

THE JOINT SELECT COMMITTEE ON ETHICAL CONDUCT MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY 27 MARCH 2009.

Mr JOHN O'DELL WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED VIA PHONE LINK.

CHAIR (Mr Wilkinson) - Welcome, John. Are you aware that any information that you give in this next 20 minutes is privileged information?

Mr O'DELL - Yes.

When I wrote that submission I didn't have anything specific in mind. I was following the pulp mill debate and it seemed to me that the Government of the day at no time was going to follow what it was telling the people. It seemed to me that the powers in the big corporations make governments - not just the Tasmanian Government, all governments, even Rudd now - to quote the guy who chases whales on the *Steve Irwin*, 'whores to big corporations'. Yet they get out there and say, 'Read my lips. There will be no such and such' and at the same time they are allowing us to be hoodwinked, at our personal physical cost, with chemicals that have been banned in other places. I live on Flinders Island and we have the most beautiful water there. I come from Sydney where you cannot catch fish in the harbour because of pollution by dioxins from various factories - Union Carbide for one - and yet the Government denies it. Then they use taxpayers' money to clean up. They will not own up in peacetime, so how is it going to be if there is a true emergency? The Government will say, 'Everything is fine' and then suddenly we are overrun by another nation or we have run out of fuel and therefore no-one can drive their cars and we are back to the horse. If they keep lying like this to save their own face, it will become anarchic. People will stop going by the rule of law because they know that their political masters and their corporate masters just lie to them. Why would one not steal? Why would one not put spikes in trees because you believe in this? They say that this will not be logged and then it is logged, so why wouldn't one do illegal things when the Government says, 'These sprays are fine'? When you look them up on the Internet you find that they have been banned in Europe for five or 10 years because they cause genetic aberrations. If the Government continues to lie - and they do lie; it can't all be lack of knowledge - it is incredibly counterproductive.

CHAIR - I take it from that, John, you believe an ethics commission would be worthwhile?

Mr O'DELL - Absolutely, yes, and it has to have some teeth. The public examination of the environmental impact of the pulp mill was overrun by the Government when its corporate master, Gunns, said, 'Listen, we can't meet all these things'. It is all very well for a Labor government to say 'jobs, jobs, jobs' but there are not that many jobs. They do not do the sums or they do not have the time to do the sums, I do not know, but it just does not add up.

CHAIR - How do you think an ethics committee should be made up?

Mr O'DELL - It should take notice of scientific findings, so you are obviously going to have some scientists that are independent and brave enough to stand up. I do not know where you get them. The two heads of the RPDC resigned because they were brave enough to stand up to the Government. So you have to have some scientists. I suppose you have to have some industry people and you have some people off the street with some commonsense. You have to have a wide variety on the ethics committee, not just high fliers. You have to have some ordinary people that read newspapers and watch TV to pose questions such as, 'I don't understand that, what do you mean?', so all sorts of people.

Mr LLEWELLYN - Do you think, John, what you read in the newspapers and what you see on the television is always correct?

Mr O'DELL - No, absolutely not, but if you examine the Internet you will get a wider variety of things. I am fairly busy so I do not get much time to surf the Internet, as they say, but there are things like Crikey that give a totally opposing point of view to what you see on WIN or in the *Examiner* or the *Mercury*. If you look hard enough, there is a wider variety of views. I do not even look at Al Jazeera but I think it probably gives a different view to CNN.

Mr LLEWELLYN - Yes, I think it would.

Mr ROCKLIFF - John, there are various examples around Australia of independent commissions against corruption and ethics commissions. Do you favour any one in particular as an example that would be best applicable to Tasmania?

Mr O'DELL - I am not that well-versed in it. Perhaps an ethics committee that went under the name of 'Gutter Press' that was capable publishing stuff that the other papers will not publish. I am a veterinary surgeon in my profession. When I grew up, animals were simply factories and now we have ethics committees for any experimentation that must go on. They are made up of probably a member of the public, maybe a minister of a religion, a lawyer and a couple of scientists so, yes, there is a lot more control over it. In fact, I think it has gone too far. We did practice operations on live dogs that were never allowed to wake up. They were taken from the RSPCA where they were going to be put down because they were unwanted. They suffered no more pain than they would have, as far as one could tell, if they had been put down with a needle, as happens at the RSPCA. We did it so that students did not have to experiment on people's dogs in veterinary practices. They did a few simple operations on non-surviving animals and now it is all gone because of ethics. So there is a double-edged sword. Any ethics committee would probably put a clamp on some development.

CHAIR - John, is there anything else you wish to say?

Mr O'DELL - I just replied because I was cross about what was happening with the pulp mill. I do not have anything particular to say or anything to expose.

CHAIR - Thank you very much for your time.

THE WITNESS WITHDREW.

**JOINT SELECT COMMITTEE ON ETHICAL CONDUCT, HOBART 27/03/09
(O'DELL)**

Mr MICHAEL MURTAGH WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thanks for coming along and thank you for your submission. What you say here is privileged evidence, so there cannot be any claims of defamation or whatever. If you go outside and say it outside, even though you might say, 'I agree with everything I said within the committee', then it can be defamatory and action can be taken if necessary.

Mr MURTAGH - I understand that.

CHAIR - If there is anything that you believe should be said in camera, just for the eyes and ears of this committee, then please let us know. If I think you are getting into areas which are going to be a bit testy, I will pull you up and say that I think we should go in camera in relation to this piece of the evidence.

Mr MURTAGH - Thank you.

We have had serious problems for the last three years with different members of government departments. I know that we have been very unfairly treated and dealt with. My wife has been assaulted by police officers. We have been assaulted by police officers. Everything I have set down here is in detail and everything is absolutely true and correct. I would ask members of the committee to peruse the details that I have put down there, the sworn affidavits and everything. There is not much more that I can say but I honestly believe there is an alleged cover-up in government departments.

CHAIR - Do you believe that an ethics commission is an appropriate body to look into matters that you have raised in your submission?

Mr MURTAGH - I do. I firmly believe that there should be some system set up whereby people like myself who have complaints like this should be able to put the documents and have their legitimate claims dealt with.

CHAIR - Have you made a complaint to the Ombudsman at all?

Mr MURTAGH - Yes, there is a complaint with the Ombudsman.

CHAIR - What has happened?

Mr MURTAGH - There are different types of things. Every time we go somewhere you come to some sort of brick wall. You are up against a wall all the time. It has cost me a few thousand dollars in solicitors' fees and it was a waste of time, with all due respect, to try it.

CHAIR - What about the police internal investigations?

Mr MURTAGH - I have been there and run into a brick wall. There is photographic evidence that has been sent and that has not been put there. There were photocopies everywhere and different people that I have sent this to all have photocopies. But it is absolutely a waste of time. There needs to be some type of body for people like me and

other people in our community. I speak for the whole of Tasmania. There is a lot of talk out in the community about what is going on Tasmania.

Mr MARTIN - Michael, one of the issues that have been brought up in relation to the powers of an ICAC or a similar body is whether it should have powers to look retrospectively or only look forward.

Mr MURTAGH - I am not too sure how to answer that because I am not a real learned man. I am a member of society and I am very concerned along with a lot of other people about what is allegedly happening here. There were 55 police officers to attend our home for the two boys on a bail matter.

Mr MARTIN - Fifty-five?

Mr MURTAGH - For a woman to have a child ripped out of her arms, allegedly at Bridgewater Police. I saw the condition she was in, and that woman is a good woman. She is a good mother and that has affected me - very much - along with other members of society.

CHAIR - And you were a police officer at one stage.

Mr MURTAGH - Yes, I was a police officer. There are people in our community that are alleged informants to police. I believe in informants, I think that we should have informants, but I do believe that these informants should be checked out for the information that they give. One of these informants is an alleged sex offender, and what he says goes with the Bridgewater Police, particularly the inspector there. They frequent his house. He left our area six to eight months ago and there have been no problems since then. But there are problems with the police in Bridgewater, as you will see in the documentation that I have there.

Mr LLEWELLYN - And you have not been able to actually get someone, according to your evidence here, to take that matter seriously?

Mr MURTAGH - That is right, Mr Llewellyn; I did contemplate passing that on to you. I have been to so many places. I went to Harry Quick long ago - and you might as well call him Harry Slow, with all due respect. I went to the other lady out there, Julie Collins, and she put it in the too-hard basket.

Mr LLEWELLYN - If I had been approached when I was Police minister we would have taken it very seriously and had the commissioner investigate the matter.

Mr MURTAGH - I have been to the Commissioner of Police.

Mr LLEWELLYN - You went to the Commissioner?

Mr MURTAGH - Everything is in those documents. Internal investigations, they just came to a dead end. They do not want to do anything. There are sworn affidavits in there. There are gangs roaming the Bridgewater area. There are women living on their own. One of the police informants is a woman, and she can go into the courts and say someone has done something and the police will take notice of her. She is doing it still. One of

those women in particular, her child has a glass cut in its eye and two of her cars were smashed; she was terrified. Some of the same gang came to our home and the police warned us that it was going to happen but they will not do anything about it. It is frightening. It could happen to anybody, I can tell you that now, and it has been happening and it will happen again.

Mr BEST - There was reference here to 1 June 2007 where a member of the family had a sort of epileptic fit?

Mr MURTAGH - Yes, my daughter.

Mr BEST - And you called for an ambulance twice. You have here, 'but was told by police that ambulance was not required'. What happened there?

Mr MURTAGH - There was a siege of our home, when those police were on the roof. It was absolutely frightening. There was screaming and at least 300 people surrounding our house. They had brought in some riot squad and it was absolutely terrifying. We were doing the best we could to assist the police and get the boys off the roof. Emma had some sort of fit and I was holding her down. I asked her girlfriend to ring an ambulance. She rang the ambulance but it didn't come, so I asked if she would ring again. She came back and said to me, 'The police said there is no ambulance required'. I dialled 000 and asked for help. They told me they knew what was going on in there but they hung up on me. I dialled again and they hung up again, so I rang a gentleman who is a solicitor and asked him, and he heard everything.

Mr BEST - I am not going to try to put words in your mouth but I want to try to explore it a little bit. Do you think there could be some stigma attached to where you live?

Mr MURTAGH - No, we have lived there for 26 years. In the particular cul de sac that we live in there are absolutely perfect people.

Mr BEST - I don't mean the people you live near, but do you think there is a view that because there are incidents that occur from time to time -

Mr MURTAGH - Yes. The whole problem, in my opinion, is the drugs in our community. It is absolutely rampant and out of control and that is where most of the problems stem from.

Mr BEST - So that makes you conclude that for some reason, if you do have a genuine issue because things are happening, that the police seem less concerned?

Mr MURTAGH - The police are not concerned - as you can see from the documents there - particularly the Bridgewater Police. It appears to me that the law is being used just by certain people. I will not go to the police at Bridgewater because I have seen what happens there. I have seen my wife assaulted there. I have seen my son, Joshua, smashed against a tree and he ended up with splintered bones in arms, which I have X-rays of. There have been some problems right the way through with the kids, but they set upon this child. He was at U-Turn when the first incident happened. I went with the police up into a park where there was a van burning, and we had just come from U-Turn at Moonah. I walked up with the police and I came back around and I told my son not to

go around the corner. It was about 10 'clock at night. He had left U-Turn about 5 p.m. and there was a vehicle stolen from Kingston at about 5.30 p.m. There were police officers down there. I witnessed an assault on this child so I made a complaint and that is where all this stems from - to silence me. The Ashley turnout and all these things - it really needs somebody to look into these organisations.

Mr BEST - You are probably not going to be happy with my next question. Do you think, though, in some ways it is also a tough situation for the police? I am not trying to make excuses here, but do you think in some ways there are a lot of things going on with drugs and it is tough area for them?

Mr MURTAGH - No, it's not tough at all if you had a proper policing organisation. I know plenty of good police officers and they certainly don't fit the Bridgewater scenario, and anybody in that community will tell you the same thing.

Mr BEST - So what you like to see happen?

Mr MURTAGH - I would like to see a complete changeover of the Bridgewater police - put someone in there who knows what is going on. You saw in there where two 13-year-old girls have been arrested and locked up. They walked into the home and took one girl out and they were made to squat after two-and-a-half hours in a police station. You can imagine what those children are like? One of those girls was my daughter, the same one who had the fit. How would you like your daughter to go in there, or even yourself? You can relate to what is going on with the Commissioner of Police, the humiliation of having to sort them out. Nobody would have any weapons really, particularly children. They would be terrified. That is what I am up against. I just want to see a fair go. I want to see the law.

Mr BEST - How do you think an ethics commissioner could investigate these complaints?

Mr MURTAGH - Someone who is in the same position as myself would produce documents, like I have produced here, and have the committee to look into it. I am not here saying I want this done and I want that done, because I am only a member of the public. You are the people who can do something about this and I really respectfully ask that something might be done about it.

Mr LLEWELLYN - So what you are requiring is for someone to take these allegations seriously and follow them through appropriately?

Mr MURTAGH - Yes, Mr Llewellyn, that is exactly right.

CHAIR - Do you believe that an ethics body would be the most appropriate body to do that?

Mr MURTAGH - Yes, I do, Jim.

CHAIR - How should it be made up?

Mr MURTAGH - I do not know because I am not a learned man. I cannot compete with the likes of you gentlemen here, with due respect, and I would rather leave it in your hands.

There are other things in this community that are not right. I expect I can say something here without incriminating myself. I have done things that I should not have done by making submissions to the Helsham inquiry. I made submissions to security officers in charge of the Launceston Railway Yard some 20 years ago. They were selling railway line to the Japanese and could not get enough to sell it. I did not go around saying all this. I did not say that I am doing this - I just had to. I am in defensive mode. It would be the same if someone came and did the same to you blokes, and that is where it stands. This fellow was selling thousands of tonnes of railway line to the Japanese.

CHAIR - It was sleepers, wasn't it?

Mr MURTAGH - I saw what was happening to the used railway sleepers. This is going back five or six years. I went to Launceston and met this gentleman and he said, 'I have all these contracts here to do this'. I thought, 'You are a security officer and you should not have those contracts'. They were being advertised in the paper legitimately as subcontractors. His son was getting the things and he was making sure his son received the contracts. I was after the old sleepers because there was a big market for them. I had been lucky to see something that you could make something out of without destroying it. They were burning all these sleepers all over Tasmania. So this gentleman had the contract with the sleepers as well and that is how I came to know what was going on. I ended up being charged with stealing sleepers through the same man, when he knew that I knew what was going on. That is the way it is. It really needs a good clean-up in Tasmania and that is my honest opinion.

Mr MARTIN - You were saying that making submissions to inquiries was a mistake for you? Why did you say that?

Mr MURTAGH - I am not too sure what you mean.

Mr LLEWELLYN - You made a submission to the Helsham inquiry.

Mr MURTAGH - I did, yes.

Mr MARTIN - Why was that a mistake?

Mr MURTAGH - Because I was on a man fern contract. I was supplying man ferns and tea tree to nurseries around the State. I had been in it since around 1970 to 1975 and I came across things in Forestry that should not be going on. I was stopped from working on two occasions on that. One was that I openly said something about a gentleman who stole a Huon pine log from the creek down at Kingston. I spoke openly and I asked at a meeting at the Huonville Hall, 'Why was it that a senior Forestry officer had been caught stealing a Huon pine log from Farmhouse Creek and yet he was not prosecuted?' Then I went on to say - and I work in the bush all the time - that I don't believe that what is happening in our forests should be happening. I am an old forest man myself, I have used a cross-cut saw, I have split palings and sleepers. I don't like seeing the forest completely destroyed. As I have said, I have been in there all my life. I am getting into another area I know but I will use this as an opportunity to try to tell you, gentlemen, who I consider run Tasmania, that we have to have progress. There is no way in the world that there should be a clear-fell area or anything like that because the biodiversity has been absolutely destroyed. I saw it in the early days - and perhaps that is where I am

coming from and why I am not going with the times - but there was select logging then. I go into the bush now and you can see where old Jack Devine in the early years built tramways. Now they are completely destroyed. They stop me from going in there - there are 4 million-plus ferns in the Florentine Valley and I have to go into those areas. Mr Wilkinson has seen the documentation of what is happening there.

This is only part of what is happening here in Tasmania. It is only a small issue. I am just an ordinary fellow who sees what's going on and, really and truly, there needs to be a clean up. I honestly believe there is a cover-up as far as other organisations go. That is why I would like to see some type of commission set up where blokes like me or any other person can go. The lady who made the sworn declaration about her daughter being taken from her home in New Norfolk - I don't know whether they had any reason to take her, but she was a 13-year-old child on her own. Her mother was out shopping at the time. You can imagine the frightening episode that she would have gone through. The mother is very concerned and she has given me her permission to speak on her behalf, so that is why that is included in my submission. Everything in those documents is absolutely true and correct.

