence. (Mr *Best*)

At 5:08 p.m. the Committee adjourned until 9:00 a.m. tomorrow.

THURSDAY, 11 SEPTEMBER 2008

The Committee met in Committee Room 2, Parliament House, Hobart at 9:00 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*
Ms *Thorp*

Parliamentary Research Officer Miss McPherson was present.

APOLOGY
An apology was received from Mr *Llewellyn.*

INTERIM REPORT
The draft Interim Report was further considered.

Ordered, That the draft Interim Report be agreed to with a minor amendment and presented to the President of the Legislative Council together with the documents ordered by the Committee to be made public and any available transcripts of evidence at the earliest opportunity. (Mr *Wilkinson*)

Mr *Martin* took his seat at 9:12 a.m.

RECEIPT OF SUBMISSION
The Committee considered the receipt of submission 130.

Resolved, That submission 130 be received and reported. (Mr *Wilkinson*)

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Rick Snell, Senior Lecturer – Faculty of Law, University of Tasmania.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Dr Richard Herr, Honorary Research Associate, University of Tasmania.

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Cassy O'Connor M.P.

The witness withdrew.

SUSPENSION
Suspension of Sitting 12:30 p.m. until 2:08 p.m.

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Emeritus Professor Peter Boyce, School of Government, University of Tasmania.

The witness withdrew.

The following witnesses were recalled and examined by the Committee in public:-

- Professor Jeff Malpas, School of Philosophy, University of Tasmania; and
- Sir Max Bingham.

The witness withdrew.

RECEIPT OF SUBMISSIONS
Mr *Wilkinson* and Mr *Martin* indicated that they were content with the receipt and publication of submissions 11 and 15 and they withdrew.

Mr *Rockliff* took the Chair.

The Committee considered the receipt of submissions 11 and 15.

Resolved, That submissions 11 and 15 be received and reported. (Ms *Thorp*)

Mr *Wilkinson* resumed the Chair.

Mr *Martin* took his seat.

FUTURE MEETING DATES
Resolved, That the Committee meet in Hobart on 7 and 8 October next; interstate on 5 to 7 November next; and at a venue to be advised on 24 to 26 November next. (Mr *Wilkinson*)

At 5:32 p.m. the Committee adjourned until 10:00 a.m., Tuesday, 7 October next.

TUESDAY, 7 OCTOBER 2008

The Committee met in Committee Room 2, Parliament House, Hobart at 10:00 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*
Parliamentary Research Officer Miss McPherson was present.

APOLOGIES
Apologies were received from Ms *Thorp* and Mr *Llewellyn.*

WITNESS
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Howard Michael Blake, Auditor-General.

Papers

Mr Blake tabled the following documents:-

1. Copy of correspondence dated 2 September 2008 from H. M. Blake, Auditor-General to Mr L. Sealy, Solicitor-General entitled 'Power of the Auditor-General to investigate actions of Ministers'.

2. Copy of advice dated 8 September 2008 from Leigh Sealy S.C., Solicitor-General to Mr H. M. Blake, Auditor-General entitled 'ADVICE Re: Power of the Auditor-General to investigate actions of Ministers'.
3. Copy of document entitled 'Procurement and GVM project'.

The witness withdrew.

SUSPENSION OF SITTING
Suspension of Sitting 10:45 a.m. to 11:05 a.m.

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Allan Garcia, Chief Executive Officer, Local Association of Tasmania.

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Bruce Scott

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Jane MacDonald, Submissions Coordinator, Save Ralphs Bay Inc.

The witness withdrew.

SUSPENSION
Suspension of Sitting 12:40 p.m. until 2:30 p.m.

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Randolph Wierenga, President, Police Association of Tasmania.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Hon. *Will Hodgman* M.P., Leader of the Opposition

Paper

Mr *Hodgman* tabled the following document:-

Correspondence dated 7 October 2008 from Hon *Will Hodgman* MP, Leader of the Opposition to the Hon *Jim Wilkinson* MLC relating to public ethics and accountability bodies of other jurisdictions.

The witness withdrew.

At 4:30 p.m. Mr *Rockliff* withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Greg Barns

The witness withdrew

At 5:18 p.m. the Committee adjourned until 9:00 a.m. tomorrow.

WEDNESDAY, 8 OCTOBER 2008

The Committee met in Committee Room 2, Parliament House, Hobart at 9:05 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *McKim*
Mr *Rockliff*
Ms *Thorp*

Parliamentary Research Officer Miss McPherson was present.

APOLOGY
An apology was received from Mr *Llewellyn.*

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Desmond Le Fevre

Resolved, That the Committee continue the examination of Mr Le Fevre *in camera*. (Mr Wilkinson)

Mr Le Fevre further examined *in camera*.

PAPER
Mr Le Fevre tabled correspondence dated 2 April 1998.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Patrick Synge

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Patrick Holloway

PAPER
Mr Holloway tabled miscellaneous additional information.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Jacob Knevett

The witness withdrew.

SUSPENSION OF SITTING
Suspension of Sitting 10:40 a.m. to 11:05 a.m.

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Doug Wright

Resolved, That the Committee continue the examination of Mr Wright *in camera*. (Mr Wilkinson)

Mr Wright further examined *in camera*.

The witness withdrew.

Resolved, That the next witness to give evidence to the Committee do so *in camera* and that the witness be anonymous and that the evidence given by this witness be not reported. (Mr *Martin*)

The following witness appeared, made the Statutory Declaration and was examined by the Committee *in camera*:-

- Witness 'A'

Paper

Witness 'A' tabled a copy of a piece of correspondence.

The witness withdrew.

SUSPENSION
Suspension of Sitting 12:43 p.m. until 2:00 p.m.

