

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT
MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON
WEDNESDAY 10 SEPTEMBER 2008.**

Mr MICHAEL STOKES, SENIOR LECTURER, FACULTY OF LAW, UNIVERSITY OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Thank you for coming along and providing us with your submission already. I understand that at some stage you want to supply us with some further material.

Mr STOKES - Yes, if I can I will. I should have enough copies there for everyone.

CHAIR - This is an informal but formal process. I will leave it to you as to how you prosecute the submission. What a number of people have done is opened up and then opened themselves up for questions at a later stage.

Mr STOKES - Certainly. First of all I want to say that I think the Government is to be congratulated on the 10-point plan that is proposed. The reason that I think that is that I do not think something like a public accountability commission, which I support, is the total answer. I think that we need other wide-ranging reforms and those which were proposed are an extremely good start. Secondly, I agree with Rick Snell's proposals for general reforms of government accountability and particularly the notion that the accountability mechanisms really should be responsible directly to Parliament. I would support the idea of a parliamentary committee on accountability that monitors and oversights general accountability institutions like the Ombudsman, public interest disclosure, Auditor-General, archives records management, other bodies such as anti-discrimination, children's commissioner and a public accountability commission.

Mr BEST - Do you think that the public service commissioner should be in there, or the Commissioner of Public Service?

Mr STOKES - Quite possibly, yes. I know that there is a bit concern that particularly the code of principles in the State Service Act is being used as a method of discipline as much as a method of maintaining integrity and therefore I think it would be good to have the responsibility for implementing that subject to a parliamentary committee like this.

I also think there is a need for a new generation of legislation on freedom of information, privacy, data protection information management. I agree with Rick Snell on that public interest disclosure and archives. One of the major reasons for this is that the Fitzgerald Inquiry in Queensland and the WA Inc Inquiry in Western Australia both concluded that too much government secrecy, too much government control of information really tends to create conditions in which corruption becomes easier and can thrive.

Real openness in government is a major way of controlling corruption. Might I say on this corruption issue too I have appendix 1 here at the end. The corruption issue is not

only really an issue about accountability and better government but certainly there is a strong correlation between economic growth and controlling corruption.

Countries where corruption is rife tend to have low economic growth, very unequal distributions of income and poor redistribution of wealth. So a lack of corruption is in fact a major economic asset. I think in the corruption debates we tend not to realise that, but the World Bank or is it the IMF -

Mr BEST - For the community, what are the crosses there then - former commerce?

Mr STOKES - Yes. You can see at the left-hand side of the graph along the bottom is the lower end of the spectrum for corruption and further out on the right-hand side in corruption increasing. In general there is a tendency for gross national income to be higher in countries with lower levels of corruption and vice versa so controlling corruption really creates conditions for, one, economic growth and, two, redistribution of income.

Mr BEST - I suppose Australia is not on that graph?

Mr STOKES - Not specifically there. It is probably one of the dots.

Mr BEST - Do you know which country is 70?

Mr STOKES - I do not know. It is quite interesting because that one is very high on the gross national income index but it is surprisingly far to the right on the corruption index but I am not sure which country it is.

I think it is fairly important to recognise that controlling corruption is one of the levers of economic growth and looking at it from that point of view -

CHAIR - When they spoke, Mike, of corruption in this graph, do you know what type of corruption they were talking about because it has been given by the strict or fairly broad definitions and I just wondered whether that was involved with payment to ministers for certain favours. Do you know what was involved?

Mr STOKES - I have not actually checked that but I believe, from memory, the sort of international definition accepted here is that corruption is the misuse either of public assets or of public power to do favours for particular individuals, so it covers both of those limbs. I could probably find that out and forward it to you if you would like to know the exact definition being used.

Mr BEST - We have had varying comment about what is corruption and what is integrity and we have had this definition that has been put certainly by the DPP as what is lawful and what is unlawful.

Mr STOKES - I would like an accountability commission to go further than just looking at what is unlawful.

Mr BEST - Yes, that is what I was trying to point out, sorry. I got it back to front there.

Mr STOKES - Yes. I think it is unfortunate if we develop a culture in which it is thought that whatever is lawful is therefore permitted and really should not be too strongly criticised. I think we need to have higher standards of integrity than simply drawing the line at what is lawful and what is unlawful. I would see any corruption or accountability body having an education function and that should go well past the lawful/unlawful divide because there is a lot of stuff that is perfectly lawful but it is certainly undesirable from the corruption point of view.