CHAIR - As you probably realise, at this stage we cannot come to any conclusion with those documents. All we can do is read them and take them into account and say as a result of that, together with your evidence and other evidence, whether there should be an ethics commission and how it is to be made up.

Mr MURTAGH - That is exactly why I have submitted these documents. I haven't set out to do this. There are terrible problems in our community and they do not fix them.

CHAIR - Thank you very much for coming along and for the time you have spent doing the submission.

THE WITNESS WITHDREW.

Prof. DON CHALMERS, DEAN OF THE LAW SCHOOL, UNIVERSITY OF TASMANIA WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Don, thank you very much for coming along.

Prof. CHALMERS - I will a short statement and then perhaps answer some questions. My personal experience is as a professor of law at the university but I have also been closely involved in the development of ethics in practice through first of all medical research ethics through the National Health and Medical Research Council where I had the privilege of chairing the National Australian Health Ethics Committee for a number of years and I remain connected to many of those. I have also had interaction with the animal research ethics and more recently as chairman of the gene technology ethics and consultative committee of the OGTR so I hope I have some specific knowledge of that area of ethics. I think the interesting thing is that we are now talking in a broader sense of public ethics. I think it would be undeniable that everyone wants the highest standards of ethics in all parliamentarians, judges and so on. I think that is quite clear. My concern is how that is achieved. I have seen in the press a considerable debate, and I think it is one of the matters which this committee is considering, is whether to set up some kind of specialised body.

Can I, in my first submission, say that I think the question of the principle of trying to ensure public confidence, public trust is undeniable. But if we are going to move forward we have to be very careful setting up new structures. I am very conscious that sometimes you set up new structures, there is a cost in budgetary constraint times and you have to really be very clear about the role and the functions of those bodies - that they actually do not have unintended consequences, that they become as it were some kind of star chamber. I think there is, for example, in Parliament a very proper role for parliamentary ethics. There is a parliamentary privilege in this committee that you may want to look at again to ask the question, is that fulfilling the types of things that we want to ensure? The privileges committees traditionally look at questions of conflict of interest and behaviour. But it may be that that is the place where some questions could be asked.

Outside of the Parliament if it is complaints about government traditionally the Ombudsman's office was the one which was intended specifically to try to ensure some accountability of public officers, the public system, and the Parliament. Again, it may be worth looking carefully at that.

Thirdly, the Commonwealth is now considering very seriously setting up a freedom of information officer and an information office. I am not quite sure about the nature of the connection between those. Again, hopefully, it is with the intention of allowing public access to information, allowing the full light of public scrutiny to fall on procedures. So my first point would be that, if there is a perceived need, is it possible to use existing institutions which you can modify rather than setting up something new. Often what happens when something new is set up is it turns out to be quite costly, there may be some worries about what the role and function is and then we find out it is doing things which are not assisting the public debate and may be seen as something of an

overreaction. I am particularly conscious that there are examples where we set up something and we find out later -

Mr LLEWELLYN - Don, can I just interrupt?

Prof. CHALMERS - Yes, please do.

Mr LLEWELLYN - Are you basing that information on your observations about what has happened in some of the other States?

Prof. CHALMERS - I think one of the questions that I suspect you are about to ask is: should we have something like a crime commission? I worry a little bit about ICACs in my experience. I think these were set up where I think there were concerns about - in New South Wales - serious corruption in police. Whether this was true or false, that was the concern. If you look at the history of why that was set up, it was set up because of a feeling that there was no independent way in which you could ensure appointments to public officials, police and so on. I am not sure that the kinds of complaints that are happening in this State are of that kind of level. So I think the ICAC is an example of a debate which I do not think necessarily transposes through. My understanding about the organisation in Queensland was that they had a feeling of systematic preferences in the tendering of contracts and, again, there were some concerns about the police. I think they then said, 'We need something quite separate.'

CHAIR - And the royal commission they had in Queensland as well, as you would be aware, and what was found there was the commencement of the Queensland commission.

Prof. CHALMERS - Yes. I think there is a similar one in Western Australia with Professor Finn after the connections with business. I am not sure that those were repeated here.

So that is the first point: if we need something do we actually need something entirely new or is it possible to say in a report that those are important functions but they can be fulfilled by other bodies? Why do I say that? I think we are a small State and I think we have to really husband our resources very carefully. In the university for example we believe strongly that law reform is an important function. I held that office for some time. It was clear in the budget at the time that something had to change. We have come forward and I think solved the problem in a really quite unique fashion. I think it is serving an extraordinary public function. I think our Tasmanian Law Reform Institute is very productive. It is enormously cost effective. The benefits are that we are mixing the research work of the university in a cost-effective fashion. With whatever we are going to do I think there is a question of cost effectiveness.

The second point I would make, however, is that I think in the case of appointments there has been some disquiet. It is for you to estimate whether this is noise and beat-ups in the press. There have been, from time to time, concerns about that. I would have thought there are always going to be difficulties in the appointments particularly of magistrates, judicial officers and public officials generally. There will always be, in a small State, a suspicion that somebody knows somebody et cetera. It is inevitably one of the prices of living in a very small community. If you miss out on the job then the accusation is favouritism. I think that suggests very strongly greater transparency, ensuring public trust. The only thing of substance which I can say is that I think the

current Labor Government at the Commonwealth level, concerned about the previous administration, decided to be much more open about the way in which it would go about the various court appointments - for example, notification and circulation. In fact I am on the list of law deans nationally that actually asked for advice about these things. You have a process then of clear criteria, which are published. There is an advisory committee that draws up short lists. Over the last 18 months that is something which has been generally welcomed as a way in which the appointments go forward, particularly at a judicial level where we never want the taint that it might have been somebody that was just close to the then Attorney-General.

CHAIR - The Federal magistracies appointment system has been lauded as being a good system, has it not?

Prof. CHALMERS - I have to declare interest because it was my wife -

CHAIR - I know that, but it has been classed as being a very good system.

Prof. CHALMERS - I think that the entire process has been one which has been welcomed. The proof of it is that last time that operated I think there was general acceptance of the process. I personally applaud it because two appointments happen to be from the University of Tasmania, which I think is quite an achievement.

That was my brief summary. There was very wide debate that we would set up an ethics committee but somehow I have my doubts that something sitting outside a system is really the way you do it. If a Parliament has the authority to manage its own affairs, which is a principle I think we would all hold to very strongly, if there is an existing organisation within Parliament then perhaps that is the body that should be looked at.

My third and final point is one of training. This is something that in the world in which I work with medical ethics, animals and GMOs is constantly coming through. There is regulation in a tight and hard sense, but regulatory systems, in some cases, have to be supplemented by attitudes, ways of looking at things, where you hope that people are not simply coming up and doing what is absolutely necessary to get across the line. In public life, we hope the ethics is something of a much higher standard. In that respect, the assumptions that everyone is ethical, certainly in the worlds that I live and work in, are not taken for granted and I think they are now becoming quite formalised in training.

The university has successfully, I am very proud to say, obtained a contract in competition with lesser universities, such as the ANU, to run a parliamentary course. I think we have expertise at the university and perhaps that is something this committee may want to consider.

CHAIR - Can you develop that for us a bit, please?

Prof. CHALMERS - What essentially happens is that parliamentary clerks, secretaries and staff come together to look at the entire constitutional history, operations of parliament, rights and duties, ethics, conundrums that may come up with parliamentary officers or parliamentarians' conflicts of interest - all of those things. That is a course which is offered nationally, because no one single parliament would probably be sufficient. It is tendered on a five-year period, as I understand it.

One of your former parliamentary colleagues is one of our adjunct staff, Dr Patmore, and three of my colleagues put together a tender and were successful in winning that contract. We will be running that in a short-course mode. Components of that particular program, supplemented perhaps with ethics discussions from either the law school, philosophy or some other parts, could be put together because it is always one of those questions, 'Did everyone who seems to have crossed the line appreciate that it was crossing the line'. There is an old and very true saying: it is always the other person who has the conflict of interest. It is very difficult to see it in yourselves. You can spot unethical conduct in somebody else but it is very interesting that we are not often the best judges of ourselves. In that respect, regarding training in ethics and public life, there is actually some very modern discussion about an acceptance of the idea that regulation will be able to solve everything. It is not the case. Systems of regulation need to be operated by people who have an ethical conduct.

We only have to look at the current collapses in the banking system. We fortunately have a regulation system. America, clearly, and Britain have been at the lower end of conduct.

Mr ROCKLIFF - Don, that parliamentary program sounds very interesting.

Prof. CHALMERS - We could send some more details to the committee.

Mr ROCKLIFF - Yes, particularly in terms of candidates who might want to stand for election or new members of parliament who might involve themselves in a condensed version of a program. Would you consider extending that to local government as well, given they are also elected officials and there is a fair bit of ethical requirement also on that tier of government?

Prof. CHALMERS - I know that governments of all persuasions over the last years have been trying to get more efficiency into local government. We had far too many and I believe some of them are now actually negotiating together. That seems to me very healthy, but I think we have, in half a million people, perhaps a very luxurious amount of government. If you had fewer councils then I think it would be very practical to say that those councillors would be asked to come along. I think that is one of the areas that I think there can be some quite lively tension between members and there can be accusations. Nationally we have an acceptance that the tendering of land contracts and so on are very delicate matters - again, an area in which it is very easy to make accusations. I would hope that training, rather than this proselytising - trying to convert you - would be, as with any public official, the things that you need to know, the codes of ethics and practice which are there. The practice and procedures will always be supplemented with an area of personal judgment and personal conduct that really I think is the world of ethics rather than the world of strict regulation.

I think that is shown in our legal system. Do you judge a judge by the standards of a person in the street? In the case of Justice Murphy, Senator Michael Tate in the Commonwealth inquiry said, 'No.' I think the same thing has happened with Justice Einfeld - there are standards which we expect of our senior judicial officers, our parliamentarians and I suspect also professors at universities, which are that the personal interest things should always be subsidiary to serving public interest.

Mr BEST - You mentioned that you have been involved in medical ethics in medical research and animal research. Is there much difference in the ethics that you would apply to those different areas?

Prof. CHALMERS - Fundamentally, yes. We have the quite unusual principle that we would probably protect animals a lot more carefully than we protect humans.

Mr LLEWELLYN - We had a witness a bit earlier on complaining that he had been giving evidence about the ethics committee and then he mentioned that his ability to do certain things in research had been taken away by ethics and he was complaining about that too.

Prof. CHALMERS - Quite frankly I think that is the case. Internationally we have moved from a situation in which we said researchers have the freedom to research to a very strong position, which says you can research in a very responsible way. This country for example, has not allowed embryo research. I am deputy chair of that committee, we have seen it as a restriction under very tight licences and in fact very few embryos have ever been used, rather than the situation that pertains in other countries where there was a freedom.

I think from the evidence before the Commonwealth Parliament there was a feeling that the majority of this community did not like to see embryos used as a means to an end. So that restriction came through and I think that we have also it seen with animals - with the animal protection people and the anti-vivisection lobby - a view that it is undignified and unacceptable in developed, mature community to be cruel to animals. Similarly, I think that we have come to exactly the same conclusion about research. We are talking about our elderly, the infirm. They should not just be used as subjects of research and that every person ought to know exactly what they are doing. I think that transfers into the same idea of parliamentary ethics. That we hope that we treat our parliamentarians with respect and the community with respect and it is not something which is a secret private interest.

Mr BEST - When you are examining different areas in applying ethics, you tend to come from the same sort of position. There will always be different issues obviously, but do you tend to come from the same sort of position in regards to how you formulate and address -

Prof. CHALMERS - I think that in western societies we tend to have a series of ethical principles which have been transferred generally into that conduct. I think that we have a principle of respect for persons which comes through. I think that we have principles against conflicts of interest that whatever you are doing, one of the major ethical things is that you have declared your interest, you have been open about that because as public officials you do not want a later accusation. We have a very strong idea that I do not think is simply coming from the churches about the dignity of individuals, so that we do not discriminate between the poor and the rich and the well and the infirm. I think that is a very important principle. We also have the idea - and I think that is what this committee is looking at - of independent review. There should be some way, for example a judge being able to be appealed - a parliament at election time - that there is some inherent review procedure.

All of those come through. I think we then have in the worst a series of principles, one of them is this so-called utilitarian idea, that when we are doing things by and large as parliamentarians or public servants, if we are doing the greatest good to the greatest number, we think that is one of the ways that we can judge it with the consequences. I think that was a terrific thing when you had a very big indulgent budget, but things are getting quite tight. Then you look at certain principles that say that these are the things that we believe are very important. I think what is very interesting is that we used to have the idea of individual autonomy - we don't like going around and restricting people. We like to allow the freedom, provided that they are not harming others. I think that is very interesting because these are not the principles that apply in many Asian countries where there is a much stronger sense of community. I think that idea of autonomy is being very restricted in ethics today, where your researcher says, 'I'm free to do what I want'. Sorry, but I think the community standards about things such as GMOs are not permissive, that we actually think are safety concerns.

Mr MARTIN - Don, this particular committee was set up at the instigation of the current Premier, I think on his first day in the job. I think he made the comment about drawing a line in the sand because of the public perception that things had gone wrong under the previous Premier. You have said that you think that there is no need for a new body to be set up -

Prof. CHALMERS - Rather, I hope the record would say that we should consider very carefully whether maybe others - I am not saying 'not', just to be cautionary about it.

Mr LLEWELLYN - I am probably a little wrong here, too. I am sorry to truncate you but I wrote down 'would prefer'. Is that correct?

Prof. CHALMERS - 'A preference' is also one that is there, but I hope I didn't say 'no' to it.

Mr MARTIN - I think you said that with the current system you would prefer to see the Parliament look after itself, with a body such as the privileges committee that hasn't met for a long time.

Prof. CHALMERS - I think when it does it is usually about a complaint between the conduct of parliamentarians, isn't it?

Mr MARTIN - It hasn't met for decades.

CHAIR - I think the last one was in the early 1990s, when it met in relation to matters that took place in a select committee and leaking the recommendations. It was something along those lines.

Prof. CHALMERS - Can I give you the justification for this? I am always very concerned that we have a principle of the supremacy of Parliament. Parliament generally and politically is answerable to the people and if they do not like you they chuck you out. I think there is an assumption that 'Something is wrong, we'll set something up'. I am not absolutely sure about the relationship of the parliamentary complaint coming to this ethics committee and what they are going to be doing to you. There are two types of committee: advisory and decision-making. If it is going to be advisory, I think the public will probably say, 'It's just a paper tiger. It's not serious'. If on the other hand it is

decision-making, there will be serious constitutional difficulties, which I am sure the Solicitor-General will be telling you, about your supreme authority as a parliament. I am not quite sure how this committee is going to work. Is it going to be a committee of the Parliament rather than outside Parliament?

Mr MARTIN - You mean the ICAC or a similar body?

Prof. CHALMERS - Something like that. If it is in the Parliament, what is it going to be? You can look originally at the concept of the parliamentary privileges: in the very early days of the British Parliament that was a very ruthless committee. They went around chasing up conflicts of interest. It was a razor gang. That is its history, but it has fallen into abeyance now. I think the message which comes out from a committee such as this is: Parliament must manage its affairs properly and effectively.

Mr MARTIN - The fact that the current Premier has taken the step of setting up this committee to look at how to investigate the public perception that there has been something wrong and the fact that the Privileges Committee has not met since at least the early 1990s, would be an indication that the system is not working. How would you see the Privileges Committee investigating some of the concerns that led to setting up of this committee and how would it investigate them?

Prof. CHALMERS - If you start thinking about the nature of the complaints, I suspect that this is what the committee will be doing. It will be tracing down each of those complaints - about appointments to judicial positions or racing or builders doing work for whomever. Each of those was traced through. My point is that somebody has gone to the press. Question - could they have gone to the Ombudsman et cetera? I think that setting up a new institution to respond to the press is probably not good public policy. The test would be: what are the nature of those complaints and what were the mechanisms by which those could have been properly addressed? If that evidence before you is, 'I did not go to the Ombudsman or whatever for the following reason' is that a fault of the person or is it a fault in the system? If it is a fault in the system, can that system be changed?

Simply setting up new committees always worries me. I give the example: in gene technology there was a feeling that we wanted public consultation to be done and we wanted ethics to be done. You set up two committees and they ended up overlapping. Now the Parliament has brought those together and is trying to rationalise so that you do not end up having more work between committees and power struggles between committees. I think you want problems solved effectively, efficiently, justly and fairly.