WITNESSES
The following witness appeared and was examined by the Committee in public:-

- Hon. Lara Giddings M.P., Deputy Premier and Attorney-General

The following witnesses appeared, made the Statutory Declaration and were examined by the Committee in public:-

- Lisa Hutton, Secretary of the Department of Justice
- Phillip Foulston, Director – Executive Division, Department of Premier & Cabinet
- Catherine Vickers, Assistant Director - Executive Division, Department of Premier & Cabinet

The witnesses withdrew.

SUSPENSION
Suspension of Sitting 12:43 p.m. until 2:00 p.m.

PAPERS
Resolved, That the papers tabled this day be received and taken into evidence and not reported. (Mr *Wilkinson*)

MINUTES
The Minutes of the meeting held on 10 and 11 September last were read and confirmed

INTERIM REPORT 2
A draft Interim Report 2 was brought up by the Chair and considered.

Ordered, That Interim Report 2 be adopted and presented to the House of Assembly by the Deputy Chair together with the transcripts of evidence heard in public on Tuesday, 7 October 2008 and Wednesday, 8 October 2008. (Mr *Hall*)

WITNESS
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Hon. Nick Griffiths MLC, President of the Legislative Council, Parliament of Western Australia

The witness withdrew

At 4:05 p.m. the Committee adjourned until 11:00 a.m., Wednesday, 5 November next.

WEDNESDAY, 5 NOVEMBER 2008

The Committee met in the Federation Room, Devonport Entertainment Centre, Devonport at 11:05 a.m.

MEMBERS PRESENT:

Mr *Wilkinson* (Chair)
Mr *Best*

Mr *Hall*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*

APOLOGIES
Apologies were received from Mr *Llewellyn* and Ms *Thorp.*

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- John Hayward

At 11:20 a.m. Mr *Martin* took his place.

Paper

Mr Hayward tabled the following Paper:-

"The Land Swap between Forestry Tasmania and the State Government".

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Peter Elkin

The witness withdrew.

SUSPENSION OF SITTING
Suspension of Sitting 12:43 p.m. to 3:00 p.m.

WITNESS
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Dallas Williams

Paper

Mr Williams tabled the following Paper:-
"Tasmania Ethics and Values Education Centre – A Supplementary Proposal for the Joint Select Committee on Ethical Conduct".

The witness withdrew.

At 4:04 p.m. the Committee adjourned until 9:00 a.m., tomorrow.

THURSDAY, 6 NOVEMBER 2008

The Committee met in the Conference Room, Henty House, 1 Civic Square, Launceston at 9:00 a.m.

MEMBERS PRESENT:

Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*

APOLOGIES
Apologies were received from Mr *Llewellyn* and Ms *Thorp.*

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Peter Godfrey

Papers

Mr Godfrey tabled the following Papers:-

1. Donor Annual Return Financial Year 2005-06 from the CFMEU Forestry and Furnishing Products Division;
2. Copy of an email from Russell Madeley to Mark Wapstra dated 12 April 2002; and
3. Copy of an email from Russell Madeley to Mark Wapstra dated 26 April 2002.

The witness withdrew.

The following witnesses appeared, made the Statutory Declaration and were examined by the Committee in public:-

- Eva Gutray-Bukoven;
- Maria Borkowski; and
- Patricia Austin.

Papers

Mrs Gutray-Bukoven tabled the following Paper:-

"Joint Select Committee on Ethical Conduct – Summary and Supporting Documentation Outline Misconduct from Government Officials and Denial of Natural Justice".

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Karl Stevens

Paper

Mr Stevens tabled the following Paper:-

"The Gunns Dossier: Pulp Mill Smoke and Mirrors".

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- George Chandler

Paper

Mr Chandler tabled the following Paper:-

> "Address to the Joint Select Committee on Ethical Conduct in Parliament – G. H. Chandler".

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Mike Bolan

The witnesses withdrew.

SUSPENSION OF SITTING
Suspension of Sitting 11:39 p.m. to 12:02 p.m.

WITNESS
The following witness appeared, made the Statutory Declaration and was examined by the Committee *in camera*:-

- Geraldine Allan

The witness withdrew.

SUSPENSION OF SITTING
Suspension of Sitting 12:47 p.m. to 2:00 p.m.

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Estelle Ross

Mrs Ross tabled the following Paper:-

"Amended Submission to Joint Select Committee on Ethical Conduct".

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Annie Zon

The witness withdrew.

Ordered, That no transcript be produced of the deliberations recorded after the withdrawal of the witness Zon. (Mr *Wilkinson*)

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Alister Mills

The witness withdrew.

The following witnesses appeared, made the Statutory Declaration and were examined by the Committee *in camera*:-

- Robert Edwards; and
- Wendy Edwards.

The witnesses tabled the following Papers:-

i. Wendy Edwards, additional submission dated 6 November 2008; and
ii. Robert Edwards, additional submission dated 6 November 2008.

The witnesses withdrew.

Resolved, That the following Papers be received, taken into evidence and reported:-

i. Donor Annual Return Financial Year 2005-06 from the CFMEU Forestry and Furnishing Products Division;
ii. Copy of an email from Russell Madeley to Mark Wapstra dated 26 April 2002;
iii. Copy of an email from Russell Madeley to Mark Wapstra dated 26 April 2002;
iv. The Gunns Dossier: Pulp Mill Smoke and Mirrors – Tasmanians Against the Pulp Mill (TAP) Inc. Research;
v. Address to the Joint Select Committee on Ethical Conduct in Parliament – G. H. Chandler;
vi. Amended Submission to Joint Select Committee on Ethical Conduct – Estelle Ross;
vii. The Land Swap between Forestry Tasmania and the State Government – John Hayward; and
viii. Tasmania Ethics and Values Education Centre – A Supplementary Proposal for the Joint Select Committee on Ethical Conduct – Dallas Williams.