CHAIR - With the educational function what would that entail? What would be a year's plan for an education course?

Mr STOKES - First of all I think there really is a lack of education and training for people going into public life. I think that is a real problem in a small community like Tasmania because you go into public life and because of the fairly small pool of people involved you can very quickly find yourself exercising major public responsibilities so you do not have a long period of on-the-job training, if you like, to get a feel for what is going on. Also, of course, it is not always obvious; things that are perfectly appropriate in private life may be totally inappropriate. An example I tend to think of is when we did some renovations on our house. Our next-door neighbour is this builder who is about 86 and he is still building, but he has done so much and helped so many people. We wanted to get these big, heavy wooden beams, and they said, 'They'll be quite expensive and will be ready in about February'. I mentioned his name - 'Oh, for him, November', and the price dropped extraordinarily. That is okay in private life, but if you translate those favours, not going through the normal processes but going through the back door, to public life then it really is inappropriate. But it's not obviously inappropriate to a lot of people and therefore I think there is a real need for people coming into public life to have some training. The training would be to identify types of situations and to identify the importance of following the procedures in public life because we always have to remember that in public life it's really a public trust function. We are there exercising functions and powers in trust for the public rather than just in our own private interest.

We need to make sure that we go through the processes carefully, that when governments are tendering and things like that, everybody is given an equal chance and that we avoid all the possibilities of both open and covert favours.

Mr BEST - I don't want to be too specific, but what if it was declared, though? What if it was openly declared?

Mr STOKES - What? You're interest in something?

Mr BEST - Well, just that example that you gave about the timber trusses or whatever - say on an open register on the Internet.

Mr STOKES - Are we talking about a government authority purchasing something here?

Mr BEST - I don't know. The example you gave was a private example and your view would be that in public life that's not appropriate. But what if it was declared, though, prior to it?

Mr STOKES - Where it becomes inappropriate in public life is if we did a deal. If I did a deal with my next door neighbour, you get these things cheaper than I do and I've got some public power and I'll give you a hand in some way. It's where you do that sort of deal in public life where you might say, 'I'll do you a favour by exercising my power or influence on your behalf if you can do me that favour'. That would then tend to become corrupt. I might have got that deal, for example, by doing something that I can do as a private citizen for that person. That is perfectly appropriate; then it's just a trade because I am not using public power or public assets.

Mr BEST - But what if it was declared and there was no return or whatever; it was just that someone actually wanted to do that and it was declared openly and there was no payment back or favour?

Mr STOKES - I guess it depends on whether it excludes other people - for example, if it was a purchasing process or something like that. There are all sorts of ways of creating inside deals. I am just looking around here at the carpets, and I'm told the carpet industry is a great industry for corruption because looms differ.

CHAIR - Normally they sweep it under the carpet.

Laughter.

Mr STOKES - Yes. It's a great area for covert corruption because all the looms differ. You see, if I want to give you the deal, I make the specification to fit your loom and you'll be about the only person who can really tender.

Mr BEST - That's ACCC, though, isn't it?

Mr STOKES - Yes, but let's say the deal is that I'll do that for you if you do something for me in return. If I'm putting out a tender on behalf of a government department then that's a type of unethical deal.

Mr McKIM - Mr Stokes, I want to ask you a couple of questions about the first part of your supplementary submission which is relating to the Government's 10-point plan and then Mr Snell's proposals for reforming government accountability, then I would like to go to what you have described as the gerrymander and the dysfunctionality of the Parliament due to its size? Firstly, you have congratulated the Government on its 10-point plan and that is fair enough. Wouldn't you agree, though, that it is notable as much for what it does not contain as for what it does? I draw your attention to the fact that it does not contain donations disclosure, law reform, or a proposal to publicly fund political parties or candidates, for example. So, I wonder, firstly, if you could respond specifically on those two issues in terms of an ethical context as to whether you think Tasmania should have State-based donations disclosure laws and whether you think it will be beneficial ethically to break the nexus between major donors and political parties and candidates?

Mr STOKES - 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.

Mr McKIM - I would be really interested in your response to public funding linked to either a ban or a very low cap on donations to political parties and candidates?

Mr STOKES - 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.

Mr McKIM - It depends how the legislation is formed because there are mechanisms in which new candidates and parties can seek public funding.

Mr STOKES - 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.