I think it would be very attractive to say, 'We now have an ethics committee'. My worry, as a professor of law, is that sometimes you find, what are the powers of this and does that conflict with this? As you start drawing the map, you find out that there is conflict between these committees and you end up with little administrative, bureaucratic difficulties when, in fact, the solution might have been available. I say 'might have been' - I am not saying I am against it because it may be that you have a very difficult job and when you come to the conclusion, you may feel that that is the better way to do it.

Mr MARTIN - Your preference for, say, the Privileges Committee, to do the job at the moment -

Prof. CHALMERS - It is a suggestion.

Mr MARTIN - To follow that suggestion through. How do you think the Privileges Committee should be made up and how would it go about investigating a complaint of misconduct by a politician?

Prof. CHALMERS - Correct me if I am wrong, but there are two advantages of using one. Firstly, because it is a parliamentary committee, you have all the powers of Parliament to summon and investigate which is a very neat thing. So you will not have to set up a new committee and then set up a whole host of specific powers. I recall when, as Law Reform Commissioner, we looked into the Rouse business and there was a Royal Commission at that time. I had a reference at very short notice to look at the powers of that Royal Commission and here we had to then start bringing in amendments. Getting the powers correct from your organisation is difficult. That, hopefully - and I hope we are not being too naïve - would be at least the Parliament. You know that it's there.

The second thing is, as I understand it, you in Parliament can appoint outsiders to those committees if you so choose. So if the feeling is that we want to have some review, a recommendation which says that the Parliament should not be just simply looking at itself, this is going to be a reconstituted parliamentary privileges and ethics committee, perhaps a new title, and we feel that we are going to clarify its powers of what it can and cannot do, as investigatory. We may choose to have some additional members sitting on that committee.

The final one I think I have already answered. That then solves the problems of the powers because it is actually held here. Hopefully not in the heat of anger but in the proper reflection of Parliament, once the blood has quietened you go back and then say we need some amendments to that committee. That seems to me to be something which says how Parliament can and will, as the principal law-maker in this State, as the supreme law-making body, above the judges in that way, ensure that we are going to start pushing very high standards. The assumption that we have to set up ICACs seems to me a little -

Mr LLEWELLYN - With such a structure having developed, I can see that that would be one way of dealing with the issue. Would you, however, because it was set up by the Parliament, see in the community's mind a perceived conflict of interest again, with politicians judging politicians or something like that?

Prof. CHALMERS - I would hope you would have the courage to go forward. I think that is an abrogation of a parliament's responsibility under our democratic system. I think it is a very strange thing because the admission is, 'Oh, we do not trust ourselves so we are going to have somebody outside'. For our Premier, I absolutely compliment that line in the sand. I think it was a very important political statement to the community. He was widely praised for it and I think the debate is coming forward. But the way in which we do it means that the report perhaps has some justifications. Perhaps you should think in terms that if we have been so brave as to say that Parliament should be doing it, there should be a sunset clause. This will operate for a three- to five-year period and will be subject to an entirely independent review.

You are probably aware that the Commonwealth Parliament quite regularly now in major legislation says that there is an automatic independent review after a three- to five-year

period. For example, embryo licensing was a very delicate matter that was put in and very carefully analysed. That seems to be a reasonable thing to do.

Mr ROCKLIFF - Someone argued that under existing committees there are not enough members of parliament to fulfil all the obligations. Could the situation be improved, do you believe -

Prof. CHALMERS - With an expansion of parliamentary numbers?

Mr ROCKLIFF - Yes.

Prof. CHALMERS - Absolutely. I am on the public record as Law Reform Commissioner about cutting the numbers. It was advice to the President of the upper House and I had grave reservations about the restrictions and the reductions in numbers of both Houses.

Whether we have a parliament for 500 000 people is a completely different issue. Constitutionally we are established as a State; we have to have a Parliament and therefore I think we have to have an effective and working Parliament. I now move outside of my area of expertise to make comment about some of the difficulties which have come in recently where deputy premiers have had to stand down and we actually are very short of numbers. I think that is an extremely difficult circumstance. If you really want to train up the next generation of ministers then the tradition used to be that you sat on the back benches, you did some parliamentary shadowing, then you stepped up. I strongly believe that we are massively understaffed in our parliament.

Mr BEST - Professor Chalmers, one model that has been presented is the concept of an integrity commissioner that would have some sort of budget with staffing that might be required. Also, they would utilise - depending on what the complaint or issue might be - the Attorney-General, for example, or maybe the Ombudsman's office. It depends, but they could outsource to a relevant government agency. So they would work together though there may be some need to allocate extra resources. One of the other models that we heard was that you could have that integrity commission but then also you would have a committee of Parliament, but nobody has really itemised what that might be. That committee of Parliament might also have other people on it from outside Parliament. They would not look at daily management but look at how the performance or otherwise of this integrity commission is going. They would also look at what is happening with emerging issues around the world. They would be looking to address issues that might arise to keep in front of emerging things, and also maybe talk about levels of training. I do not know how it might work but essentially there would be two things: one of Parliament overviewing and keeping abreast of things and then there would be an integrity commissioner.

Prof. CHALMERS - A person who covers it all.

Mr BEST - Yes. I am interested in what your thoughts might be about something like that.

Prof. CHALMERS - Could I say that seems to me to be a gloss on the principal responsibility of parliamentary oversight. If you are saying that it can be done by this two-role integrity commissioner then, first, they are actually doing something. My question remains the same, even as a preference: is that not the current role of the Ombudsperson?

Mr BEST - It might be, but it is not at the moment.

Prof. CHALMERS - Then you may want to just tweak the existing powers of the Ombudsman who is, in any case, able to be recalled by that committee, and that has been done. Next stage down, if it is a research function again you may want to be fully apprised on the training and up-to-date developments in other places and why those have been introduced so that we do not just slavishly follow something - because there may be different political and economic and social considerations. That may be a function for which this parliamentary committee simply says, 'You have a very good university. We want them to independently present that information to us on a regular basis. I am not quite sure why this person has go through it. We live in the world of the Internet where I think we can do some very special things. In the old days you had to go to the place where the library was. That is what has released our university to be so competitive.

Mr BEST - For example, there may be a complaint that is investigated using that model where you have an integrity commissioner. It may be that the matter is looked at and it works out that it was not a very serious thing. It might warrant that someone needs to be advised or counselled as to what is more appropriate. Alternatively, it may be that something serious has happened, therefore there needs to be some expertise. Phones might need to be tapped, for example. How would you do that with the privileges committee and would we really want to be involved in that? You would want someone independent. In the case of police phone-tapping, maybe that should be outsourced - and not necessarily locally.

Prof. CHALMERS - It comes back to Mr Rockliff's question. We want sufficient openness and accountability. If the Parliament was of a sufficient size so that there is not the accusation that it is all just together then that would solve one of the problems. I think you have to look at the nature of the complaints that were made and systematically find out what should be done. I think we are jumping too much into structures. Function, first; structure, second. What is the nature of the function? The ones that you have given me about phone tapping, for example, I do not think it is a proper function of an integrity commissioner. To the best of my knowledge, the phone tapping requires judicial officers to approve it. That is how we keep that open. I would not want it going off to some integrity commissioner. I happen to trust our judges and magistrates and they are the ones who should do it because they are the ones who should be reviewing it. What is the role and function of an integrity commissioner? Not necessarily setting up - I have a preference to see in a small jurisdiction whether there are available institutions that may be able to be reformed. I think it is possible that the Premier may have felt at the time that we needed to have an ethics commission. There has been a very wide public debate by a former Premier of this State and professors have been suggesting, and I suggest, that we take a cautious approach to make sure that we are setting up institutions that will serve the public well. If it turns out that it is the Parliament setting up its own institutions, yes, there will have to be a very careful explanation of why that it is there. It may take a little bit more political courage to sell that that to the community, but I think there are other checks and balances.

CHAIR - But if there is that ability, Don, as you were saying to second onto it at any particular time individual people from outside Parliament you have the opportunity to do that.

Prof. CHALMERS - I think it would be inevitable that this would happen because you only have to look at the numbers of those - if you took one from each of the three parties you are going to be very thin on the ground, so I suspect it would almost certainly have to be.

CHAIR - It would seem to be one from one each of the parties and maybe an independent, so that you have the four.

Prof. CHALMERS - It would be interesting to try to treat each of you as parliamentarians, responsible to the Parliament. Perhaps you might find that you end up having, as independents or whatever, a very different composition. I think the upper House would argue that it tries to think in terms of the -

Mr LLEWELLYN - I come back to one of the questions I put a bit earlier. I talked about that perception aspect, not from the point of view that I didn't think what you were saying was a good idea. Perhaps I do, and I think I agree with your thesis that we ought to look at our existing processes first before we set up new processes. In our existing processes with parliamentary privilege there is an issue with the House of Assembly and an issue with the Legislative Council. There are two functions of privilege within the parliamentary system. I said just lightly, 'Would it be a joint House parliamentary privileges committee?'

Prof. CHALMERS - I would have thought yes.

Mr LLEWELLYN - If it is, there are all these complications about how you operate between Houses and legal aspects associated with that.

Prof. CHALMERS - Yes, because I think your act is saying it is 'the Parliament' rather than one or other of the Houses.

Mr MARTIN - Don, an issue that is allied to this is political donations and public disclosure thereof. Do you have a view on whether there is sufficient disclosure and whether there needs to be some strengthening up of laws there?

Prof. CHALMERS - I would have thought that the answer is yes. I think if you look at the Commonwealth Parliament, which I think has always been very concerned about that, and check through to see how these are operating, I think it is one of the matters that if you choose to give a contribution to a political party, whether you like it or not, that is a matter of public interest. It may be a small amount - \$100 or less - but I think there comes a point where the levels of donation is properly a matter of public record.

CHAIR - Don, thank you very much for your thoughts. They were more than helpful.

Prof. CHALMERS - I think you have a very difficult job because I think there is probably a public answer but there are some times that parliaments shouldn't answer to the public and consider what is really in the best interest of the public.

THE WITNESS WITHDREW.

Mr PETER GRAHAM BROWNSCOMBE WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Peter, thanks for coming along. You probably know the ropes better than most of us around here, if not all of us, in relation to privilege. If you want me to dwell on them I will.

Mr BROWNSCOMBE - I do not suspect I am going to say anything that will cause you any problem in that area - unless provoked!

CHAIR - Thanks for your submission. We will let you speak to that submission and then ask any questions. I am sorry, but we are a bit hamstrung with time because Jeremy has to leave at 10.40 a.m. to give evidence in another committee.

Mr BROWNSCOMBE - Well that cramps my style a fair bit.

CHAIR - I can understand that, I apologise.

Mr BROWNSCOMBE - That loses your quorum, does it? I could amplify a whole lot of issues in the submission but, given the time constraints, I will take it that everyone has read my submission. I will dwell on just a few points and then I propose to just have a bit of a discussion about a bill and then questions.

CHAIR - Sure.

Mr BROWNSCOMBE - Just in very simple terms, it is my submission and my evidence that we need an independent commission against corruption in this State. As I said in my submission, I think all this talk about ethics is really just not calling a spade a spade. Corruption is corruption and I will say a little more about that but the definition is really important and you can define all sorts of things to be all sorts of things for all sorts of purposes but if you take the broader definition of corruption which is used in other States that have similar bodies - and indeed in some other Tasmanian statutes - it is fairly broad and it extends far beyond just money in brown paper bags.

Secondly, I was interested to read the Tasmanian Government's submission, which appears to be one of the longest presented. It certainly has more blank pages than any other. On page 98 it suggests that this body - and they call it an Ethics Commission but I disagree with that - has three primary roles - education and advice, investigation and recommendation.

I do not agree with any of that and I am probably sure that a lot of other people do not. It is a question of what is meant by those terms and how far they extend. I will say a little bit more about that soon. In one sense, despite all the nice words that are used to bulk up the submission - and it is useful background for those who are not familiar with the processes within government; and I think there is a fair bit of misconception around -

Mr LLEWELLYN - Peter, I did not write the submission obviously or I was not part of writing the submission but I think it was trying to -

Mr BROWNSCOMBE - Set a debate.

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Mr LLEWELLYN - not to pre-empt the outcomes of this committee.

Mr BROWNSCOMBE - I accept that but in terms of those fundamentals I guess what I was trying to say two things, Minister. I think they are good objectives but it is in the implementation and the detail where the issues lie.

The second thing is that it is in evidence. The bill that sits in the upper House, introduced by Terry Martin some time last year, outlines in essence two institutions. First, a commission against corruption and, secondly, an integrity commission. Both of those are very deliberately explained, defined and detailed as to how they could operate. What at first glance seems very overpowering is the size of a document that outlines the sort of detail about what I - and a number of other people that have given evidence to this committee have said - believe can operate as a fairly small body but you need the framework, the parameters and the legal definition all documented so that there is no misunderstanding. I submit to you that the less detail there is, the less flesh that is on the bones, the more argument there is about the powers that can or cannot be instituted, or abuse that may or may not occur, or protections that are or are not there, or what they can or cannot do. Rather than run away from something that looks at first glance rather bulky, it provides the detail and allows people to canvass, discuss, examine and be clear about what is expected by a parliament in terms of functions, roles, responsibilities, mode of operating et cetera.

I submit that what we need is small and cost effective with responsibilities to educate, investigate, report and - I underline - not to prosecute. It leaves others - that is, the Auditor General, the Ombudsman, the police or whatever - to go about and do their activities but co-operate with them, and that we have in addition an integrity commissioner. The integrity commissioner that I envisage is much the same as the one that exists in Queensland, which is primarily there to provide advice to the government of the day and senior bureaucrats on what might appear to be difficult questions such that there could be some benefit from some external advice that clarifies or gives them a green light. By consulting that commissioner, firstly you acknowledge that others might see it differently; secondly, you get some external advice and, thirdly, hopefully you can play with it. At least you have on the public record a degree of transparency after the event.

Minister, there would have been times in your ministerial career when it was a really line ball decision. You accept that as your responsibility but there are occasions where at least even being able to talk about it with someone else would assist and perhaps give you some confidence to do the right thing, because that is what you wanted to do. But sometimes the person that is taking the decision is not always in the best position to see how it might be viewed by others. That is no criticism of any minister, premier, or whatever. For instance, Anna Bligh used it in Queensland in relation to whether she should appoint and send a former premier overseas as a trade commissioner. The thought processes that went on in her mind were - it is jobs for the boys, but could you find a better advocate for the State to perform a role as trade commissioner? What is the right answer? At least if you acknowledge it, it can be seen from both sides and you put that formally with someone else, you have a basis for at least saying, 'I recognised that it might be seen strangely. I have taken some advice and I have accepted that advice'. To be fair, it is not dissimilar to the old remuneration tribunal for parliamentarians. We

cannot set our own salary. We think we know what it ought to be, but let someone else give us some advice on it and we will determine whether we think that is a reasonable outcome.

In terms of cost, one of the issues that I have seen canvassed in the media and elsewhere is that we cannot afford this ICAC. It is too expensive and we are a small State. I say, let us put that issue to bed. Do we need a police service, yes. Do we need an auditor-general, yes. Do we need hospitals, yes. Do we need judges, yes. Do we need an ICAC? I say yes because it is a fundamental part of the total regime of good and effective governance and service delivery to the people. I think it is as simple as that. I have no doubt that if the proposition were put to the Tasmanian people, 'Is everyone in this State prepared to put \$10 per year on the table for having a higher degree of confidence and more trust in their body politic and their public service?', then they would say yes. That gives me a lot of money to put on the table to deliver an ICAC. Let us presume it is \$20 a year - a couple of packets of cigarettes or a few Big Macs or whatever vernacular we want to use. I do not think, in the scheme of things, that is a big cost for the benefits that will be delivered from such a body.

The second big negative that I have seen peddled is that reputations will be tarnished from an ICAC. Yes, but so what? Do people get unreasonably dragged before the courts under the current system? I suggest if you ask the current police commissioner, he would have a view on that. That is under the existing rules. I reckon if you asked the former head of Hutchins, he would have a view on that too. So to those who say that reputations will be unreasonably sullied, things will get out of hand, people will have a free kick, it happens now under the existing system.