Resolved, That the following Papers be received, taken into evidence and not reported:-

i. Joint Select Committee on Ethical Conduct – Summary and Supporting Documentation Outline Misconduct from Government Officials and Denial of Natural Justice – Maria Cecylia Borkowski & Eva Karja Gutray-Bukoven;
iii. Wendy Edwards, additional submission dated 6 November 2008; and

ii. Robert Edwards, additional submission dated 6 November 2008.

At 4:04 p.m. the Committee adjourned until 9:00 a.m., tomorrow.

FRIDAY, 7 NOVEMBER 2008

The Committee met in the Conference Room, Henty House, 1 Civic Square, Launceston at 9:10 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Martin*
Mr *Rockliff*

APOLOGIES
Apologies were received from Mr *Llewellyn*, Mr *McKim* and Ms *Thorp*.

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Clive Stott

Papers

Mr Stott tabled the following documents:-

i. Copy of correspondence dated 12 June 2008 to Mr Peter Rowlands, District Forest Manager from Clive M. Stott;
ii. Web page printout – www.cleanairtas.com/photos.htm (4 pages);
iii. Copy of correspondence dated 29 August 2008 to the Chief Forest Practices Officer from Clive M. Stott;
iv. A further Web page printout – www.cleanairtas.com/correspo.htm (4 pages); and
v. Copy of a circular from Ian Cawthorn, District Officer – Tamar, Tasmania Fire Service and Ian White, Rosevears Vineyard Hospitality & Functions Manager.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Cathran Bowyer

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Peter Meadley

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Sven Wiener

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Ovie Taylor

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Andrew Ricketts

Papers

Mr Ricketts tabled the following documents:-

i. Environmental Ethics Policy Document Draft December 2004; and
ii. Extract from the Oxford English dictionary.

The witness withdrew.

SUSPENSION OF SITTING
The following witnesses appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Sandra Hunter; and
- Peter Hunter

The witnesses withdrew.

SUSPENSION OF SITTING
Suspension of Sitting 12:47 p.m. to 2:00 p.m.

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee *in camera*:-

- John Hawkins

Papers

Mr Hawkins tabled the following Papers:-

- Correspondence dated 6 November 2008 from J. B. Hawkins to the committee entitled "Forestry Exempt ALL Heritage Legislation" together with 17 annexures.

The witnesses withdrew.

CONFIRMATION OF MINUTES
The Minutes of the meetings held on 5 September, 7 & 8 October having been circulated were read and agreed to.

At 2:50 p.m. the Committee adjourned until a date to be fixed.

SUB-COMMITTEE

MONDAY, 24 NOVEMBER 2008

The Sub-Committee met in the Speaker's Hall, Parliament House, Brisbane at 9:30 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Hall*
Mr *Martin*
Mr *McKim*

APPEARANCES
The following person appeared before the Sub-Committee:-

- Professor Brian Head, Director, Institute for Social Science Research, University of Queensland.

Professor Head withdrew.

The following persons appeared before the Sub-Committee:-

- Paul Hoolihan MP, Chair, Parliamentary Crime and Misconduct Committee, Parliament of Queensland;
- Simon Finn MP, Member, Parliamentary Crime and Misconduct Committee, Parliament of Queensland;
- Mrs Christine Smith MP, Member, Parliamentary Crime and Misconduct Committee, Parliament of Queensland; and
- Stephen Finnimore, Research Director, Parliamentary Crime and Misconduct Committee.

Messrs Hoolihan, Finn, Finnimore and Mrs Smith withdrew.

SUSPENSION OF SITTING
Suspension of Sitting 12:47 p.m. to 2:00 p.m.

APPEARANCES
The following person appeared before the Sub-Committee:-

- Robert Needham, Chairperson and Chief Executive Officer, Crime and Misconduct Commission.

Mr Needham tabled the following Paper:-

Document outlining the structure of the Crime and Misconduct Commission.

Mr Needham withdrew.

The following person appeared before the Sub-Committee:-

- Kevin Lindeberg

Mr Lindeberg tabled the following:-

1. CD entitled 'The Heiner Affair';
2. Article by Piers Akerman entitled 'PM shreds his own credibility' – Sunday Telegraph, 16 November 2008

Mr Lindeberg withdrew.

The following person appeared before the Committee:-

- Dr Alexander (A.J.) Brown, Senior Lecturer, Griffith Law School, Griffith University.

Dr Brown withdrew.

At 4:40 p.m. the Sub-Committee adjourned until 11:00 a.m. tomorrow.

SUB-COMMITTEE

TUESDAY, 25 NOVEMBER 2008

The Sub-Committee met in the Jubilee Room, Parliament House, Sydney at 11:00 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Hall*
Mr *Martin*
Mr *McKim*

APPEARANCES
The following persons appeared before the Sub-Committee:-

- Hon. Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption;
- Roy Waldon, Solicitor to the Independent Commission Against Corruption.

Messrs. Cripps and Waldon withdrew.

BRIEFING
The following persons met with the Sub-Committee:-

- Greg Smith MP, Member, Committee on the Independent Committee Against Corruption;
- Helen Minnican, Committee Manager, Committee on the Independent Committee Against Corruption;
- Dr Jasen Burgess, Senior Committee Officer, Committee on the Independent Committee Against Corruption.

At 12:47 p.m. the Sub-Committee adjourned until 9:30 a.m. tomorrow.

SUB-COMMITTEE

WEDNESDAY, 26 NOVEMBER 2008

The Sub-Committee met in the Waratah Room, Parliament House, Sydney at 9:30 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Hall*
Mr *Martin*

APPEARANCES
The following person appeared before the Sub-Committee:-

- His Honour, Mr Harvey Cooper AM, Inspector of the Independent Commission Against Corruption;

Mr Cooper withdrew.