Mr McKIM - I am glad you brought that up. It would have been my next question.

CHAIR - I thought you were going to use the Labor Party line, then, and not say 'brother' but 'brethren'.

Laughter

Mr McKIM - Or Tasmanians for a Better Future, for example.

Mr STOKES - There are major freedom of speech implications at that point. I suspect that State legislation, for example, which tried to rule that out could well run foul of the implied guarantee of free speech which the High Court found in the Constitution, given the way they decided the ACT case. Unless you were going to publicly fund every interest group that meets certain requirements and wants to make public statements during an election campaign, you really are imposing a clamp on freedom of speech, which is a difficult thing. In many ways maybe we should be tackling the problem from the other end and imposing quite serious caps on election spending by political parties and by other interest groups. Doing that would have a number of consequences. I would get the candidates out into the street more and meeting people but it would also make the parties less dependent upon the large donations. It would really give the parties a very strong incentive to maximise political involvement by as many people as possible. So, I tend to think that we perhaps should be looking at it from the other side, which is the spending side, as much as we look at the money-raising side.

Mr McKIM - Can I ask you to specifically respond to this. Do you think that, when organisations that are not political parties are advertising during election campaigns, the community has a right to know who is funding those advertisements and where the money comes from?

Mr STOKES - Yes. If you want to advertise during an election campaign there is no reason why you should not - as an organisation. If we are going to make political parties reveal their donors, it seems to me to be fair that you make other organisations which want to

run campaigns like this to also reveal their donors, otherwise of course it becomes too easy for an organisation to effectively be a front either for a political party or for someone else without revealing their true identity. So I would say yes. Once you apply that rule to political parties, out of fairness it really has to be applied to other organisations as well.

Mr ROCKLIFF - Michael, you say in your submission that Tasmania needs a corruption ethics watchdog. How important is it, if you really want to maximise the benefits of setting up such a watchdog for all the reasons that have been discussed in public in the last 12 or 18 months or more, that we restore the numbers of members of parliament at the same time to enable the executive government to be more accountable in the parliamentary framework?

Mr STOKES - I think it is very important. 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. People talk about too many politicians but I think it is about time politicians ran a bit of a publicity campaign on their own behalf -

Mr McKIM - No-one would listen to us, Michael.

Laughter.

Mr STOKES - 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.

Mr MARTIN - In your section under gerrymander, the second sentence there is really arguing that it should be five electorates of seven rather than seven electorates of five.

Mr STOKES - I would certainly say five electorates of seven will give you a better result than seven electorates of five. I put down the sort of numbers which are not all that far removed from actual numbers. With five members being elected, a party which, say, gets 51 per cent of the vote will get three times as many seats if they get an even distribution across the electorate as a party which would be, say, the major opposition party getting about 32 per cent of the vote. That I do not think is a reasonable outcome.

Then you can get a minor party say with about 17 per cent of the vote and if it were distributed equally across the electorates getting the same number of members as a party with 32 per cent of the vote.

Those figures are plausible in Tasmanian where the vote per electorate tends not to be hugely different. We tend to have, within a few percentage points, roughly the same vote in each electorate for each of the parties. You could get results like that which leaves you with an extremely weak major opposition party.

CHAIR - If you look through the Beaumont, Chapman or Morling reports they all said that to play the game properly you cannot do with any less than 35 in the lower House. But by having the smaller Parliament it seems to me that it restricts people wanting to put their hand up to go into parliament as well. Therefore you have got a number of people who not only do not get in but do not want to put their hand up. When you look at the last election I think only one new candidate got in. So there is not that turnover. To my mind the ideal parliament is where you have your experienced people, your people working up to experience and your inexperienced. It has to be a broad range of people but now that is not occurring. I think that is a bad thing.

Mr STOKES - I had not actually thought of that consequence but I can see that consequence occurring and it is not a good thing. If you have seven members being represented from the one seat then the figures do not stack up nearly so badly against your major opposition party. For a healthy democracy you need your major opposition party to be reasonably represented and not a runt.

Mr MARTIN - So what possible arguments would there be for having seven electorates of five?

Mr STOKES - Seven electorates of five have the potential to produce the same sort of skewed outcome in that you could very easily get, with just a small majority of votes in each electorate for the government, two-thirds more seats than your major opposition party.

Mr MARTIN - And there would also be a lot of additional costs in being out of sync with the Federal boundaries.