People sometimes drive cars and have accidents. Do we ban cars? People sometimes do not wear seatbelts. Do we ban the driving of cars? No institution involving people is 100 per cent perfect. The Parliament is not. The public service is not. The private sector is not. Community groups are not. The church is not. Do we shut down the churches because we have found some paedophiles in a particular order? I put that to you not to make light of it but as a cogent argument. Yes, there will be some, but that happens in every society, in every system, in every form of law. All we can do is what in essence is a cost-benefit analysis from a societal perspective. Are the benefits that we get worth the recognition that sometimes there will be some mistakes and some costs? Will the ICAC be perfect if set up in Tasmania? No. On balance is it better to have one than not? You betcha. That is my evidence.

I am one of perhaps the few economists that will give evidence. My submission to you as an expert witness perhaps, Mr Chairman, to raise a bit of law is that, as an economist I guess it is my judgment that an ICAC is cost-effective at about somewhere between the \$5 million and \$10 million a year mark. Depending on how you set it up, it is cost effective. Let me remind you that, strangely enough, one of the first supporters of an ICAC was the TCCI. They recognised that if there is uncertainty, concern, lack of trust about the systems in which we operate that has an immediate impact on businesses' willingness to invest in that State.

The next point is this - and this is a really important one: one of my major positions in advocacy for an ICAC is that it is the threat of getting caught that is probably more relevant in the psychology of the whole thing. It is that factor that makes it important. I

instance this: I am not sure, Minister, whether we have them in Tasmania but when I was in New South Wales recently I got caught by a fixed camera because I did not see it - a speeding camera. If you know there is one there, you will slow down. I think the psych evidence is almost a lay-down misere on that. I guess the point that I am putting to you in the committee is we do not have a red light camera for ethics in this State. We do not have one.

We know that there is an AG, we know that there is an Ombudsman. We know there are some police. But none of them is charged specifically with dealing with these issues. They are all too overworked and overburdened with their existing responsibilities to deal with some of these. If you know that it is open for a member of the public or your colleague to even anonymously dob you in to somewhere and you think that that might have a consequence, is my submission you will think twice. That is a fundamental issue.

As someone who has been a public servant for about 30 years, I guess I have seen a fair bit of the operations from all sides. I do not think that the Tasmanian public service or the Tasmanian local government sector is riddled with corruption, or the Government or the institutions or whatever. But I am prepared to bet that if it is found in other States continually and regularly - and I instance New South Wales, even with an ICAC - they can find people in the SRA - that is the State Rail Authority - doing funny business in certain things; they can find people in the fire brigade who are letting contracts to their mates for bits and pieces; they can find planners in local government that are doing the wrong thing in terms of what they do in recommending a permit be approved. That is happening in Tasmania, at present. There is nothing really available to deal with it. On that point, it is a throw-away line in the State Government's submission - and I understand perhaps why that is the case because local government is a separate sphere of government - but there should be no hesitancy from this committee in saying that local government is subject to the same kind of anticorruption framework that might be suggested for parliamentarians, State public servants and GBEs. There is no reason why they shouldn't. In fact I can argue some reasons why it is even more important because out there in the back blocks, not only in your electorate Minister, in everyone's electorate, there are small councils and there are certain relationships on councils that are capable of encouraging a framework where it is 'just mateship'.

I guess that brings me back to one of the education issues. One of the big problems that I have seen in this State - and I do not think it is anyone's fault in particular - is that there has been a deterioration of what used to be referred to as sort of the 'Westminster principles and traditions of public service.' I am not blaming any particular system or any particular government, but it might be unfortunate that our parents or the current generation of parents are a lot busier and have a lot less time to spend with their children talking about these things and explaining what is right from wrong.

Mr ROCKLIFF - I have to go, but I will be back at 11 a.m.

CHAIR - If you want to wait Peter, do you want to wait?

Mr BROWNSCOMBE - If I can be fitted in or however. You have got a full desk I see.

CHAIR - We have. In fact we have gone, as you know our time as was originally -

Mr BROWNSCOMBE - I do not want too much - I would probably like another five minutes.

CHAIR - Yes, we can arrange for that. At 11 o'clock we can arrange for an extra five minutes.

Mr BROWNSCOMBE - Does that mean potentially you could have a cup of tea now?

Laughter.

CHAIR - Yes it does, yes, because our cup of tea was 10.40 through to 11

Short adjournment.

Mr BROWNSCOMBE - This bill, which is in evidence, summarises a lot of bits and pieces that I am trying to make. If you go through a lot of the sub-headings that are shown in this index, are these not the things that you people should be specifically considering when you move from the generalities of broad debate to what something might look like in terms of specifics.

So in terms of an act, as this bill says it is to constitute the commission and provide a framework for greater accountability of and a greater community confidence in the Parliament and the public sector. I do not think too many people could argue about that. I mean it is almost a derivative of the terms of reference. To go through quickly what a bill has to have, it has to have a name, a commencement, objects. In terms of the objects, if you go to the last page on that piece that you have it says things like 'to promote the integrity and accountability of public administration; to investigate, expose and prevent corruption; to educate public authorities, officials, members of the public about corruption and its detrimental affects on public administration and the community'. Could anyone argue that that is not a reasonable set of objectives for some body - leaving aside what the name might be? That is my submission.

Part 2, if we go back to page 2, I submit we need a commission. We need a commissioner. We need capacity for the Parliament to veto an appointment so that if the government of the day puts in a stooge there ought to be a debate as to who the commissioner is. If it is one thing that I have learned in my lifetime it is not so much the institutions that matter but the people.

In terms of corrupt conduct, it is defined, it is quite expansive, it provides some limitations for some other things and it imposes a duty on a lot of people to report corruption. If there is any encouragement needed for people to think that something might happen then impose a duty on them.

Part 4 - functions. Public interest to be paramount: I think this is a really important thing. There have been a lot of submissions made to this inquiry on how does a commissioner determine what they will look at. If you go and look in more detail on another occasion in sitting as a committee at what the public interest is and what systemic and corrupt conduct is, it basically says to focus on the big stuff. It is not about saying I saw Jim Wilkinson jaywalking and there was a policeman on the other side who

did not book him and therefore that is corrupt conduct by either Jim Wilkinson or the policeman. I do not want to diminish to role of jaywalking, but the police every day have to make judgments about what is important and how to use their time.

Principal functions, task forces, cooperation: a commission ought to be able to cooperate. It should be able to operate independently but in concert when necessary. It needs some powers in terms of division 2. It needs a whole lot of investigatory powers. None of those are particularly unusual or strange. They are relevant to a commission doing things.

In terms of compulsory examination, I submit that is important - section 38. They can have their legal representation but they must be subject to examination and cross-examination if that is required. If they do not turn up, I think there ought to be a reserve power of arrest.

In terms of search warrants, the previous speaker was talking about powers where necessary from the judiciary. Yes, get a search warrant and get it from the courts and put your case to them as the commission.

Disposal of property, miscellaneous, reimbursing witnesses: top of page 5, referral of matters, provides for the Parliament to refer matters to the commission to have a look at. That seems perfectly reasonable.

Part 6 is to do with an inspector. Some people have said that ICAC needs its own watchdog. We have just seen in Federal Parliament a spy agency doing things that seem to be inconsistent with its charter. At least there is somebody who can go and have a look at them. They can report direct to the Parliament.

Parliamentary joint committee: I think it should be a joint committee and I think someone should watch over them. I think that is a really important part of the democratic process, that there is a nexus between the Parliament and this watchdog. It is that important. I propose that there be explicit parliamentary ethical standards.

Part 10 is the integrity commissioner. I think we should have an integrity commissioner and I think this a really good framework. You can be in contempt and a whole lot of miscellaneous issues. I cannot see anything there that is not necessary, even for a small ICAC.

Is there any provision that has been identified here that is not warranted? I would like to formally challenge the committee to answer that question.

CHAIR - Thanks very much, Peter.

THE WITNESS WITHDREW

Mr ROBERT MAURICE CHARLES PATTERSON, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Robert, thank you for coming along. I am sorry we are stretched for time. It is my fault - being Chairman I will take responsibility for that, but things are starting to step out of line. If you can be brief that would be appreciated but I do not want to gag you either. We have your submission it is submission number 19. If you wish to speak to that submission and then some questions can be asked.

Things that you do say in this committee remain within this committee, in other words there cannot be any defamatory action taken as a result of your comments within here. But if you go outside and you reiterate them outside or confirm everything that you have said in this committee outside then if there is anything defamatory you are not protected with the privilege that you are now.

Mr PATTERSON - I understand that.

Mr LLEWELLYN - Mr Chairman, just before we start can I declare an interest that Robert has been to see me on a number of occasions and we have tried to resolve these issues, or at least I have done my best to do that, but I think that certainly he has not achieved the outcomes that he wanted.

CHAIR - I know that it has been going on for some time because a number of years ago the same thing happened.

Mr PATTERSON - First of all, thank you Mr Chairman and members for inviting me and I acknowledge Minister Llewellyn's indication that it has been quite some time. The matters are serious, serious to the extent that the Ombudsman invoked his power to go back more than two years to investigate matters which had been detailed in the submission.

However, the prime aim of my appearance here today is to look at the mechanisms which I feel have allowed the situation which I have detailed in the submission to develop to that state. Essentially the problem has been, I believe, a general lack of accountability, transparency and due process in relation to how administrative action is taken by government departments and their accountability in relation to that by various officers.

By way of background I have been a public servant for a number of years - for the Health Department as an expert in waste water, so that is where I am coming from. I indicate that I do have the appropriate qualifications in this area, an associated Masters degree and what have you. With Defence I am also a qualified inquiry officer so I have a fair idea on due process and what should be required of a department when questions are answered.

For example, with the greatest respect to the minister, a number of years ago I had some concerns about action by his department in relation to the shack sites. I wrote on 6 December to the minister detailing a number of questions on what I regarded as 'biased,

inappropriate and actually quite wrong behaviour' on behalf of the process of his department.

What I found very difficult was that I received no reply to this letter in relation to the specific questions that I asked. There are a number of matters and it concerns me, again with the greatest respect, that you did not see fit to reply or were not compelled under any parliamentary requirement to reply. This is a problem and one of the findings perhaps from here is that there be a compulsion on behalf of ministers or indeed senior public servants to be required to answer specific questions that are of concern to individuals.

Mr LLEWELLYN - We did have a subsequent meeting where you came and put your points of view and we talked about them.

Mr PATTERSON - Yes. I do not want to go there please because I am very cognisant of the time. That specific meeting did not address the questions I requested specific answers to and certainly has not resolved the matters in question, which I regard as very serious, as indicated in that documentation. For example, there was the inappropriate payment of government money to engineers to have my system assessed. This was the engineer that wanted to do the sewerage system to which I was asked to provide an alternative solution.

Mr MARTIN - So they were competitors.

Mr PATTERSON - Absolutely. Well, he had a clear vested interest and this is where the due process has not been appropriate. He had a clear vested interest. I have given in the evidence there details of what moneys were paid and when that request was made.

CHAIR - There are some annexures to your documentation. If there are any questions in relation to those annexures we will have to go into camera.

Mr PATTERSON - Sure. That is fine.

Again leading on from there, this accountability and transparency, these points of government, is that the Ombudsman was so concerned, as I indicated, that he invoked his powers to go back more than two years when I finally complained to him about this and a number of other matters associated with these waste-water systems. The Ombudsman has not received any advice back from your department. Unlike the Commonwealth Ombudsman, who can compel ministers and senior public servants to respond to direct questions, for whatever reason you have seen fit not to respond to the Ombudsman's detailed complaints, which are indeed these complaints embodied in that document. I would strongly recommend that there be some mechanism in Tasmania to allow complaints to be heard fairly, with transparency, and for those that have done things which are not right, or with bias, or with pecuniary interests, or done in an incompetent way as can be defined by review of decisions in relation to Australian standards, for example, there should be accountability. If there can be some mechanism produced to allow -

CHAIR - There certainly can be a recommendation if the committee deems that to be an appropriate recommendation.

Mr PATTERSON - That is the key. Having worked in jurisdictions, with Defence and with the Commonwealth Ombudsman in Defence-related matters, and also interstate and overseas in waste water departments, I feel that Tassie is really disadvantaged when it comes to an individual being able to question the process.

Mr MARTIN - Where has the Ombudsman got to or is he just waiting on a response from the department?

Mr PATTERSON - It has been silence. It has been going over two years and it has just been stony silence.

Mr MARTIN - Does he not have the power to get the information to deal with this?

Mr PATTERSON - I have had informal discussions from Mr Connock at the Ombudsman's office. He said we could not compel the ministers or the senior public servants in that department to answer our direct questions to enable a complaint to be investigated.

Mr MARTIN - So there is no appropriate body or organisational structure in the State at the moment to investigate the sort of complaint you have?

Mr PATTERSON - Exactly, if there is no cooperation. One would imagine that if there was no fault on behalf of the department - and you have seen the amount of evidence I have presented - there would be free and open communication. I can only draw that conclusion. Not wanting to discuss it or evaluate the evidence is the problem.

Mr MARTIN - From the letter you wrote on 6 December 2006 neither you nor the Ombudsman have been able to get answers to these questions?

Mr PATTERSON - No.

CHAIR - So, Rob, you believe that there should be an obligation on all parties to reply in answer to the questions asked. If not, there should be a body to enable you to air your grievance and they could then speak with the body in question to endeavour to get those answers. They should have the powers to get those answers, if appropriate, and then deliver the reply back to you.

Mr PATTERSON - That is an excellent summary because the only other recourse I have is through the court. That becomes essentially nonsense because you cannot sue the government - unless you are Mr Packer.

Mr MARTIN - The impact of the decisions within the department is that you were unable to use the system?

Mr PATTERSON - With the impact, there has been good news and bad news. The good news is that the inappropriate decision-making in relation to my inventions put us onto the mainland earlier. That has been excellent because they are all accepted on the mainland in many jurisdictions, councils and what have you.

Mr MARTIN - And they are not accepted here by the State's department?

Mr PATTERSON - By the department, but some councils are ignoring departmental advice.

Mr MARTIN - You have had no problems interstate?

Mr PATTERSON - Not where we have chosen to go, and it has been slowly at this stage, or overseas. The mechanisms used by agencies interstate is that they look at a particular waste-water invention on its merits in relation to the Australian standards. These are very clear and if you comply with those and have engineering certification then that is the end of it. In Tasmania, unfortunately, the Workplace Standards people are not health people. They are plumbers and in my opinion they lack sufficient qualification to assess correctly. The requirements in Tasmania to do design work require you to be a qualified engineer or an environmental health officer and have professional indemnity insurance. In the organisation that assesses whether my systems can go or not the key gentleman involved, I understand, is a qualified plasterer. He does not have any technical knowledge, and I used to do the job. This is where it becomes farcical, but it is sad because people are missing out on systems. For example, with the BiPu, which is a simple septic tank, the Government was wonderful. Premier and Cabinet purchased ninety 300-person systems to go to Aceh together with the instructions for the engineers, and that was great for 27 000 people who were displaced. So from the Tasmanian Government point of view it is fantastic.

On the other hand, with the Department of Justice - and you will see in the submission it is long and tortuous - one of the conditions, for example, for this basic thing which is like a baby septic tank and which applies to no other septic tank thing, is that I have to inspect it once a week. There is clear evidence that he was cut-and-pasting from things that required package-plants accreditation to this that were authorised products. I'm saying, 'Here's the muck-up. We cannot have these systems that have a requirement that I inspect them every week'. It is a standard septic tank with no moving parts. It doesn't apply to any other septic tank thing in Tasmania. The frustration is enormous so you just don't go there. The company has now moved manufacturing to Port Macquarie.

Mr MARTIN - The State Government bought x number to go to Aceh as part of the relief package. Is this the same product that they won't allow to be used in this State without onerous conditions?

Mr PATTERSON - Yes, absolutely. I have two independent engineer reports that say the system complies with Australian standards.

Mr LLEWELLYN - There's two different types of systems that we are talking about - the BiPu was one and the MAT(E) was the other. Ideally we wanted to use MAT(E) and I have noticed that that was the case, but standards are not in my jurisdiction.

CHAIR - Bob, what you're saying is that you want a body to go to, or regulations or legislation in place, to enable reasonable answers to be given to reasonable questions so at least you know where you stand?

Mr PATTERSON - That's it is a nutshell.

CHAIR - If necessary, can we call you back if required?

**JOINT SELECT COMMITTEE ON ETHICAL CONDUCT, HOBART 27/03/09
(PATTERSON)**

Mr PATTERSON - I'd be delighted to. The people missing out are a lot of the Doug Wrights and the shacks at Eggs and Bacon Bay. You all know the story there - \$80 000 was required or here's \$5 000 and take your shack away. Think of the impact on pensioners, and we solved it for \$3 000 because I was 'allowed'. I had to get special approval as a consultant - with over 30 years' experience. I couldn't believe the embarrassment I had to go through to get that - all to go to council for one of my designs. 'That's fine, what's wrong with that, it complies to Australian standards'. If it wasn't serious, it would be absolutely farcical. If we can get a mechanism to allow government department secretaries and individuals to be accountable, we would be a better place.