BRIEFING
The following persons met with the Sub-Committee:-

- Hon Kayee Griffin MLC, Chair, Legislative Council Privileges Committee;
- Hon Ian West MLC, Member, Legislative Council Privileges Committee;
- Hon Jenney Gardiner MLC, Legislative Council Privileges Committee;
- Rev. the Hon Fred Nile MLC, Legislative Council Privileges Committee; and
- Hon Greg Donnelly MLC, Legislative Council Privileges Committee.

Mrs Griffin tabled the following document:-

"The Framework Regulating the Conduct of Members of Parliament in New South Wales".

The following persons met with the Sub-Committee:-

- Paul Pearce MP, Chair, Legislative Assembly Privileges and Ethics Committee;
- Hon Richard Amery MP, Member, Legislative Assembly Privileges and Ethics Committee;
- Malcolm Kerr MP, Member, Legislative Assembly Privileges and Ethics Committee;
- Gerard Martin MP, Member, Legislative Assembly Privileges and Ethics Committee;
- Frank Terenzini MP, Member, Legislative Assembly Privileges and Ethics Committee; and
- John Turner MP, Member, Legislative Assembly Privileges and Ethics Committee.

Such Members withdrew.

The following person met with the Sub-Committee:-

- Ian Dickson, Parliamentary Ethics Adviser

Mr Dickson withdrew.

At 12:28 p.m. the Sub-Committee adjourned *sine die*.

MONDAY, 16 MARCH 2009

The Committee met in Committee Room 2, Parliament House, Hobart at 9:22 a.m.

MEMBERS PRESENT:

Mr *Wilkinson* (Chair)
Mr *Best* (via telephone)
Mr *McKim*
Mr *Martin*
Mr *Rockliff*

APOLOGIES
Apologies were received from Mr *Hall*, Mr *Llewellyn* (until 2:00 p.m.) and Ms *Thorp* (until 2:00 p.m.).

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Emeritus Prof. Stuart McLean, School of Pharmacy, University of Tasmania

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Phillip Lowe

The witnesses withdrew.

SUB-COMMITTEE PROCEEDINGS
The Committee received the Minutes of Proceedings and Transcripts of the meetings held by the Sub-Committee in Brisbane and Sydney on 24 to 26 November last.

Ordered, That such documents be taken into evidence. (Mr *Wilkinson*)

The Committee deliberated upon the electronic (CD) and hard copy documents distributed by Mr Kevin Lindeberg at the meeting of 24 November.

Ordered, That such documents not be received and accordingly be returned to Mr Lindeberg. (Mr *Wilkinson*)

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Sally McGushin

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Jack Lomax

Paper

Mr Lomax tabled the following Paper:-

- 'Addendum to my submission of the 28th July 2008 to the Joint Select Committee on Ethical Conduct'

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Barbara June Daly

Resolved, That the examination of Mrs Daly continue *in camera.* (Mr *Wilkinson*)

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Aziz Gregory Melick SC

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Andrew Holliday

The witness withdrew.

Suspension of Sitting 1:14 p.m. until 2:00 p.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best* (via telephone)
Mr *Llewellyn*
Mr *McKim*
Mr *Martin*
Mr *Rockliff*
Ms *Thorp*

WITNESSES
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Dr. David Obendorf

The witness withdrew.

The following witnesses participated via telephone, made the Statutory Declaration and were examined by the Committee *in camera*:-

- John Knowles; and
- Elsbey Geale

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Elizabeth Perey

The witnesses withdrew.
The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- James Graham

The witnesses withdrew.

The following witness participated via telephone, made the Statutory Declaration and was examined by the Committee in public:-

- Kenneth Harris

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Paul Maurice Davis

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- John Charles White

Papers

Mr White tabled the following papers:-

- Tasmania v John Charles White – Comments on Passing Sentence, 10 December 2007, Underwood CJ;
- Extract of Erskine May's Parliamentary Practice – 20th Edition – page 343.

Resolved, That the examination of Mr White continue *in camera.* (Mr *Wilkinson*)

Papers

Mr White tabled the following papers:-

- Correspondence dated 8 May 2007 from S. P. Estcourt QC to Mr T. J. Ellis SC entitled 'The State of Tasmania v Bryan Alexander Green';
- Extract of the document entitled "Commonwealth Director of Public Prosecutions – Prosecution Policy of the Commonwealth – pages 3 to7.

At 5:15 p.m. Ms *Thorp* withdrew.

Paper

Mr White tabled the following paper:-

- Extract of 'The Mercury' of 16 April 2008, page 28.

The witness withdrew.

RECEIPT OF DOCUMENTS

Resolved, That:-

a. the documents tabled this day whilst the Committee was sitting in public be received, taken into evidence and published;
b. the documents tabled this day whilst the Committee was sitting *in camera* be received, taken into evidence and not published. (Mr *McKim*)

DRAFT REPORT

The Chair brought up a draft "Interim Report 3" which was read and adopted. (Mr *Wilkinson*)

At 5:41 p.m. the Committee adjourned until 27 March next.

FRIDAY, 27 MARCH 2009

The Committee met in Committee Room 2, Parliament House, Hobart at 9:00 a.m.

MEMBERS PRESENT:

Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Llewellyn*
Mr *Martin*
Mr *Rockliff*

APOLOGIES

Apologies were received from Mr *Hall*, Mr *McKim* and Ms *Thorp.*

Miss McPherson was in attendance.

WITNESSES

The following witnesses participated via telephone, made the Statutory Declaration and was examined by the Committee in public:-

- John O'Dell

The witness withdrew.

The following witnesses participated via telephone, made the Statutory Declaration and was examined by the Committee in public:-

- Michael Murtagh

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Prof. Don Chalmers, Dean of the Law School, University of Tasmania

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Peter Brownscombe

SUSPENSION OF SITTING

Suspension of Sitting 10:46 a.m. until 10: a.m.

The witnesses withdrew.