Mr STOKES - It would be better to have seven five-member electorates but certainly if you did that you have to have separate electoral rolls from the Commonwealth.

Mr McKIM - What do you mean it would be better to have seven five-member electorates?

Mr STOKES - It would be better in the sense that with a greater number of members of parliament you can run more effective committee systems.

Mr McKIM - Do you mean better than what we have currently?

Mr STOKES - Yes.

Mr McKIM - But you are not arguing that it would be better to have seven five-member electorates than five seven-member electorates.

Mr STOKES - Correct. Five electorates with seven members in my opinion is better than seven electorates with five members, both from a cost point of view - because you do not have to do a new electoral roll - and also because seven-member electorates are going to produce a more balanced parliament fairer to the major opposition party, whichever party that happens to be, than five-member electorates.

Mr BEST - In relation to the watchdog, do you feel that it has a broader role not just for parliamentarians but also for the public service and the media?

Mr STOKES - I had not thought of extending it to the media. I would have to give a lot of thought to that. I do not particularly want to comment on that without having thought about it.

Mr BEST - Sure. My line of thought is that if we are going to have ethical standards for people in the public arena then it needs to apply for everyone. Just out of interest, first of all, does the Law School receive private donations, probably not, I suppose, it is all public funded, is it? Do you get people that sponsor?

Mr STOKES - No, we do encourage private endowments of the Law School. We do have some privately endowed scholarships and things like that. We would welcome any private benefactor who wanted to fund a couple of chairs.

Mr BEST - That is fine, but do you get any private sponsorship at all or you do not get any really?

Mr STOKES - We get some for scholarships and things like that. I do not know that much private funding, at the moment, is going into the general day-to-day running of the school.

Mr BEST - Right. Do you have any policy on private money that comes in?

Mr STOKES - The university does have policies dealing with private money coming in. They are almost certainly on its web site but I have not looked at them.

Mr BEST - That is okay. Are you happy with those policies? You have not looked at them, sorry, so I cannot really ask you that then, can I?

Mr STOKES - No.

Mr BEST - Do you think favouritism is something that is broader? You started off talking about that issue of favouritism with the beam. Does that happen? Is there a favourite treatment of those that sponsor?

Mr STOKES - The university?

Mr BEST - Yes, or are they treated any differently to those who do not?

Mr STOKES - The university is like anybody else. I will not mention names, but the university, years ago, received a donation and it was a generous bequest, from the

parents of a student who was subject to disciplinary proceedings at the time. The university should not have taken that bequest, in my opinion.

Mr BEST - We are talking about encouraging ethical conduct. We had a submission earlier from Tasmanians for a Healthy Democracy and they talked about the education and having this endemic, if you like, this ethical conduct endemic in the community, that that is something that should embrace all of society, whilst its powers are more predominantly on those who make decisions.

Mr STOKES - I think that there are particular and quite specific and rather different ethical rules which apply to people in public life compared with those that apply to people in private life. Where you want to draw that public/private boundary, you are raising a really difficult point because -

Mr BEST - That is okay.

Mr STOKES - To give you an example, a large company employs a lot of people. In their dealings with their employees, is it essentially public or is it essentially private? They have a lot of administrative control in various ways over lives of various people. In many ways, if you wanted to, you could look at that control as governmental. Certainly the Communist Party wanted to nationalise the means of production. One of their arguments was that these powers were essentially governmental and therefore should be public and under public control. So that is a huge question. But I think, without radically changing the whole economic system -

Mr BEST - No, that is okay.

Mr STOKES - I do not know which faction of the Labor Party you belong to.

CHAIR - I do not want to tie us down to time.

Mr BEST - Just quickly, obviously we want see this panel, or whatever it is, move forward - or I certainly do, as a member of the committee. We see also false allegations and slurring and misrepresentation. Do you see then that this could have that capacity to clear the air?

Mr STOKES - It can clear the air.

Mr BEST - In both cases, guilty and not guilty?

Mr STOKES - That is right. Really, yes, it can clear the air, but I think the whole privacy issue is an important one and I have dealt with this a little bit in my point 12 here, 'Hearings and Publicity'. There is a real problem of damage to reputation if you hold public hearings, particularly as these types of authorities typically can take into account a lot of evidence which is not admissible in a criminal court because the criminal focus is really too narrow for this type of function. You can get undeserved damage, so sometimes I think hearings should be private, reports not published to the public - well, certainly not full reports.