CHAIR - Thank you, Bob. Thank you for your submission.

THE WITNESS WITHDREW.

Ms LIILA HAAS, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Liila, that you for coming along.

Ms HAAS - I am here on behalf of Future Tasmania, which is a non-profit organisation that looks at solutions to environmental, economic and social issues in Tasmania. We have put forward suggestions for reform. As I think you would all be aware, we are in a time of major upheaval across quite a number of areas, including climate change, drought, global warming, increase of natural disasters, coupled with the global financial crisis and then social and political upheaval around the planet, and Tasmania is not exempt from these issues. These times are putting pressures on governments all over the world, including Tasmania, to come up with solutions. Up until now some of the democratic models that we have used, including issues around ethics, have worked but in a time of major change it brings up opportunities to look at reforms to our democratic processes, particularly around ethics.

Future Tasmania has put some thought into this, and we have a submission. I am here, rather than to talk about any specific issue, to inspire you all to think about some reforms. Of course, they mean legislative changes, but that might encourage broader sweeping ethics and changes to our system.

CHAIR - In the last page of your submission you wrote what you believe to be appropriate reforms. The first one was that there needs to be an independent commission. What do you believe the make-up of that should be?

Ms HAAS - Those were Richard Flanagan's points from an article that he submitted to the *Mercury* on 12 April.

Mr ROCKLIFF - Is there any model around Australia, Liila, that you think is more appropriate for Tasmania?

Ms HAAS - Earlier in the paper I talk about an auditing branch of the government, a fourth branch in addition to legislative and judicial, a general auditing branch to have checks and reforms to make sure there are no breaches. We don't have that sort of branch in our government.

CHAIR - There's the Auditor-General.

Ms HAAS - Yes, but a specific branch that will provide more thorough checks so that we have more people in place to see these issues through.

CHAIR - The opposite argument in relation to that special division that you are speaking about is that the Auditor-General is in a separate department at arm's length from government, and he carries out a number of audits each year. That is programmed. He has a list of what he is going to do each year at the commencement of each year. He runs that past the Public Accounts Committee, and there is agreement in relation to it, so one could argue that is already there.

Ms HAAS - Do you feel that is strong enough?

CHAIR - It is certainly strong.

Ms HAAS - Okay. The points that I made for Tasmania are specifically about whistle-blowers. We would like to see them strengthen legislation and support whistle-blowers so that they are protected and there is actually financial remuneration for them. If someone goes public or goes to the media, then there is no right to vilify them, and in a healthy democracy we think such people would have protection. So that is the first point that we made specifically for Tasmania, around transparency, particularly related to public/private partnerships. We do not support public/private partnerships. We think there always must be public disclosure. We believe in total public disclosure rather than commercial-in-confidence, so all tenders, contracts and documents should be made fully public. For water and other resources, any tendering should be made fully public without fail. We also believe there should be a period of debate after the tendering process so that the public can have some say in how that has gone. We also believe in freedom of information. So those are the four main points - they are on the last page - that we are proposing for Tasmania.

Mr BEST - We have had a couple of suggestions. We had a witness earlier today talk about a committee of Parliament. There is the Privileges Committee of Parliament that perhaps has been under-utilised and could be utilised more. That is one example that has been given. Others are that we could have a committee of Parliament that might encompass people from the community in certain aspects. Another one is that we would have an integrity commissioner that would be funded and who could call upon the Auditor-General and people like that to undertake educative as well as investigative functions. I am just interested in how that might fit with some of the things you are proposing.

Ms HAAS - Exactly right. I think we would like to see members of the community involved in some of those issues. I know that in the north of the State there are some groups that are putting together their own audits around some issues, such as water quality and things like that, so groups in the community are already doing that off their own bat. So it would be nice to have some space for them to do that in a way that is recognised and in a way where their findings are utilised. I support that.

Mr MARTIN - With total public disclosure, you do not believe there is any reason whatsoever why commercial-in-confidence should ever be used as an excuse to not let the public know details of a contract or tender?

Ms HAAS - What do you think about that? Do you think they should be?

Mr MARTIN - No, I am being devil's advocate. I am asking you whether there is any situation where you would ever think that is appropriate?

CHAIR - Some might argue, of course, that if there is not commercial confidentiality, then if, say, a figure for the TOTE was allowed into the open arena, all the people who may want to buy the TOTE would know the value of TOTE and therefore they would be able to offer that sum as opposed to what might be a larger sum.

Ms HAAS - Is that so bad?

CHAIR - The Government would argue it probably is.

Mr LLEWELLYN - The other point might be that in doing so we would be breaking the law.

Ms HAAS - I believe the way the global financial crisis is going we will need major reforms. You saw in this submission there is a whole section on economic democracy, which is looking at the cooperative model. I believe that we are going to see, right across the globe, major shifts in what is happening. In my opening statement I was trying to say that we are in for a time of major upheaval all across the globe, across a number of issues, and the capitalist model that we have been leaning on so heavily may not always be the model that we will see in place.

Mr MARTIN - It has not worked too well recently.

Ms HAAS - It has not worked too well and this is the time to look at changes across the way we govern and across the way we do economics. This example that you are giving me is part of an old model and an old way of thinking.

CHAIR - I am starting to get old.

Ms HAAS - I do not mean it that way. We need to be thinking about reform across a number of areas if we are going to make it through this next era, if we are going to thrive and if we are going to be at the forefront and cutting edge of what happens on the planet. I am talking about 10 to 20 years down the track. So that model of the way corporations function may not be the model that is going to get us through this next period.

Mr LLEWELLYN - No. I was alluding to the Trade Practices Act, which is a Commonwealth act and out of the reach of this committee.

Ms HAAS - Even so, I think to get through this period we are going to be looking at legislative reforms around a number of issues, from taxation to the way corporations work. So that is why I combined the political and economic when we look at reforms. It is exciting because there are lots of possibilities, but it is also scary. This paper that we have prepared and put a lot of thought into is offering some solutions that might be useful for how we get through these next 10 to 20 years.

CHAIR - Liila, thank you very much for your time today and your effort.

THE WITNESS WITHDREW.

Mr DAMIAN BUGG AM, QC WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Damian, thanks for coming along.

Mr BUGG - I do not have a submission before you. I am here by invitation and I thought you do not want me to write something as well if I am going to briefly say anything.

The terms of reference seem to me to point towards an ethics commission or something similar as a question this committee must resolve. Do we need one? 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. Mr Best mentioned earlier the Privileges Committee. You are the best judges of whether the Privileges Committee is capable of, in the parliamentary sense, reviewing, investigating and giving effect to either sanction or improvement in the area of the ethics of the State's elected representatives.

Mr MARTIN - The problem there is that it has not met for decades. I cannot even tell you who is on it.

Mr BUGG - That is a bigger problem for you than it is for me.

Laughter

Mr BUGG - I just do not know. But if you start with that ethics committee, does it exist, or if it does but only exists in name and there is just lip services to its function, then you need to go back to the drawing board and say, 'That has failed. Let us put something else in place'. You do not need an integrity commission, in my view. What you do need is something in the same way corporations are required now to have continuing education and safeguards in place to ensure that the directors of a publicly listed company are properly instructed and educated in the areas of corporate governance and the responsibilities and roles of directors. Easily said but difficult to apply because, with all due respect, gentlemen, you have been parliamentarians now for some time and you do not want to be seen in the floaties class at the swimming pool being taught about the ethics and integrity of politicians. But you have to do it. You can introduce educational requirements or instructive requirements through the university - and I am not wearing

the chancellor's hat and chasing work - but that is the thing that you should have. You should have it also for your staff and advisers so that they can identify those two big 'cons' - conflict and confidentiality. They are the critical things. In this question of transparency, does someone have a conflict of interest and should they be dealing with this matter? Should they declare what that conflict is? If the person who is being dealt with understands what the issue is and still accepts the matter to proceed forward then that is fine. Confidentiality: how do you keep the lid on things? If something leaks then it usually leaks inaccurately and the wrong perceptions are given. Everyone then believes it is a conspiracy. Have you got the right safeguards in place? I do not know; you have to look at the Privileges Committee. If Mr Martin cannot work out what is going on with the Privileges Committee then I certainly cannot.

CHAIR - With the Privileges Committee it normally would take a request by Parliament to refer something to it. So the Privileges Committee is there. It is not a matter of the committee members just sitting back and not wanting to do anything, it is as a result of nothing being referred to them.

Mr MARTIN - Since the early 1990s.

Mr BUGG - If you look at areas of what has been out in the open and a question of public debate, for elected representatives it comes in two categories: what has happened in Parliament and what has happened as part of your executive overlap responsibilities. I do believe that you can readily introduce, for reassurance but also for your own ease of understanding, very simple ethics courses. The Australian Institute of Company Directors has regular programs for company directors. If you go to one it is quite instructive in the way they press buttons that very quickly identify things that you have seen in your role as a board member or whatever. That is what I would suggest. You are looking more at understanding and education and using your Privileges Committee. If that proves to be insufficient then you need to revisit that process and deal with it.

Now, as far as the State Service is concerned it is quite interesting because we are talking about the ethics of the State Service. I think the State Service Act was amended quite significantly since my days as State DPP. I left to take on the Commonwealth job in 1999 and I think there was a draft bill in the process then. The State Service Commission has a mandate under that legislation - I am pretty confident if you check it - to ensure that appropriate levels of integrity and ethics as part of the principles of the public sector are achieved. That may involve a review or some reassurance from the State Service Commissioner that the commission has in place appropriate educational and oversight mechanisms to ensure that the levels of ethics that you are talking about and the integrity of the sector are well tuned - in a similar way, as I suggested, that you might have regular updates.

What other safeguards are there? You have mentioned the Auditor-General and the Ombudsman. It seems Mr Patterson is dissatisfied with the lack of teeth that the Ombudsman has. I know there are a number of exemptions from the provisions of the act. My old State office was exempt and because of the nature of the office and the work it does that was entirely appropriate. You may need to look, in light of those criticisms, at whether or not it is an effective mechanism to review administrative conduct within the State public sector.

If you go through Ombudsman, Auditor-General and State Service then you have the regular appearance of representatives of agencies before your Public Accounts Committee, so you have scrutiny in a fairly broad sense. My experience of Public Account Committee is that it is not just about public accounts, so you have that as well. If you pull all of that together you could say that should cover what we would loosely call ethical conduct or the integrity of the sector.

I did take the liberty of reading a couple of the transcripts. This committee has engaged in questioning about issues of criminal conduct and the investigative process for criminal conduct. I suppose that if you put that in a separate category, and I think you have to, there are two levels of conduct that you are talking about. The mere lack of application of proper principle does not always constitute a crime, whereas there is a public perception that heads on sticks should be achieved because someone is seen to have done the wrong thing. Quite often that is not the case but there are sanctions available for State servants who do not do the right thing but do not commit a crime.

Then you have an investigative process. Do you want to establish an anticorruption commission so that you can have some independence of the investigative process? That creates its own dilemma because in my experience there are no other processes that train investigators for that sort of thing other than the police departments around the country. The Commonwealth police, the State police forces and departments all have their own training systems. You can get private investigators but that is a totally different process. They are not aimed at gathering evidence for use in criminal proceedings. An understanding of the intricacies of that is pretty much the domain of police departments.

If you are considering setting up some independent investigative process then that creates its own issues and I still do not think that is necessary. Certainly in my time as State Director, towards the end, the Ombudsman's office used as investigators former police officers. I know the Department of Environment did as well. Where you were looking at serious breaches of the environmental regulations and you knew that the material was likely to be used in the subsequent prosecution, then you needed people who understood the questions of admissibility and the issues about hearsay and how to take a statement properly and so on. If you have a specially trained unit of investigators that is sitting there waiting for something to happen, and it does not happen for a couple of years, then first of all it is very expensive and secondly they will move on and take jobs elsewhere because it is pretty boring sitting around doing nothing.

If all of those systems cover the integrity and ethics issues, then what about crime? There has been a debate in the public, and I do not want to buy into it here today, about whether or not the Police department is independent of the minister. I think there are arguments for and against that proposition but if you want an independent investigative agency there are probably only two ways of doing it - either secondment for specific tasks from the State police or secondment externally from the Federal police - because of the nature of the task. It may be that you have some cooperative arrangement with the other State police departments - you scratch my back and I will scratch yours. Here are five investigators; you have them for six months. I will need five in another 12 months or whatever. So you have the ability to second but do not set up some permanent and expensive bureaucratic structure. If there are occasions where you require an examination of conduct that steps outside ethical breach of integrity, then you need

someone who can assess that, because you may need some distance between the investigation and the legal assistance that investigation gets.

CHAIR - That is the thing I have a question about at the moment. You need a person to say whether it does get outside the realms of doing the wrong thing, as opposed to criminality. Do you have a person there, part-time or alternatively through the Ombudsman's office or another agency, to say I believe this is probably outside the area of just doing the wrong thing; it goes into the criminal area. That being the case I refer it to a part-time commissioner or something along those lines, or alternatively give it to the police. What do you do?

Mr BUGG - I thought about that when I was looking at your terms of reference and at what one of the previous speakers, not today but some months back, had said. I think you need a well-qualified and experienced person who is in integrity or anticorruption but it is a very low-key office and administration. It might be one permanent officer and one secretarial support, but the person is relatively senior, relatively experienced and has some protections about issues of confidentiality so people can come to them.

One of the previous speakers this morning talked about whistleblowers. There is an issue there and some people feel concerned about going to the existing structures for that very reason. They may feel more comfortable about going to that particular individual. Now that particular individual is the permanent senior employee of what whatever you call that part-time structure. Then if the need arises they have access to either one or more persons who can then look at it and say yes, let us establish an inquiry. They then have the power to second, so you get two experienced police officers if it is a fraud. If it is allegations of sexual impropriety then it is someone from wherever. These are, as you know, quite different issues that require quite different methods of treatment. If they come from the State police then they are corralled and do not go back to the department until the matter is finished.

I had that experience as the State DPP on a couple of occasions where I was provided with the head of the internal investigations branch and one of his officers, and I think it worked. It may not work on every occasion so you would need the flexibility to get the cheque book out and get someone over from South Australia, Victoria or wherever for the duration.

Mr LLEWELLYN - There were other examples. One that I can recall was the drug squad in Launceston where Sir Max Bingham was asked to inquire into the arrangements of what had happened with respect to the drug squad.

Mr BUGG - They were exhibit issues, weren't they?

Mr LLEWELLYN - Yes.

Mr BUGG - You can do that and then you ask what happens after that? Quite candidly, if there is an evidentiary outcome that indicates criminal conduct then you refer it to the DPP. You should only have one prosecuting officer - and I speak from some interesting experiences. I went to Tanzania last year to do some training with prosecutors in the Prevention of Corruption Bureau and the DPP's office. The differences between the standards of the two were marked because the PCB prosecutors were not getting to court

that much, whereas the DPP's prosecutors were. They were very experienced they were able to distil the relevant and critical issues in cases and things like that. So it is not attractive for lawyers to go to an office where you do not get to court very much, if that is what you are after. Therefore if you want to set up a separate prosecuting office to the DPP then I would argue against it. One, it is unnecessary; two, it is hugely expensive. You have one prosecuting office who should be seen as the only prosecuting office. In England they have three different prosecuting offices - serious fraud office; customs, excise and inland revenue; and the Crown Prosecution Service. You do not get into too much turf warfare but there are issues of overlap in England.

Police should investigate crime. If people are concerned that a particular matter is so confidential that it requires external involvement then you set that facility up and provide it with an access to budget facility, not a full budget facility, so that if the need does arise then you have it.

I have seen the workings of some of the interstate organisations and they grow significantly to meet particular matters. I do not know what the Crime and Misconduct Commission has in Queensland but it is probably about 300 staff.

CHAIR - It is significant and likewise in New South Wales.

Mr BUGG- In New South Wales if you add all three together - PIC, ICAC and the Crime Commission - they are significant organisations.

CHAIR - In Western Australia, the CCC they referred a matter to the DPP, the DPP did not believe that there were appropriate charges that should flow, therefore they initiated their own proceedings. It fell over which, I think is an example of why the experts should be left to do the expert work and the people -

Mr BUGG - Don't have a dog and start barking.

CHAIR - That is right, yes.