WITNESSES

The following witnesses appeared, made the Statutory Declaration and were examined by the Committee *in camera*:-

- John Hardman; and
- Maggie Hardman

Papers

Mr Hardman tabled the following Papers:-

- Document commencing 'History';
- Copy of correspondence dated 10th November 1958; and
- Copy of correspondence dated 8 September 2003.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Robert Patterson

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Liila Haas

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Damian Bugg AM QC

The witness withdrew.

The following witnesses appeared, made the Statutory Declaration and were examined by the Committee in public:-

- Rodney Nichols;
- Aron Perkins, Advocate, Advocacy Tasmania; and
- Daniel Nichols

Resolved, That the examination continue *in camera*. (Mr *Wilkinson*)

Papers

Mr Nichols tabled the following Papers:-

- Correspondence dated 1 March 2009; and
- Copy of correspondence dated 21 March 2009.

The witness withdrew.

SUSPENSION OF SITTING

Suspension of Sitting 1:39 p.m. until 2:00 p.m.

WITNESSES

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Iain Frawley, Acting State Service Commissioner

The witness withdrew.

The following witnesses appeared, made the Statutory Declaration and were examined by the Committee in public:-

- Alderman Doug Chipman, Deputy Mayor, Clarence City Council; and
- Andrew Paul, General Manager, Clarence City Council

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Dr. Elizabeth Smith

Resolved, That the examination continue *in camera*. (Mr *Wilkinson*)

Papers

Dr Smith tabled the following Papers:-

- Document Entitled "Qualified Advice"; and
- Miscellaneous documents relating to Local Government matters.

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Simon Allston, Ombudsman

The witness withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee *in camera*:-

- Glenn Lennox

The witnesses withdrew.

The following witness appeared, made the Statutory Declaration and was examined by the Committee in public:-

- Marrette Corby

The witnesses withdrew.

CONFIRMATION OF MINUTES

The Minutes of the meetings held on 5, 6 and 7 November and 16 March last were read and adopted. (Mr *Wilkinson*)

CONDUCT OF INQUIRY
The Committee deliberated upon the further conduct of the inquiry.

Resolved, That:-

a) a comparative analysis of the roles and functions of Parliamentary Privileges Committees of other Australian jurisdictions be provided to the Committee; and
b) a paper be prepared by the Secretary in consultation with the Chair outlining the issues covered by the inquiry to date; summaries of evidence pertinent to each such issues; and options available for each such issue.

WITNESS
The following witness appeared, made the Statutory Declaration and was examined by the Committee *in camera*:-

- Darren Davey

Paper

Mr Davey tabled the following Paper:-

- Document entitled "Affidavit".

The witness withdrew.

RECEIPT OF DOCUMENTS
Resolved, That the documents tabled this day be received, taken into evidence and not published. (Mr *Martin*)

ADVICE OF SOLICITOR-GENERAL
The Committee deliberated.

Resolved, That the opinion of the Solicitor-General be sought as to his interpretation of Section 7 of the Police Service Act 2003 as to whether the words "under the direction of the Minister" enable the subjugation of the Commissioner to the directions of the Minister in respect of the 'operational duties of Tasmania Police

At 5:26 p.m. the Committee adjourned until a date to be fixed.

WEDNESDAY, 20 MAY 2009

The Committee met in Committee Room 2, Parliament House, Hobart at 1:00 p.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Llewellyn*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*
Ms *Thorp*

DOCUMENTS
The following documents, having been previously circulated, were considered by the Committee:-

1. Kevin Lindeberg, Submission II, dated 16 March 2009.
2. Kevin Lindeberg, Special Supplementary Submission, dated 5 May 2009.
3. Correspondence dated 26 November 2008 from Sonia Bonici, Senior Correspondence Officer, Buckingham Palace to Kevin Lindeberg.
4. Correspondence dated 5 March 2009 from Ken Smith, Director-General, Department of the Premier and Cabinet, Queensland to Kevin Lindeberg.
5. Correspondence dated 30 April 2009 from Hon Lara Giddings MP, Deputy Premier to Shane Donnelly, Secretary, Joint Select Committee on Ethical Conduct.
6. Correspondence undated from Hon John White to Hon Jim Wilkinson MLC, Chair, Joint Select Committee on Ethical Conduct.
7. Correspondence dated 3 April 2009 from Simon Allston, Ombudsman to Hon Jim Wilkinson MLC, Chair, Joint Select Committee on Ethical Conduct.

The Committee deliberated.

Resolved, That Papers 1 to 4 abovementioned not be received. (Mr *Hall*)

Resolved, That Papers 5 to 6 abovementioned be received. (Mr *Wilkinson*)

Resolved, That Paper 7 abovementioned be received and taken into evidence. (Mr *Wilkinson*)

ISSUES PAPER
The document entitled "Issues Paper" having been previously distributed was taken into consideration by the Committee.

The Committee deliberated.

At 2:20 p.m. the Committee adjourned until 1:00 p.m. tomorrow.

THURSDAY, 21 MAY 2009

The Committee met in Committee Room 1, Parliament House, Hobart at 1:00 p.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*

Ms *Thorp*

APOLOGY
An apology was received from Mr *Llewellyn.*

CONFIRMATION OF MINUTES
The Minutes of the meeting held on Friday, 27 March last were read and confirmed as a true and accurate record. (Mr *Wilkinson*)

ISSUES PAPER
The document entitled "Issues Paper" was further considered by the Committee.

The Committee deliberated.

At 2:22 p.m. the Committee adjourned until 1:00 p.m. Wednesday, 27 May next.

WEDNESDAY, 27 MAY 2009

The Committee met in Committee Room 1, Parliament House, Hobart at 1:00 p.m.

Members Present:

Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Llewellyn*
Mr *Martin*
Mr *McKim*
Mr *Rockliff*

APOLOGIES
Apologies were received from Mr *Hall* and Ms *Thorp.*

WITNESS
Mr Leigh Sealy S.C., Solicitor-General, appeared, made the Statutory Declaration and was examined by the Committee *in camera.*

The witness withdrew.