What I was suggesting, just as a crude rule of thumb as a general rule, where the investigation, say, is referred by government and therefore is already public, you should have a public inquiry, but where the investigation arises out of a matter referred by a private individual, it should be much more looked on in the same way as you would do a police inquiry. Of course police inquiries are not making all the allegations and evidence and everything public; it tends to be much more private. That's just as a general rule of thumb. I think until we know that there actually is something wrong where the issue arises out of a private complaint, it should be kept private until a late stage in the proceedings.

Mr ROCKLIFF - I want to expand a bit on that. I was reading item 6, Michael, on functions, investigated claims of official misconduct and of other types of ethical misconduct in the public sphere. I was going to ask the question regarding whether or not the ethics watchdog, if you like, waits for a complaint or initiates its own complaint if there's a bit of smoke permeating the air, but you have sort of covered that in point 8. Would you like to expand on that?

Mr STOKES - Sure. Clearly it should be possible for Parliament or the Government to refer matters, but also I think it needs to be able to act of its own motion. By comparison with the Ombudsman, the Ombudsman can act of his or her own motion, and that's a fairly typical power given to agencies of this sort because they need that, otherwise they are too much under the control of government. But they should also be able to act on a complaint from a member of the public where that complaint seems to be a serious one, so they have to have a discretion, yes we pursue this or no we don't. That is part of their independence, if you like.

Where a complaint looks to be politically motivated or revenge, or mud-slinging, or something like that, they should just be able to walk away from it and say, 'No, we're not going to deal with that'.

Mr BEST - How could you do that, though? Some things should be investigated, shouldn't they, you can't do it on numbers, then, can you really?

Mr STOKES - No.

Mr BEST - So this body would say, 'That was a waste of time, we're not looking at that'.

Mr STOKES - Well, you start looking at the evidence; you start making inquiries and you start looking at evidence and if you get the impression fairly quickly that it's all smoke and no fire, then you -

Mr BEST - But it would have to be referred initially, wouldn't it?

Mr STOKES - That's right.

Mr MARTIN - Michael, one of the debating points in this issue is there's at least one key public figure advocating that there be - what's the word - a retrospective role for the committee, of the watchdog body. What's your view on that?

Mr STOKES - A retrospective role?

Mr MARTIN - Yes.

Mr STOKES - Well, my own view is that particularly where there is real corruption which could be criminal, for criminal offences there's typically no statute of limitations. They can get fresh evidence and they will carry out a prosecution for a murder which happened 30 years ago.

Mr MARTIN - And so they should.

Mr STOKES - And so they should. So I don't think there should be any statute of limitations where we are really dealing with a matter which could be a serious criminal offence.

Mr BEST - So would that be like where the police had already investigated something and the DPP decided not to lay charges unless something substantially new arrived?

Mr STOKES - I think without there being some new or other very good reason for doing so it would be inappropriate to revisit that. If the DPP has decided not to lay charges and it has already been publicly aired, it would be unwise to take that up without new evidence or some other very good reason for doing so.

Mr ROCKLIFF - In terms of just the investigation though, Michael, you made the point that you do not think there should be any limitation to how far back it goes.

Mr STOKES - Yes, particularly where you are looking at a criminal offence. I think the case for drawing the line with inappropriate public behaviour which is not criminal is a bit stronger. The major role there is educative, if you like; we want to get the message across that it is inappropriate, even though the law might permit it. I am not quite sure if there is the same justification for going back where we are talking about behaviour which may have been improper but clearly was not criminal.

Mr MARTIN - Michael, the other debating point is whether or not police should be included, and whether they should have the power to investigate other police.

Mr STOKES - I think there needs to be an independent body to look at the police. It is very interesting, if you go back to the foundations of the London Metropolitan Police in the 1830s, the first commissioner insisted that every serious complaint was investigated by an independent magistrate.

Mr MARTIN - Smart man.

Mr STOKES - Smart man, yes. That is because there was a real suspicion that the police would be an arm of government used to suppress political dissent and all sorts of things. To show the integrity of the police, the first commissioner of the London Metropolitan Police insisted on that. I think there really needs to be some independent oversight of the police and unless we are going to multiply bodies, the obvious body to carry out that function would be this one.

CHAIR - Mike, I have read your new submission and as to the framework, you are saying, as I understand it, that there should be a separate secretariat from -

Mr STOKES - Yes.