Mr BUGG I really do think it is quite interesting. If you have conducted the investigation, you ought to be suspicious about matters. Sometimes the police are criticised for being too suspicious, but you need investigators to be suspicious. However, to be suspicious you lose a level of objectivity.

To make a proper assessment about whether you have feathers that will fly this case into a prosecution, you need to step back from that closeness to the ball and make a very cold and objective evaluation about whether or not you have reasonable prospects of a conviction.

I think that was a classic example of why the matter should have gone to the DPP and the decision been followed. The usual criticism of the DPP is when you decide not to prosecute and if you have a very open and understandable set of guidelines which the govern the decision to prosecute and therefore also the decision to not prosecute then the community can understand and say, 'I can see why they have taken this particular step'. It is an enormous step to remove from the trial process, and therefore in the community's

view the opportunity to judge someone's conduct through a jury; it is a huge step to remove that and say, 'No, I am not satisfied there is sufficient evidence'.

But if you have in place the right guidelines, which we set up in 1989, as a national standard, then you find that it becomes a mantra and people say, 'Oh, I understand now what you meant by that'.

Mr LLEWELLYN - Are those guidelines used in each State now?

Mr BUGG - Absolutely. There are some variations because new directors need to publish an annual report with their signature under a new set of guidelines so they justify the printer's ink by making a few minor changes. The Commonwealth - my old offices - are slightly different because we received investigative material from 42 different agencies and some of those were quite different, like the Australian Crime Commission or its predecessor, the National Crime Authority. So you had to have in place some guidelines about how we would deal with those matters and I had completed a review of those guidelines. I see the new guidelines have just been published last month.

Mr LLEWELLYN - Do we publish them in this State?

Mr BUGG - Oh yes.

Mr LLEWELLYN - In this State?

Mr BUGG - The Commonwealth ones or the State ones?

Mr LLEWELLYN - No, the State ones.

Mr BUGG - The State ones, yes. I used to actually fill up a few pages of the annual report and put them in there if I did not have too much to report on. So they are usually in the annual report.

You obviously do not read the annual report.

Laughter.

CHAIR - I thought that was coming.

Laughter.

Mr BUGG - Mine used to make it to the remainder bin pretty quickly as well. The interesting thing is that I know there was some discussion with one of the speakers some months back about this question of criminal conduct and whether or not, having completed an investigation, there is found to be no criminal conduct, is there some alternative remedy and, quite often, the matter may be so minor that the alternative remedy in the public interest is a far preferable outcome. It may be some civil penalty or some sanction, be it the suspension of a licence or whatever, if you are talking about someone's licence and conduct.

So that is all covered as well. You have the basic prosecution test, which is reasonable prospects of conviction, but even if you are satisfied that there are reasonable prospects

of conviction, there may be very good public interest reasons - a long list of them, and it is not exhaustive - of why, in the public interest, it may not be appropriate to prosecute. The person may be 89, on their deathbed. I know my predecessor decided not to prosecute Mal Colston because he was dying of cancer but he was still alive four years into the job. The Legal and Constitutional Affairs Committee used to ask me on every occasion what was happening.

Mr LLEWELLYN - We were presented with a set of those guidelines in some earlier evidence from someone else, but that person was unable to answer the question as to whether or not they were the guidelines that we use here in Tasmania.

Mr BUGG - When we settled them in 1989 the establishment of the DPP offices was not yet complete around Australia. This State was the first State to set up an independent prosecuting office in 1973 and called it the Crown Advocate. It followed Victoria and the Commonwealth in 1986 and changed the name of the office to DPP - and that is when I was appointed. By 1989 there were a couple of other States that had directors of public prosecutions as well and we all decided that we should try to establish a uniform prosecution test. When we did, we each went to our attorneys and said, 'This is the test we're proposing. Is it acceptable?' When you talk about transparency, the fact is that you might make your decision behind closed doors, but if you can say, 'The reason we've decided not to prosecute is that there are no reasonable prospects of conviction and the test we have applied is as follows' that is another matter. For example, it can be quite awkward if you're dealing with a case where some witness's evidence is just not credible, to then come out and say, 'We've decided not to prosecute because Mr X was not a credible witness' is a real body blow to someone who may very well be a victim of crime. Sometimes you need to keep some sort of cover over it. I tend to agree that there are some things that have to be kept confidential - some of them commercial-in-confidence, whatever you want to say about things, and I think the community generally understands that. Full transparency would make government unworkable but reassurance that you are applying proper standards - and there are things that you can point to show that that is the case - seems to me to be the biggest thing that you want to attain from what you are doing.

Mr MARTIN - Damian, one of the problems in the State, and I suppose the reason the current Premier moved to set up this committee in his first day in the jobs was, in his words, 'To draw a line in the sand' from the previous administration because there was a public perception that things were wrong. If Parliament itself - in the form of the Privileges Committee, as it is set up - is investigating complaints against individuals within Parliament, is the public perception going to be that the politicians are just looking after themselves? Is that a problem? How do we overcome that perception?

Mr BUGG - It depends on how you set it. If there are problems in that it has become redundant or whatever, if you want to breathe life into it, look at some of the professional bodies that still investigate allegations of professional misconduct and the community accepts that. There has been recent publicity about the medical profession. I know the legal profession has stepped outside that, but I still think that you can provide the public with a measure of reassurance in the way in which you both set up the committee and make it work. If the committee's functioning is behind closed doors, there is no record of proceedings and issues such as that, then people will become suspicious.

Mr MARTIN - There needs to be some openness and transparency obviously in the way that the committee deals with things.

Mr BUGG - Yes, but there are some things that you will not be able to disclose. It is a quid pro quo - you build up public trust by disclosing that which you can disclose but reassuring them that there are some aspects of matters that you can't disclose. In the main the public accepts that, but if you have had a privilege committee that hasn't worked for a long time then you can understand the level of cynicism that you may very well be confronted with.

Mr LLEWELLYN - I wouldn't have thought that the public would know anything about it because it hasn't been in the news for decades! The point that you made was the point that I made to Professor Chalmers when he was suggesting almost the same sorts of things that you are -

Mr BUGG - We have not spoken about this.

Mr LLEWELLYN - Exactly - first look at the existing organisations and if they need pepping up a bit, that is what he would prefer and that sort of thing. I did ask that same question. It is a perception about politicians.

Mr BUGG - Check the bathwater. If it is still warm and it is still clear, use it.

Mr MARTIN - Damian, you mentioned the legal fraternity as one that was investigating itself and there were some issues of public perception because of some of the things that have happened in the recent decade. There were changes made to that. Do you believe those changes were necessary and how do you relate that to parliament looking at itself?

Mr BUGG - There is quite a history there. I was on the Law Society's Investigations Committee and we investigated complaints that came in. That was in the early 1980s and I thought it worked very well. In fact you tended to see a much less, shall we say, emotional approach - indeed a very hard approach - from your professional colleagues towards investigating matters. In fact there were occasions where there was criticism made that we were a little bit too heavy-handed in the investigation and prosecution process. That is probably a criticism that you would feel more comfortable about than if it was the other way round. So I thought that the system worked quite well.

Where I think the principal criticism of the level of oversight of the Law Society of the conduct of practitioners was found wanting was in relation to the management of mortgage registers and clients' funds and I think when you got into some of that conduct there were prosecutions either in the criminal court or dispositions of matters in the Supreme Court where there was either unprofessional conduct or professional misconduct, the more serious of the two, then criminal prosecutions. So there were dispositions of the matters and in any organisation, be it police force, the legal profession or the medical profession, you will have people who will step over the mark, and either be dishonest or not apply standards. So that the mere fact that this happened, you cannot protect yourself against it in every case. Regular audits of accounts do not often pick things up that a cunning fraudster can achieve if that person is in charge of the accounts. What ultimately evolved I think was probably accepted by the Law Society because quite frankly it was at a point where there was a high level of criticism, some of it I think

unjustified, of the level of scrutiny it had maintained over the activities of its members. I did not think it was probably necessary at the time but I think for a variety of reasons the Law Society saw it as expedient, but you had better talk to someone. In fact I think Tim was around when that legislation, my brother Tim I should say, was settled and the arrangements were put in place.

The State Government has legislative authority over those professional bodies and their disciplinary processes and this was a case where I think the State Government has received a number of complaints as well and felt it should do something about it.

Mr BEST - I wanted to ask about some of the principles that you apply in regard to investigation. We had one witness who told this committee that in their particular instance there was not an investigation of a crime; that really it was to search out a law that may have been broken. That was the feeling or the interpretation that was given to us. Do you feel that that is fair to go about an investigation that way or do you think that really you should be investigating a crime? Or are they the same?

Mr BUGG - There is a difference. Someone may feel that a crime has been committed. And going back to something that I said earlier, it may very well be that what actually happened is misconduct that offends some regulation but it is not criminal conduct. But the investigator should approach the matter, in my view, with an open mind. What are the facts? Are we investigating a murder or is this manslaughter? Is it a suicide? Let us look at all the facts. When all the facts are gathered the investigator or investigators will have a suspicion and they will refer that matter if they are in any doubt to the DPP for consideration as to whether or not there is sufficient there to prosecute for a particular offence. It may very well be that the DPP's view is that there is not, but there is sufficient to prosecute for another offence. So the goalposts have to be kept fairly flexible, both at the start and throughout.

I think a good example of that is in Corporations Law where the State is not involved in that anymore. But a very early stage in my role as Commonwealth DPP, in talking to the Chair of ASIC about how to expeditiously deal with a particular matter, I learned that if you investigate it to the full extent of allegations against a senior person in a corporation, the investigating may take a year-and-a-half and then the processing of that investigative material may give you three areas of offending. There may be insider trading, there may be breach of directors' duties and there may be straight fraud. But to get the message out in any criminal justice system you have to have a speedy investigation and you should try to have a speedy outcome if there is a criminal prosecution. It blunts the deterrent effect of your system if it takes years to get the thing dealt with.

So we talked about that and concluded that investigators should keep an open mind and if they brought to us three discrete areas of offending, we would ask you as the regulator what is the best regulator signal that you want to send from this cluster of misconduct. If we want to attack directors' duties or insider trading we will focus on that aspect of it from the prosecution viewpoint because that is a public interest issues as well.

I think in summary, in answer to your question, if someone was looking for a law that was breached rather than investigating the crime it might very well be that they were looking at the facts and saying, 'Has there been a breach of any law here?' once they have a better feel for the facts. So they are slightly different but they do -

Mr BEST - Going back a bit, in your situation as DPP for the State would you have been more inclined to be interested if there was a criminal intent or would you have been more interested in the fact that, if you searched hard enough, you might have found a technical breach?

Mr BUGG - The DPP does not have an investigative function. So what you would have brought to you might be an evolving investigation where you are providing advice to the police as the investigation undergoes. I do not know, but Tim Ellis has given evidence and he has probably mentioned that. So there are occasions when police need assistance - 'We think that we are there, is there enough evidence?' 'Well, you are short on evidence of intent. Can you have a look at this or whatever?' That sometimes happens with investigations. But the DPP rarely sees a matter evolving to the point where they say, 'Look, I would like you to chase that.' We leave the investigation up to the investigator. It is horses for courses.

Mr BEST - Sure. Do not bark if you have a dog.

Mr BUGG - Exactly. If you are the DPP, then you are really interested in prosecuting crime - that is your function. If when you have looked at it there is not sufficient evidence to establish a crime but there is, for example, a breach of the Sea Fisheries regulations, let us say, then you say, 'Well, this is really a breach of the Sea Fisheries regulations - go and deal with it.'

Mr BEST - You have mentioned before that you filled that role from 1986 to just recently. You have also given evidence today to say that during your time you did not, in your mind, come across anything that was rampantly corrupt to the point that you would want an ICAC in Tasmania.

Mr BUGG - There were occasions when there were issues. Just before I was appointed there was the electoral spending debacle where everyone had spent in excess of their electoral entitlement in the advertising of the election campaign. Nearly everyone finished up down at the Magistrates Court. The former governor, Bill Cox, was the Crown Advocate then and he prosecuted 30 politicians, I suspect, for breaches of electoral spending. You get pockets like that and people say, 'God, the State is corrupt. Everyone has overspent', but the reality was that it needed some correction in the system that was, I guess, slack for that to have happened. Then there were issues such as the Rouse bribery scandal. There was a royal commission subsequent to that. I looked at all the material that had been gathered and I could see no other basis for prosecuting any other person. I do not think the royal commission found that to be the case either. That was investigated by the State police. I really think that you could question the cost of that royal commission.

Mr BEST - So where we hear witnesses come in and say there has to be this royal commission into everything that has happened over the last x years in the pulp mill and everything else, you would tend to think that is a bit of an overstatement?

Mr BUGG - Yes. You think very carefully before you appoint a royal commission into anything, and you think even more carefully before you appoint a permanent commission with standing powers such as an ICAC, unless there is a really compelling need for it. I do not see that. For example, you may have in place practices and procedures which take

too long to process matters. With the best will in the world someone may want to speed matters through that process. It is the fact that the processes are too complex and too lengthy and too protracted that creates the problem. Then you go back and say, as I said at the outset, 'What do you have in place already?' If your regulatory or approval processes are too complex and too drawn out then you need to look at that and change that, because anyone's attempt to foreshorten that, for whatever intention, will always be misinterpreted.

Mr MARTIN - I have been asking this of a number of witnesses. One thing that leads to public perception issues with politicians and political parties is the issue of political donations. Do you believe there should be full public disclosure? Do we need to strengthen the laws in relation to it?

Mr BUGG - I have not really thought about that. It would be awful to have every \$2 and \$5 donation on some list. That is just too time-consuming. There has to be a level of transparency. It comes about as an issue of disclosure because, for example, there may be some enormous donation for one party and there might be a slightly lesser sum donated to the other major party. The process of that, if not disclosed, could result in all sorts of perceptions if the donor is a very active business person in the community and is always seeking approvals for entrepreneurial conduct which is hugely beneficial to that person. It may also be beneficial to the community, and the government of the day may be encouraged to support that person, but it would help public perception if that disclosure is made so that people know that this person has been fairly even-handed in their donations and that the government of the day has come out and said, 'This man has had such and such. There will be complete transparency in the way in which we deal with this person'.

Mr MARTIN - You see no downside to full public disclosure, except for the minor amounts?

Mr BUGG - I don't see it. In this day and age it is so expensive to mount an election campaign that the alternative of taking that from the public purse really troubles me. Mind you, it wouldn't be a bad thing if you had a lid on electoral spending and it had to come from the public purse. We might get some peace at election time, with all due respect. I really have not thought about it beyond that. It would be too arduous a task to go all the way down to the two-bobs and what have you, but certainly a certain level of it because it comes into that question of transparency across the board.

CHAIR - Thank you for coming, Damian, and sharing your expertise with us.

THE WITNESS WITHDREW.

Mr IAIN FRAWLEY, ACTING STATE SERVICE COMMISSIONER, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Iain, thanks for coming along. Thanks for coming to give us your expertise as the Acting State Service Commissioner. As you know we are looking into the ethics issue and whether there should be a special body established or alternatively whether we should use one of the existing bodies but give it extra powers and resources. A number of different models have been suggested and we just wondered what happens in the State Service Commission in relation to the powers that you have.

Mr FRAWLEY - As you would be aware, the State Service Commission office is an independent statutory office holder. 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.

In that context we have the State Service Act 2000 that provides the standards that we believe the community expects of State servants in terms of how they operate and they are enshrined in the principles that are in the act. Those principles are in turn supported by a code of conduct that in the event that those principles are not adhered to then there are appropriate remedies to deal with them.

In those terms the role of the State Service Commissioner is to ensure that those principles are upheld and maintained. One of those principles indeed talks about ethical conduct and as I say through those general principles we expect each State servant to maintain and act in an appropriate manner.

CHAIR - If I have a complaint in relation to dealings that I have had with a State Service employee, do I come directly to you or do I go through another body before I get to you?

Mr FRAWLEY - In relation to our piece of action as it were, in the event that an individual has a grievance with an employee of an agency they would take that up with the agency involved. There is a procedure then for the agency to take action in the event that they believe there may have been a breach of the code in terms of what an employee may have done. That is the action that would occur.

The action that the State Service Commissioner would take in relation to an alleged breach of a code would only occur in relation to a head of agency where the minister administering the act requested that there was a belief that the head of agency may have breached the code. The State Service Commissioner would act in relation to that. Any other potential breach would be undertaken by the agency concerned through the appropriate mechanisms that have been established for that purpose.

Mr LLEWELLYN - Do you provide a bit of an oversight on that process?