At 2:06 p.m. the Committee adjourned until 1:00 p.m. tomorrow.

THURSDAY, 28 MAY 2009

The Committee met in Committee Room 1, Parliament House, Hobart at 1:00 p.m.

Members Present:

Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Llewellyn*
Mr *Martin*
Mr *Rockliff*

APOLOGIES
Apologies were received from Mr *McKim* and Ms *Thorp.*

DOCUMENTS
The following document, having been previously circulated, was considered by the Committee:-

Letter dated 22 May 2009 from John Hawkins to the Members of the Ethics Committee covering miscellaneous correspondence.

The Committee deliberated.

Resolved, That such document not be received. (Mr *Wilkinson*)

ISSUES PAPER
The document entitled "Issues Paper" was further considered by the Committee.

The Committee deliberated.

Ordered, That the Chairman bring up a draft report. (Mr *Hall*)

At 2:03 p.m. the Committee adjourned until a date to be fixed.

MONDAY, 6 JULY 2009

The Committee met in Committee Room 2, Parliament House, Hobart at 2:10 p.m.

Members Present:

Mr *Rockliff* (Acting Chair)
Mr *Best(via telephone)*
Mr *Llewellyn*
Mr *Martin*
Ms *Thorp*

APOLOGY
An apology was received from Mr *Wilkinson*.

DOCUMENTS
The following documents, having been previously tabled, were further considered by the Committee:-

Resolved, That the following documents tabled on 7 October 2008 be received, taken into evidence and reported:-

(Mr Blake)

Copy of correspondence dated 2 September 2008 from H. M. Blake, Auditor-General to Mr L. Sealy, Solicitor-General entitled 'Power of the Auditor-General to investigate actions of Ministers'.
Copy of advice dated 8 September 2008 from Leigh Sealy S.C., Solicitor-General to Mr H. M. Blake, Auditor-General entitled 'ADVICE Re: Power

of the Auditor-General to investigate actions of Ministers'.
Copy of document entitled 'Procurement and GVM project'.

(Mr *Hodgman* (Franklin))

Correspondence dated 7 October 2008 from Hon *Will Hodgman* MP, Leader of the Opposition to the Hon *Jim Wilkinson* MLC relating to public ethics and accountability bodies of other jurisdictions.

Resolved, That the following documents tabled on 7 November 2008 be received, taken into evidence and reported:-

(Mr Stott)

Copy of correspondence dated 12 June 2008 to Mr Peter Rowlands, District Forest Manager from Clive M. Stott;
Web page printout – www.cleanairtas.com/photos.htm (4 pages);
Copy of correspondence dated 29 August 2008 to the Chief Forest Practices Officer from Clive M. Stott;
A further Web page printout – www.cleanairtas.com/correspo.htm (4 pages); and
Copy of a circular from Ian Cawthorn, District Officer – Tamar, Tasmania Fire Service and Ian White, Rosevears Vineyard Hospitality & Functions Manager.

(Mr Ricketts)

Environmental Ethics Policy Document Draft December 2004; and
Extract from the Oxford English dictionary.

Resolved, That the following documents tabled on 7 November 2008 be received, taken into evidence and not reported:-

(Mr Hawkins)

Correspondence dated 6 November 2008 from J. B. Hawkins to the committee entitled "Forestry Exempt ALL Heritage Legislation" together with 17 annexures.

DRAFT REPORT

The Draft Report, having been circulated to the Members of the Committee was considered.

Chapter 1 – Appointment & Conduct of the Inquiry

Paragraphs 1.1 to 1.7 read and agreed to.

Paragraph 1.8 read.

Amendment made.

Paragraph 1.8 as amended agreed to.

Paragraph 1.9 read.

Amendment made.

Paragraph 1.9 as amended agreed to.

Paragraphs 1.10 to 1.18 read and agreed to.

Chapter 2 – Overview

Paragraphs 2.1 to 2.4 read and agreed to.

Paragraph 2.5 read.

Amendment made.

Paragraph 2.5 as amended agreed to.

Paragraphs 2.6 to 2.18 agreed to.

Chapter 3 – Parliament

Paragraphs 3.1 to 3.11 read and agreed to.

Paragraph 3.12 read.

Amendment made.

Paragraph 3.12 as amended agreed to.

Paragraphs 3.13 to 3.22 read and agreed to.

Recommendation 1 read and postponed. Secretary to provide further information on the interpretation of "spouse".

Recommendations 2 and 3 read and agreed to.

At 4:05 p.m. Ms *Thorp* withdrew.

Paragraphs 3.23 to 3.31 read and agreed to.

Paragraph 3.32 read.

Amendment made.

Paragraph 3.32 as amended agreed to.

Paragraph 3.33 read and agreed to.

Recommendation 4 read.

Amendment made.

Recommendation 4 as amended agreed to.

Recommendation 5 read.

Amendment made.

Recommendation 5 as amended agreed to.

Recommendation 6 read and agreed to.

Paragraphs 3.34 to 3.43 read and agreed to.

Recommendation 7 read.

Amendment made.

Recommendation 7 as amended agreed to.

Recommendation 8 read.

Amendment made.

Recommendation 8 as amended agreed to.

Paragraphs 3.44 to 3.36 read and agreed to.

Recommendation 9 read and agreed to.

Paragraphs 3.47 to 3.62 agreed to.

Paragraph 3.63 read.

Amendment made.

Paragraph 3.63 as amended agreed to.

Paragraph 3.64 read.

Amendment made.

Paragraph 3.64 as amended agreed to.

Paragraphs 3.65 to 3.79 read and agreed to.

Paragraph 3.80 read and postponed.

Paragraphs 3.81 to 3.87 read and agreed to.

Paragraph 3.88 read.

Amendment made.