CHAIR - Not your Ombudsman, not your Auditor-General, but a separate secretariat - call it what you will. That would be staffed by how many people?

Mr STOKES - I think it has to be adequately resourced. In a way I would not mind if the Auditor-General, the Ombudsman and this body shared staff, but I think it is important that those staff are not subject to the State Service Act. I actually suggest right at the beginning of the submission that there be a separate source of legal advice for what we might call the integrity arms of government, which is independent of the Crown Law Office and the Solicitor-General because of their close involvement in advising government. But if there are major efficiency gains to be had I would see no problem in the sharing of staff between this body, the Ombudsman and, say, the Auditor-General.

CHAIR - When a complaint has been made, there has to be a vetting process to say whether that complaint deserves investigative process or not. That body, whoever it is, has to do that. In order to investigate it, do they use people employed by them at the time or do they second people from the Federal police, the State police or whoever they deem to be appropriate?

Mr STOKES - Okay. For some investigations you are going to need that police investigative expertise. I would actually give them the discretion. I should imagine in many of the investigations there would be no difficulty in using State police where that police expertise is required, but occasionally - and particularly in ones where police integrity are involved - you are probably going to need to bring people in from outside. So I think your commission itself is best placed to make that decision and should have the authority to bring in outside investigators if they judge it necessary.

CHAIR - I know we are bound by time because Nick has an appointment very soon after 5 p.m., which will mean we will not have a quorum. So I will ask you the last question at this stage and we may have to call you back at some later stage, if appropriate.

So the investigative body says, yes, there is a case to answer. Do they then give all that information to the DPP who decides whether to charge or not? If not, if it is just under the line of criminality but certainly is unethical, immoral or bad judgment, you name it, is it just a question of 'name and shame' then or does it go back to the Ethics Commissioner to say, 'We have looked at it; it is not criminal but we believe that this behaviour was out of order' et cetera, and then it is a 'name and shame' type situation?

Mr STOKES - That would be it, wouldn't it? All you could do at that point would be to 'name and shame', as you say, if it were a serious breach of ethics.

Mr BEST - You would recommend too, wouldn't you, that you do not behave like that, as well as naming and shaming?

Mr STOKES - Sure, that is right. An interesting point would be whether you go as far as the New South Wales body was authorised to do when they effectively said - and I think it was the Nick Greiner case - 'This person should resign.'

CHAIR - That would have to be up to the commissioner.

Mr STOKES - That would be up to the commissioner. But on the other point, I certainly do not think this body should have any power to institute prosecutions itself. There was the experience in, I think it was again New South Wales, where the corruption authority tried to initiate the prosecution itself, in one case, and it turned into an absolute disaster. It is great to have that independent oversight of their work which the DPP would provide.

Mr BEST - Should its findings then say, as it goes through the process that Mr Wilkinson has just explained - vetted, investigated - that it feels then that maybe the DPP ought to look at this because there could be charges?

Mr STOKES - Yes.

Mr BEST - I know we want transparency, but because we do not know that there are charges or not, should that component at least remain in-house until the DPP decides if they are going to lay charges or it is going back to the committee? If it goes back to the committee then the committee could say, 'We have this back and we are now going to make our own findings'. What becomes public?

Mr STOKES - There is a very strong case for not too much publicity as soon as you are starting to look at serious criminal charges, because you are prejudicing the possibility of a fair trial, if a trial starts. In fact, you could provide the situation where the defence is able to properly to argue that this person should not be charged because the publicity has been such that there is really no likelihood of a fair trial, and that is an argument which would be available.

Mr BEST - So the public would know only to the point where a matter has been referred and up until such time as a decision is made by the DPP or by the committee itself?

Mr STOKES - Yes. Once the committee thinks that it might be going to refer charges, I think at that point you really have to start very seriously considering privacy and not releasing the evidence until the decision has been made - do we go ahead with the charge or don't we? - because you really do prejudice a fair trial if you go on at that point.

CHAIR - My thanks for coming along. Sorry we are restricted by time, but because of the number of apologies we have had today we do need a quorum otherwise the Standing Orders say we cannot take evidence. But if we need to call you back, can we do that, please?

Mr STOKES - Yes, you certainly can.

CHAIR - Thanks for your time in not only giving evidence, but for the time you put into your submissions as well.

Mr STOKES - Thank you for the opportunity.

THE WITNESS WITHDREW.