Mr FRAWLEY - We establish the rules of the investigation and the determination of the alleged breach and at the end of that there is an opportunity for that decision to be reviewed either internally through the Office of the State Service Commission in the event that the sanction imposed is anything other than termination. In the event that it is termination then that sanction would be reviewed in the appropriate Industrial Tribunal. So, yes, there is a standard procedure established, it has the force of law, agencies are expected follow that otherwise there is procedural flaw and things would have to be rectified and there is a right of review at the end of that so that employees are appropriately treated.

Mr BEST - Just on that issue of determination. You mentioned that you set the 'rules of determination' - is that right, did I hear correctly?

Mr FRAWLEY - No. We set the process that should be adopted for an investigation and determination. So when you get through that in terms of natural justice and so-on and when you get down to the head of agency actually making the determination, that person is responsible within a framework for deciding the outcome and what that would be. So it is not prescriptive in the sense that -

Mr BEST - Is it possible, without going into personal issues, to give a short snapshot example of what that might be on an issue of some sort?

Mr FRAWLEY - I am not quite sure how detailed you would like to be?

Mr BEST - Not to take up the whole of the committee's time, but just an example.

Mr FRAWLEY - If a head of agency has a reason to believe that a breach may have occurred he then appoints or she appoints

Mr BEST - Breach of what though?

Mr FRAWLEY - One of the elements of a code. So it may be that

Mr BEST - Confidentiality?

Mr FRAWLEY - Yes, or may be that they do not act appropriately in the course of their employment - they may have breached an Australian law or whatever. So the head of agency establishes an investigating officer to then establish the facts surrounding that allegation. The investigating officer will then report back to the head of agency with his or her findings in relation to that investigation. The head of agency will then consider that together with anything else that the individual may wish to provide and then come to a decision about whether the head of agency believes that a breach of the code has occurred. Then he or she will make a decision accordingly, allocate a sanction if the thing is to be challenged then it will come to me or back to -

Mr BEST - If they do make a decision are there any mitigating circumstances that can be considered with regard to what sanctions might be?

Mr FRAWLEY - It is up to the head of agency to take into account whatever information they believe is relevant to their decision in terms of the sanction. Firstly, has there been a breach, does the evidence support that? Secondly, well, yes there is a breach and what is the sanction I will impose? That sanction can go from counselling through to termination. There is a whole range in between. So if there are circumstances brought forward that a reasonable person would suggest that for these reasons maybe we would have done this but in the circumstances we will do that. That is up to the head of agency.

Mr BEST - Do you get many constituent-type issues or are they mostly to do with departmental referral?

Mr FRAWLEY - Most of the ones that we get in my office relate to internal issues because that is what we are really all about.

Mr BEST - You really are about internal issues then.

Mr FRAWLEY - Yes. In the event that we do get external issues then we would refer those to the agency concerned, ask them to investigate it and provide us with details of the outcome. In the event that we were not satisfied with the outcome then we might decide to take some action. In the event that the action taken by the agency seems appropriate then we would leave that between the agency and the individual.

Mr BEST - So you do not have the power then to investigate externally or it is not really your role?

Mr FRAWLEY - It is not really the role rather than the lack of the power, I would suggest.

Mr MARTIN - That leads in perfectly.

Mr BEST - I thought it might do. That's why I wanted to -

Mr MARTIN - Geez - team work! In both cases - an internal complaint and the odd one form an outside constituent - what feedback is given to the original complainant?

Mr FRAWLEY - Say in the latter case if it is someone from outside the system, we would tell them what we were doing and that the matter had been referred to whomever. Then we would get an advice to what occurred, knowing what the outcome was of that and whether the individual had been advised on that.

If I could just add to what the Chair said earlier. In terms of the State Service - and that is all I deal with; those people engaged under the State Service Act 2000 - there is also a raft of other legislation that impacts on the way we operate. There are other avenues, such as the Ombudsman and the Anti-discrimination Commission, which people might take to more appropriately address a particular issue.

Mr MARTIN - With the feedback to the complainant, are they told the results of the investigation?

Mr FRAWLEY - They should be.

Mr MARTIN - If they are not?

Mr FRAWLEY - Let me rephrase that. It would be pointless to say that the matter is being investigated and that they do not tell them anything beyond that. We would certainly hope that -

Mr MARTIN - For example, if they are told that no action is being taken and the complainant is not satisfied with that, are they given an explanation as to reasons why?

Mr FRAWLEY - I could not honestly say. I would certainly hope so, that there would be something to say that the nature of the complaint was such that it had no substance to it and they could not act without something more concrete or whatever.

Mr ROCKLIFF - Iain, you mentioned code of conduct before and ethics. In terms of ethics training or making sure State servants are up-to-date with the Code of Conduct, is there any formal training process within each department? Whose responsibility is it? Do you oversee that?

Mr FRAWLEY - Firstly, there is a training program conducted by the Public Sector Management Office and it tries to encourage all new appointees to attend an induction program.

Mr ROCKLIFF - So it is encouraged, it is not compulsory?

Mr FRAWLEY - I do not think we can make it that. It is encouraged and, indeed, most people do because that gives you an insight into the workings of the service and your own conditions and rights and so on. So there are lots of advantages to go. Part of that involves an explanation about your responsibilities as a State servant in terms of the principles and the Code of Conduct and what is expected of you. In turn, it is trying to ensure that people appreciate that giving service to the public is an honoured profession but, with that, you have certain responsibilities and it is trying to, in a way, make people aware, particularly those coming into the system, that it is a good place to be and there are these responsibilities that go with that. So that is the way we try to do it.

In addition to that, we conduct an employee survey where we encourage all employees to give input on how they perceive the service to be going, particularly in relation to State Service principles. We started that in 2005. We did one in 2007 and the results of that show that from an employee perspective, internally, they believe most agencies, if not all - and this is 80 per cent of the respondents - are encouraging ethical behaviour and apolitical behaviour in their systems. So that is from an employee perspective.

CHAIR - Iain, is there any argument at all that the agency itself is examining the agency or somebody from within the company?

Mr FRAWLEY - When I started I mentioned how we operate and that is why this separation of powers has occurred. When the legislation was established it had the State Service Commissioner doing all those three functions. But how much confidence could someone have to challenge a decision or review a policy, when we would be part and parcel of the development of that policy? So from that perspective it was realised that we should

devolve that responsibility by delegation to the Secretary of the Department of Premier and Cabinet and then we could review any decision without that perception that we might have already been tainted by a previous involvement.

Mr MARTIN - Who do you report to?

Mr FRAWLEY - Parliament. That is why that is important to have that separation from the minister that we see has caused some complications in other areas.

Mr MARTIN - So it is straight to Parliament and not through the minister?

Mr FRAWLEY - Yes. An annual report is provided to Parliament in relation to the activities of the State Service Commissioner.

CHAIR - Can I put this example to you? I am a landowner. I feel that I have been aggrieved as a result of a decision of the old Housing department because of a public servant not doing what they believe should have been done. What do I do?

Mr FRAWLEY - If you came to us we would ensure that that was taken up by the head of agency to see that the employee involved had not done anything inappropriately. So then we would be looking to the head of agency to conduct their investigation into that matter. That is in relation to a personal action as opposed to more of a policy-type issue about 'we don't approve these' or 'we do approve these', if I can make that distinction. So that is where we would go with that one.

CHAIR - If documentation had gone missing, what would the response be to that?

Mr FRAWLEY - Well, you could not say anything about that until the full circumstances surrounding what had occurred, why it had occurred and the reasons for it were known. It would just be a hypothetical. I really cannot say much more except that we would expect it to be properly and thoroughly investigated by the agency concerned.

CHAIR - For the past five years surveys have been handed out, I understand, with the employees giving their feedback, and I noted -

Mr FRAWLEY - Two in the last two years. We do them every second year.

CHAIR - So since commencing you have undertaken five annual agency surveys?

Mr FRAWLEY - Sorry. The survey I mentioned was the employee perception survey. The ones mentioned in the report are the annual agency surveys. We get that every year, and the agencies tell us how they think they are doing, whereas the other one is what employees -

CHAIR - I see, yes. And as a result, has that made you change your views on how to do things?

Mr FRAWLEY - That is a bit awkward to answer, because we operate in terms of the independent statutory officer-holder. That person then determines the way the office operates, so we have had a period of time with two different people who have gone in

two different ways. Because I am only there as an interim arrangement, nothing has really changed from what Commissioner Watling had in place.

CHAIR - Do you believe that there should be an independent body within Parliament or outside Parliament at arm's length from Parliament to look at issues which can either be classed as ethically wrong or corruption or, alternatively, do you believe that there are systems within the parliamentary process and within government to enable those problems to be properly investigated and reported on?

Mr FRAWLEY - I think we need to be careful that we don't just have something else that adds to the list of things we already have but nothing really changes - if that makes any sense. We need to ensure that those bodies that do exist either do what they are there to do, or have the power to do what they need to do -

Mr MARTIN - Resources?

Mr FRAWLEY - Yes - as well as the resources both human and financial - rather than simply thinking maybe the solution is creating another body that is then under-resourced and whatever and ends up just being another opportunity to go to somebody but nothing really changes. As I mentioned, with have antidiscrimination laws, we have Freedom of Information, we have personal protection, we have a whole range of things. Now there might be a need for something else, or perhaps there needs to be a rationalisation of what we already have. I have not looked into it to the degree that would allow me to make a worthwhile comment.

Mr MARTIN - I suppose it begs the question - do you consider you have adequate resources to carry out the role that you should be doing?

Mr FRAWLEY - This is the wrong time to be asking it, I suppose, as we enter into this situation of global economic crisis and moneys being wound back. In terms of what we have been doing over the last four years in particular, with the commissioner, supported by half a dozen people, we have been undertaking evaluation programs of what is going on in agencies. Admittedly that is the preliminary stage of evaluating that they are complying, then the second stage will go beyond the compliance to drill down into that compliance, but that is to come.

Mr MARTIN - So you don't think resources are stopping you from doing that?

Mr FRAWLEY - No. You have to start from a starting point, so we have started from the starting point of there being requirements to be satisfied by the legislation - such as an internal performance management program, an internal grievance program and a diversity program. All of those are in legislation. So we start to examine that to see that they do comply with that and then from there we will drill down from the compliance to the outcomes. What are these measures that have been taken, what outcomes have they achieved or are we just talking about ticking the boxes for outputs and nothing really changes? So we have to establish the benchmark they have and then move to the second stage. Although in general terms the act came into being in May 2001 it does take some time to get things operating.

Mr BEST - Most of the individual witnesses have brought their own complaints. This is my anecdotal overview from that I have seen from the witnesses - the complaint has generally been about something that has happened with an agency of some sort and they are at a point where they can't take it anywhere, they have nowhere to go. I suppose there are two parts to that: do you think you are that person who they should go to; and, secondly, if not where would they go?

Mr FRAWLEY - At the moment I would say no, we are not that body to go to and it would be more appropriately dealt with by the Ombudsman.

Mr BEST - But the Ombudsman has limited powers too, doesn't he?

Mr FRAWLEY - Exactly.

Mr BEST - The Ombudsman provides a great service, but there is only so far they can investigate.

Mr FRAWLEY - That is why I say that perhaps we need to revisit what we have and ensure that they are either resourced or given the necessary power because recommendations are one thing but if you need to make changes sometimes you have to be a little stronger than that.

Internally in our system we have that power. But that is in relation to directing heads of agencies to go and do another process or to fix something up or grant someone leave without pay - all those sorts of things. Outside of that, we do not have power.

CHAIR - Sometimes there could be a perception, Iain, that if a person is being investigated, he is being investigated by his own head of agency and that head of agency then reports to you?

Mr FRAWLEY - In terms of any external complaint?

CHAIR - No, internal.

Mr FRAWLEY - In terms of an internal complaint the head of agency has the power to make the decision and to determine the action. They would only come to us if they are aggrieved by the sanction imposed by the agency, unless it is termination in which case they would take it to the industrial commission -

CHAIR - I understand that.

Mr FRAWLEY - and there they would deal with any issues that arose with procedural fairness as well as the eventual outcome.

CHAIR - Has there been any issue at all along the lines of 'the head of agency is one of the team, therefore the issue is being swept under the carpet'. Therefore should it go to you as opposed to going to the head of that person's agency?

Mr FRAWLEY - It could come to us anyway because we are the ones who establish the procedures for the investigation and determination of a breach of the code. So we could simply say that we withdraw that commission's direction and we will do it all ourselves.

CHAIR - Yes.

Mr FRAWLEY - We could ensure that it did not go out but that would not be practical. Firstly, agencies have to be given responsibility to manage their own affairs. Secondly, we would expect them to always operate with good conscience and do things that they should. Thirdly, we would not have resources to do all those sorts of things anyway because, as we speak, dozens of investigations are going on in relation to employees who are believed to have been in breach of the code, as well as inefficiency through inability.

CHAIR - Any other questions at all of Iain?

Mr BEST - One quick one about the Ombudsman. Do you get anything back from the Ombudsman's office at all - about any complaint that they might have been looking at?

Mr FRAWLEY - The opportunity exists for all we bodies to refer across jurisdictions if we believe the matter is more appropriate to another jurisdiction. So, if we had something that we felt it was more appropriate for the Ombudsman we would refer it to them. If they had something that they felt was more in line with, say, an employee, they would refer it back to us.

Mr BEST - Excuse my ignorance on this one. If the Ombudsman's office investigates a matter and something is not quite right, can it be referred to you if it is departmental conduct or competency?

Mr FRAWLEY - If is an employee?

Mr BEST - Yes.

Mr FRAWLEY - If it is an employee it could be.

Mr BEST - So it has to be an employee basically, doesn't it?

Mr FRAWLEY - Yes. That is the difference. In the main we are the protector of our own system, if you like, or try to be.

CHAIR - Thanks for coming along and sharing your expertise with us.

THE WITNESS WITHDREW.

Alderman DOUG CHIPMAN, DEPUTY MAYOR, CITY OF CLARENCE AND **Mr ANDREW PAUL**, GENERAL MANAGER, CLARENCE CITY COUNCIL, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Thank you gentlemen for coming along.

Ald. CHIPMAN - The council has passed a resolution saying that it believes that there should be an integrity commission or whatever formed but local government should be involved. There are a couple of reasons for that. I think there is a feeling in council that local government, perhaps more so than any other level of government, is most vulnerable to some of the pressures of corruption, particularly because they are dealing at the coalface with potential developers. You only have to look at what has happened recently at the Wollongong City Council to realise what the impact can be if things go wrong.

We are required to have, for example, a code of conduct at the moment and there are provisions for people to appeal, if they perceive that things are going wrong, through the Director of Local Government and there are processes leading up to that as well. But there is a perception as well in council that perhaps the Director of Local Government is not well structured and well equipped to deal with some of the complaints that could come up and so it would be appropriate if there were an overarching integrity commission that would look into local government as well.

Mr ROCKLIFF - Does your council have any induction for new councillors or aldermen in terms of the code of conduct or issues that may arise in terms of pecuniary interest and the like?

Mr PAUL - We certainly do provide a briefing to all new aldermen and we also provide it as a refresher to continuing aldermen. We provide them with some fairly extensive written material and then try to walk them through that material. We also make available to them the opportunity of participating in any of the more general LGAT programs that they run as induction sessions for new councillors and new aldermen. I think we give them a fairly comprehensive briefing in regard to their roles, obligations and responsibilities.

Mr MARTIN - Has the issue gone before LGAT?

Mr PAUL - I have no recollection of it having been through LGAT. I know it was a matter that was considered quite independently by council, not as a result of a broader local government push by LGAT to consider this question. It was something that council did independently.

Ald. CHIPMAN - It was an opportunity that we saw as a council, given that this committee was looking into this matter. We would see also that it would apply to government business organisations et cetera and State authorities.

Mr MARTIN - That is good. I am glad a council has looked at it and is recommending that local government is included.

You mentioned the susceptibility of local government, politicians and staff is in the planning area - mind you, the Treasurer has wanted to take over a fair chunk of that at the moment. Are there any examples of issues raised about that sort of conflict of interest in a planning matter, and how have you dealt with it in the past?

Ald. CHIPMAN - I am not aware in recent times of Clarence Council having an issue in regard to planning items per se. There have been several other occasions where the code of conduct has been perceived to have been transgressed and issues have been raised up through to the Director of Local Government, but none that I am aware of directly involving councillors or staff on conflict of interest with a development.

Mr MARTIN - So there are no issues in the recent past that would be referred to this sort of integrity body?