Paragraph 3.88 as amended agreed to.

Paragraph 3.89 read and agreed to.

Paragraph 3.90 read.

Amendment made.

Paragraph 3.90 as amended agreed to.

Recommendations 10 to 14 read and agreed to.

Recommendation 15 read.

Amendment made.

Further consideration of Recommendation 15 as amended postponed.

At 5:00 p.m. the Committee adjourned until 9:00 a.m. tomorrow.

TUESDAY, 7 JULY 2009

The Committee met in Committee Room 2, Parliament House, Hobart at 9:00 a.m.

Members Present:

Mr *Wilkinson* (Chair)
Mr *Best (via telephone)*
Mr *Llewellyn*
Mr *Rockliff (via telephone)*
Ms *Thorp*

DRAFT REPORT

The Draft Report was further considered.

Chapter 4 – Executive

Paragraph 4.1 read and agreed to.

Messrs *Martin* and *McKim* took their seats.

Paragraphs 4.2 to 4.5 read and agreed to.

Paragraph 4.6 read.

Amendment made.

Paragraph 4.6 as amended agreed to.
Paragraph 4.7 postponed. Secretary to provide additional context for the quotation.

Paragraphs 4.8 to 4.10 read and agreed to.

Chapter 5 – State service

Paragraphs 5.1 to 5.12 read and agreed to.

Paragraph 5.13 postponed. Secretary to obtain a copy of the report of the Parliamentary Standing Committee of Public Accounts on 'Television Advertisements by the Tasmanian Greens'.

At 10:00 a.m. Ms *Thorp* withdrew.

Paragraphs 5.14 to 5.31 read and agreed to.

Recommendation 16 read and agreed to.

Recommendation 17 read.

Amendment made.

Recommendation 17 as amended agreed to.

Chapter 6 – Auditor-General: Office of the.

Paragraphs 6.1 to 6.6 read and agreed to.

Paragraph 6.7 read.

Amendment made.

Paragraph 6.7 as amended agreed to.

Paragraph 6.8 read.

Amendment made.

Paragraph 6.8 as amended agreed to.

Paragraph 6.9 read.

Amendment made.

Paragraph 6.9 as amended agreed to.

Paragraph 6.10 read.

Amendment made.

Paragraph 6.10 as amended agreed to.

Recommendation 18 read and agreed to.

At 10:46 a.m. the Committee adjourned until 7:00 a.m. tomorrow.

WEDNESDAY, 8 JULY 2009

The Committee met in Committee Room 2, Parliament House, Hobart at 7:20 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best (via telephone)*
Mr *Llewellyn*
Mr *McKim*
Mr *Rockliff (via telephone)*

DRAFT REPORT
The Draft Report was further considered.

Chapter 7 – Ombudsman: Office of the.

Paragraphs 7.1 to 7.5 read and agreed to.

Paragraph 7.6 postponed.

Paragraphs 7.7 to 7.13 read and agreed to.

Paragraph 7.14 postponed for further discussion on quotations utilised.

Paragraphs 7.15 to 7.18 read and agreed to.

Paragraph 7.19 read.

Amendment made.

Paragraph 7.19 as amended agreed to.

Paragraphs 7.20 to 7.21 read and agreed to.

Recommendation 19 read.

Amendment made.

Recommendation 19 as amended further considered and postponed.

Recommendation 10 read and agreed to.

Paragraphs 8.1 to 8.8 read and agreed to.

Paragraph 8.9 read.

Amendment made.

Paragraph 8.9 as amended agreed to.

Recommendation 21 read and agreed to.

Recommendation 22 read and deleted.

Chapter 9 – Tasmania Police

Paragraphs 9.1 to 9.10 read and agreed to.

At 8:10 a.m. Mr *Hall* took his seat.

Recommendation 23 read.

Amendments made.

Recommendation 23 as amended agreed to.

Recommendation 24 read.

At 8:25 a.m. Ms *Thorp* took her seat.

Amendment made.

Recommendation 24 as amended agreed to.

Paragraphs 9.11 to 9.14 read and agreed to.

Paragraph 9.15 read.

Amendments made.

Paragraph 9.15 as amended agreed to.

Paragraphs 9.16 to 9.24 read and agreed to.

Recommendation 25 read and agreed to.

Chapter 10 – Public Interest Disclosures Act 2002

Paragraphs 10.1 to 10.16 read and agreed to.

Paragraph 10.17 read.

Amendments made.

Paragraph 10.17 as amended agreed to.

Chapter 11 – Commissions of Inquiry Act 1995

Paragraphs 11.1 to 11.20 read and agreed to.

Recommendation 24 read.

Amendment made.

Recommendation 24 as amended postponed.

Chapter 12 – Freedom of Information Act 1991

Paragraphs 12.1 to 12.18 read and agreed to.

Paragraph 12.19 read.

Amendments made.

Paragraph 12.19 as amended agreed to.

Chapter 13 – Criminal Code Act 1924

Paragraphs 13.1 to 13.8 read and agreed to.

A new Recommendation was inserted to follow Paragraph 13.8.

Recommendation 25 was read.

Amendment made.

Recommendation 25 as amended agreed to.

Chapter 14 – Other Review Mechanisms

Paragraphs 14.1 to 14.10 agreed to.

Chapter 15 – Need for Augmentation

Paragraph 15.1 read.

Amendments made.

Paragraph 15.1 as amended agreed to.

Paragraphs 15.2 to 15.27 read and agreed to.

Paragraph 15.28 read.

Amendment made.

Paragraph 15.28 as amended agreed to.

Paragraph 15.29 read.

Amendments made.

Paragraph 15.29 as amended agreed to.

Paragraphs 15.30 to 15.39 read and agreed to.

Paragraph 15.40 read.

Suspension of Sitting – 10:37 a.m. until 7:10 p.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best (via telephone)*
Mr *Hall*
Mr *Llewellyn*
Mr *Martin*
Mr *McKim*
Mr *Rockliff (via telephone)*

Paragraph 15.40 further considered.

Amendments made.

Paragraph 15.40 as amended agreed to.

Paragraphs 15.41 to 15.42 read and agreed to.

Chapter 16 – Tasmanian Integrity Commission

Recommendation 26 read.

Amendments made.

Recommendation 26 as amended agreed to.

Recommendation 27 read and agreed to.

Recommendation 28 deleted.

Paragraph 16.1 read.

Amendments made.

Paragraph 16.1 as amended agreed to.

Paragraph 16.2 read and agreed to.

Paragraph 16.3 read.

Amendment made.

Paragraph 16.3 as amended agreed to.

Paragraph 16.4 read and agreed to.

Paragraph 16.5 read.

Amendment made.

Paragraph 16.5 as amended agreed to.

Paragraph 16.6 read.

Amendment made.

Paragraph 16.6 as amended agreed to.

Paragraphs 16.7 to 16.9 read and agreed to.

Paragraph 16.10 read.

Amendment made.

Paragraph 16.10 as amended agreed to.

Paragraph 16.11 read.

Amendment made.

Paragraph 16.11 as amended agreed to.

Paragraph 16.12 read.

Amendment made.

Paragraph 16.12 as amended agreed to.

Paragraph 16.13 read and agreed to.

Paragraph 16.14 read.

Amendment made.

Paragraph 16.14 as amended agreed to.

Paragraphs 16.15 to 16.16 read and agreed to.

Paragraph 16.17 read.

Amendment made.

Paragraph 16.17 as amended agreed to.

Paragraph 16.18 read.

Amendment made.

Paragraph 16.18 as amended agreed to.

Paragraph 16.19 read and agreed to.

Chapter 17 – Other Matters

Paragraphs 17.1 to 17.2 agreed to.

Paragraph 17.3 read.

Amendment made.

Paragraph 17.3 as amended agreed to.

New paragraph to follow Paragraph 17.3 agreed to.

Recommendation 29 read.

Amendment made.

Recommendation 29 as amended agreed to.

Paragraphs 17.4 to 17.9 read and agreed to.

Recommendation 30 read and agreed to.

Chapter 18 - Conclusion

Paragraph 18.1 read.

Amendment made.

Paragraph 18.1 as amended agreed to.

Paragraph 18.2 read and agreed to.

Paragraph 18.3 read.

Amendment made.

Paragraph 18.3 as amended agreed to.

Paragraph 18.4 read.

Amendment made.

Paragraph 18.4 as amended agreed to.

Paragraph 18.5 read.

Amendment made.

Paragraph 18.5 as amended agreed to.

Paragraphs 18.6 to 18.8 agreed to.

Postponed Recommendation 1 further considered and agreed to.

New Recommendation to follow Recommendation 1 was agreed to.

Postponed Paragraph 3.80 further considered and agreed to.

Recommendations 10 to 13 reconsidered and deleted.

New Recommendations 10 and 11 agreed to.

Postponed Recommendation 15 as amended further considered.

Amendment proposed (Mr *McKim*) by leaving out all the words after "The Committee recommends that" and inserting "the House of Assembly be restored to 35 members being comprised of 7 members being returned from 5 electorates".

Question put – That the Amendment be agreed to;

The Committee divided.

Ayes	Noes
Mr *McKim*	Mr *Best* Mr *Hall* Mr *Llewellyn* Mr *Martin* Mr *Rockliff* Mr *Wilkinson*

So it passed in the Negative.

Question put – That Recommendation 15 as previously amended be agreed to.

The Committee divided.

Ayes	Noes
Mr *Hall* Mr *Martin*	Mr *Best* Mr *Llewellyn*

Mr *McKim*
Mr *Rockliff*
Mr *Wilkinson*

It was resolved in the Affirmative.

Postponed Paragraph 4.7 further considered.

Amendment made.

Paragraph 4.7 as amended agreed to.

Postponed Paragraph 5.13 further considered.

Amendment made.

Paragraph 5.13 as amended agreed to.
Postponed paragraph 7.14 further considered and agreed to.

The following new Paragraph to follow Paragraph 15.30 was proposed (Mr *Hall*):-

"The Committee finds that it would be beneficial for members of the media to appraise and educate themselves in matters of ethical behaviour and processes."

Question put – That the new Paragraph be inserted to follow Paragraph 15.30.

The Committee divided.

Ayes	Noes
Mr *Best*	Mr *Martin*
Mr *Hall*	Mr *McKim*
Mr *Llewellyn*	
Mr *Rockliff*	
Mr *Wilkinson*	

It was resolved in the Affirmative.

Title of the Report agreed to.

Resolved, That an extension of the reporting date be sought until Friday, 24 July next to enable the completion of the Report of the Committee. (Mr *Wilkinson*)

At 10:30 p.m. the Committee adjourned until a date to be fixed.

THURSDAY, 23 JULY 2009

The Committee met in the Conference Room, 4th Floor, Henty House, Launceston at 8:15 a.m.

MEMBERS PRESENT:
Mr *Wilkinson* (Chair)
Mr *Best*
Mr *Hall*
Mr *Llewellyn (via telephone)*
Mr *Rockliff (via telephone)*
Ms *Thorp (via telephone)*

APOLOGIES
Apologies were received from Mr *Martin* and Mr *McKim.*

CONFIRMATION OF MINUTES
The Minutes of the meetings held on 20, 21, 27 and 28 May and 6, 7 and 8 July last were read and confirmed. (Mr *Hall*)

DRAFT REPORT
The draft Report, as amended, was considered and agreed to with minor amendments.

Resolved, That the draft Report, as amended, be the Report of the Committee. (Mr *Best*)

At 8:25 a.m. the Committee adjourned *sine die*.