Mr PAUL - Perhaps one or two matters may have, depending where the bar is set in terms of threshold for referral, triggered such a referral. If you work in council long enough you will always get someone saying, 'That decision was because such-and-such was a friend of such-and-such', or 'I didn't get a fair hearing because of whatever'. We have had those sorts of complaints - if I can call them that - from time to time, but they have been, by and large, dealt with internally. I think there were one or two occasions where it has been referred to the Ombudsman but we have never had any adverse findings.

Mr MARTIN - Hypothetically, if you received a complaint today, or the mayor receives a complaint about an alderman, that there is evidence they have received a cash payment from a subdivider or something, what would you do?

Mr PAUL - I am trying to think, specifically, of the terms of the code of conduct. Certainly if a complaint came to me and it was about one of the aldermen then the first thing I would do would be to raise the matter with the mayor and give him the veracity or whatever of the complaint. It would appropriate to talk to the individual named in the complaint from a procedural fairness basis and ask them for an explanation. If deemed to be appropriate, I would probably refer the matter to the Director of Local Government.

Mr BEST - Some councils - not yours, I don't believe - have had a fair bit of rocky road with regard to how things have operated. We have seen people attacking each other within the council and that sort of thing, to the point of instability, though everyone is entitled to different views. I am interested in what your view might be.

Ald. CHIPMAN - It certainly can but I would not think it a matter for an ethics or integrity commission. I think it would be a continuing role for a council's internal processes and the Director of Local Government to deal with issues such as that. What we are really talking about here are areas where potentially corruption can intrude into a council, as it did, for example, at Wollongong. It is situations such as that where the Director of Local Government may not be equipped to handle those appropriately.

Mr LLEWELLYN - There is a parallel situation between local government and State Government and, I suppose, the Commonwealth Government from a point of view of elected representatives. In Federal Parliament and in the State Parliament we have parliamentary privileges committees which might or might not work, could or could not be improved et cetera. We do not have such a situation with local government and it

would be a bit of an imposition to set up one such committee for every local government body. Would you comment on that?

Ald. CHIPMAN - Minister, we do have an internal committee and we have an outside person appointed so that if issues come up where allegations have been made against a councillor breaching the code of conduct, for example, they can be dealt with internally in the first instance and then by the Director of Local Government.

Mr MARTIN - That is under the Local Government Act?

Ald. CHIPMAN - Yes. The Local Government Act requires us to have that committee. So I see some parallel there. That process is probably more for disciplinary matters or transgressions and interpersonal behaviour issues rather than for big corruption issues.

Mr LLEWELLYN - But this committee is looking at ethics too, not necessarily criminal matters or fraud or those sorts of things.

Ald. CHIPMAN - I would see an ethics committee at the top of the tree in terms of this sort of process. We would be trying to deal with the minor issues at the local level first of all and then through the Director of Local Government, if appropriate. An ethics commission or body such as that would be at the top of the tree in terms of dealing with it.

Mr PAUL - Our experience with the code of conduct process in local government is probably not that good in the sense that I am pleased to say we have not actually had the necessity to use the actual process yet. We certainly have all the mechanisms in place but it has never been utilised.

Mr MARTIN - The code of conduct came in after I left local government. I was interested in your experience of it but you actually have not had one.

Mr PAUL - No, we have not utilised it. Obviously I talk fairly regularly with my colleagues and the general consensus, certainly if I am talking about the professional executive arms of the organisations that I talk to, is that it is really just a process used to score political points or beat someone else around the head rather than actually address issues of substance.

Ald. CHIPMAN - Having said that, the fact that there is a code of conduct in place imposes a sense of discipline to some extent. It does actually establish a benchmark.

Mr MARTIN - Better than nothing but it does not quite cut the mustard.

Ald. CHIPMAN - Yes.

CHAIR - Thanks very much for coming along and giving us your views.

THE WITNESSES WITHDREW.

Mr SIMON ALLSTON, OMBUDSMAN, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Simon, thank you very much for coming and thanks also for providing your submission.

Mr ALLSTON - I should say that, unlike a number of other officers in government, I do not have policy officer. So, putting a submission like this together - and I keep being asked by many bodies to make submissions on their work - is not an easy thing to do and it gets done on the side, which is why my submission is fairly short. I have gone back to it a number of times since I wrote it, for various reasons, and it really is a fair reflection of where I sit. The logic of it seems to me to be satisfactory, if not to others. So it is a bit of a rough diamond but it really does contain the essence of the issue.

I have had quite a lot of experience in government life now, including the most experience in the State in royal commissions - the Rouse royal commission and the one into the death of Joseph Gilewicz. That, plus my work in the Solicitor-General's office and now my work as Ombudsman, has led me to the conclusion that we live in a pretty wonderful State. We do not have the endemic corruption in institutions like the police force, which has led to the introduction of commissions against corruption in other places. I think we are immensely fortunate in that respect. I have read quite a lot of the testimony to this committee and I note that a lot of people have made the same point. It is a small State, people tend to know each other. Corrupt conduct tends to float to the surface fairly quickly and then it tends to get agitated pretty effectively in the public domain.

It seems to me that we would be going much too far to have a body like an ICAC. It would cost a lot of money. It would overlap with functions of existing investigative bodies, including my own office. It would, I think, not have enough work. I notice when I look at the newspapers that come out from time to time from bodies like the ICAC and the Criminal Justice Commission in Queensland that they do an awful lot of education but they do not do a lot of investigation. Every now and again you get something like the Wollongong City Council scandal that suddenly causes a lot of activity and then these commissions go quiet again. I do not think this State can afford that sort of thing.

Where are the deficiencies in what we have and what should we do? Do they need tightening up? If they do, what can we do, at least cost, without overlapping existing institutions? Where the deficiencies lie are really in relation to ministers, ministerial advisers and MPs. That is because there are limits to what I can do as Ombudsman because of the nature of the jurisdiction in the Ombudsman Act.

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.

Since I wrote my paper, other things have happened which make it necessary to add to it a bit. The Jack Johnston affair has troubled me from the point of view of good administration.

CHAIR - I do not want to -

Mr ALLSTON - I am only going to go in relation to the way it was investigated not in relation to the substance of it. Please stop me if you think I am going too far but the issue arose as to whether or not that case should have been investigated by police officers who had been subordinate to Mr Johnston in his role as commissioner. Although it may well have been the case that the nature of the evidence was such it was quite appropriate for the matter to be investigated by Tasmania Police, in my view it was the wrong thing. There was a public perception that this was not appropriate and I think that perception was fairly placed.

When I was involved in those two royal commissions that I have mentioned we took pains to employ officers from the Australian Federal Police to carry out the police work that was necessary because we needed to get at a distance removed from people within the State who might otherwise have done the work to make sure that the thing was palpably independent and in my view, whatever the nature of the evidence, that should have happened in this case. So that is something that I would submit that it would be appropriate for the commission to consider.

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.

CHAIR - So your belief is that police internal investigations are able to investigate but then there should be an independent audit from somebody like the Ombudsman's office -

Mr ALLSTON - Exactly.

CHAIR - probably the Ombudsman's office is the best to do that, to this independent audit?

Mr ALLSTON - It is probably so under present structures, yes. I would have thought that that is something that is worthy of attention.

The last point is a bit closer to home. There is no-one really to whom I am accountable apart from the Parliament through my annual report. In other places the Ombudsman can be accountable to a parliamentary committee or at least in touch with the Parliament through a committee. One of my predecessors, Damon Thomas, I know put that forward as a good suggestion for the State but it was not taken up. I believe Jan O'Grady did the same. I do not think it is a bad idea, especially when so many significant powers are vested in a statutory officer, to have closer connection with the Parliament in this case than presently exists. Those are additions that I would make to what I have written, Jim.

CHAIR - Thank you.

Mr MARTIN - Simon, in your submission where you talk about some of the issues that have led to the setting up of this committee by the current Premier you look at the list of existing powers of investigation. You say that the investigating authorities took the strongest powers through a commission of inquiry, police and the Ombudsman. You then go on to say the likelihood of a commission of inquiry being established to investigate alleged misconduct by a minister is low, given that commissions of inquiry are established by the Government 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 if of course the subject of the inquiry is the conduct of one of its own. You then go on to say that the police would 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, then go on to talk about the Bryan Green issue and the TCC affair. But then you conclude 'however a police investigation may not shed light on all aspects of the controversy'. Can you explain that in a bit more detail?

Mr ALLSTON - Particularly the last sentence of that, the police investigation matter?

Mr MARTIN - Yes.

Mr ALLSTON - Because the police are only going to be interested in criminal conduct. They are not interested in anything else. Let us for instance, say, the 'shreddergate affair'. There were many aspects to that that did not involve criminal conduct. In fact you might not find criminal conduct anywhere in it at all. So the police might look at some very tightly focused bit of it but then there is this whole thing there which may never be investigated.

Mr MARTIN - It appears that none of the current organisations or individuals with the power to investigate has sufficient power to look at all the issues involved, that there is a deficiency. Do you have a solution to that?

Mr ALLSTON - This is where I came up with the observation that there were really deficiencies, particularly in the ministerial area, and that you needed some checks and balances for whatever body might look at those. It is only in the case of a commission of inquiry that you are likely to - because it is inquisitive by nature, it goes wherever its terms of reference allow it to go. In my case I can only, as Ombudsman, say, look at

administrative action by a public authority. But if I saw something on the periphery of what I was doing or in the course of carrying out my investigation I saw, say, criminal misconduct I would bring in the police. So in most situations, one would think, the interaction of the various investigative bodies would produce a satisfactory outcome. But I think there will be some circumstances where that will not happen and the one that troubled me was the ministerial position.

Mr MARTIN - So at the moment if you were investigating something and you came across something that you did not think was criminal misconduct by a minister or parliamentarian but you thought there may be some ethical or moral issues there, what would you do with it?

Mr ALLSTON - Ethical and moral issues are really something that I could make observations on as I went. It might be in areas that are outside my expertise, for instance, and might, say, fall within the Auditor-General's area and I might confer with him. If I saw something criminal I might refer it to the police. I might make recommendations in an appropriate case for, say, action under the State Service Act and try to engage other authorities. There is a sort of panoply of things that might come together.

Mr MARTIN - We have had some evidence provided to us today by a couple of people with legal backgrounds that we do not need additional new bodies to be set up but the parliamentary Privileges Committee should investigate complaints or allegations of misconduct by politicians. What are your thoughts on that?

Mr ALLSTON - I would not agree with that.

Mr MARTIN - Can you explain why?

Mr LLEWELLYN - I do not think they exactly said that.

Mr ROCKLIFF - Firstly, you would work within existing structures.

Mr MARTIN - Yes, work within existing structures but there were direct references to the Privileges Committee.

Mr LLEWELLYN - There was a direct reference to the parliamentary Privileges Committee but I do not think any of the witnesses suggested that, as it is operating at the moment, it would be adequate or appropriate.

Mr MARTIN - No, but it should be re-looked at and a reconstituted privileges committee is the best vehicle to look at complaints.

CHAIR - I think it is maybe.

Mr MARTIN - Maybe. What are your thoughts on that?

Mr ALLSTON - No, I would not agree with that. Good investigation requires some really refined skills and with all respect to the people at the table, a parliamentary committee is not the way to investigate a matter of serious fact. I find it quite troubling that some of

the issues in the 'shreddergate' affair have been trawled over by a parliamentary committee in a way which is -

Mr LLEWELLYN - It might be better if this discussion was in camera.

CHAIR - You probably do not have to touch on that at the moment.

Mr ALLSTON - I do not want to touch on the evidence but it seems to me to be a blunt and unskilled instrument for the purpose.

CHAIR - The Ombudsman's office has an investigative role. Do you believe that with some changes to the act under which you work the Ombudsman's office would be the best office to look into these areas of ethical conduct, and also look into areas which may increase from ethical conduct to criminal conduct and then be able to second some people to do an investigation, and then if necessary report that matter to the police or the DPP to see whether any action should flow?

Mr ALLSTON - Yes, Jim, in the right case. It needs to be accepted that I am bureaucrat in a way, unelected, appointed for particular skills no doubt but I am just a statutory officer. There are some issues of the sort that have been floating up in the public domain of late where one would hesitate to tread because of the political consequences of what you are doing. I am not saying I would not do it in the right case, but you hesitate about it because the consequences for the administration of public life can be quite extreme. I am adverting there to political consequences. In those cases, particularly where we are talking about ministerial misconduct, it does not properly fall upon the single shoulders of a person like myself to make those calls.

CHAIR - Do you believe that you should be at arm's length and there should be a process which reinforces the independence of the Ombudsman's office?

Mr ALLSTON - In what respect?

CHAIR - The 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?

Mr ALLSTON - I do not have any quarrel with that sort of suggestion. 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.

CHAIR - The only act dealing with the Ombudsman which provides for the Ombudsman as an officer of Parliament is the Queensland act. Queensland is the only State which has provision in the act with regard to the officer of the Parliament being subject to direction in fulfilment of his function. Should the independence of the Office of the Ombudsman be made explicit in the Tasmanian legislation? Should there be a provision similar to that in the Queensland legislation, which provides that the Ombudsman is an officer of

the Parliament and is not subject to direction by any person about the way the Ombudsman performs his functions under this act or the priority given to investigations?

Mr ALLSTON - 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.

CHAIR - Queensland and New South Wales legislation provides for parliamentary committees which deal with the Ombudsman. The Northern Territory, South Australia, Victoria and Western Australia do not provide for a parliamentary committee in their ombudsman acts. 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. Do you see merit in the formalisation of a relationship between the Office of the Ombudsman and a parliamentary committee, much the same as Public Accounts Committee and the Auditor-General?

Mr ALLSTON - 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 responsibilities are on us, so the more engagement there is with the people to whom the officer is accountable the better.

CHAIR - The Queensland legislation provides for a parliamentary committee with the following functions:

- 'a) To monitor and review the performance by the Ombudsman of the Ombudsman's functions under this act;
- b) To report to the Assembly 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 Assembly's attention;
- c) To examine each annual report tabled in the Assembly under this act and, if appropriate, to comment on any aspect of the report; and
- d) To report to the Assembly any changes to the functions, structures and procedures of the Office of Ombudsman the committee considers desirable for the more effective operation of this act.'

How would you regard the enactment within Tasmania of legislation mirroring what is in Queensland?

Mr ALLSTON - I would not have a difficulty with any of that.

CHAIR - Do you believe it to be appropriate and helpful?

Mr ALLSTON - Yes.

CHAIR - Your annual report talks about your increase in case load and continuing concerns about resourcing. Noting that comment, how detailed are your plans to establish the investigation unit, which you speak about? What are the details? What was the quantum of additional funding sought from the Government in each of the two applications which were declined without explanation? Does your office have the skills set to inquire into standards of ethical conduct?

Mr ALLSTON - 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 an 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.

CHAIR - Are those people trained to the investigation side or are they more to deal with the complaints side?

Mr ALLSTON - That is a very good question. The sort of investigation we do at the moment is sort of administrative-type investigation. We do interview witnesses from time to time as we need to but generally we do not apply to an investigation the sort of

skills that you would expect from trained a police officer, for instance. Were I to get a significant, say, investigation into corrupt activity or alleged corrupt activity I would very likely have to second or bring in skilled outside assistance to do that.

CHAIR - Have you power to do that under the act?

Mr ALLSTON - Yes, there is no reason I cannot do that but -

CHAIR - It would have to be funded.

Mr ALLSTON - it would have to be funded. That is the rub. I have not yet had a matter where I thought that was necessary. There was one that came in a couple of weeks ago where I thought that if I had the resources, maybe I should have a look at this but who would I use? It was that sort of question I was asking myself. But you never know in this sort of job. Tomorrow there could be suddenly something that lands on the doorstep and requires that sort of attention.

CHAIR - So if there are issues in relation to ethics and somebody crosses the line as to morality, ethics, whatever it might be in public office, do you believe you have the skill set within the Ombudsman's office now to properly investigate that?

Mr ALLSTON - In ethics yes, I do. We could possibly get consultancy assistance if we entered a bit of territory that we were unfamiliar with or we thought we needed some support. That is quite normal in an investigation if you are in an area that you do not know much about; you might draw on somebody who knows a lot more about it than you do. The Auditor-General was telling me the other day he has done that.

CHAIR - Could you have within the office of the Ombudsman - and I do not want to duplicate resources or positions - a part-time ethics commissioner, let us say, so that if matters - and I am just putting forward a hypothetical - came before the Ombudsman's office, a complaint, he would be the appropriate body to look at that complaint to see whether there is any substance in the complaint and then if necessary be able to refer it on to this ethics commissioner, for want of another word, who would be a part-time person who would then go out and investigate and if necessary second other people to assist in that investigation or do you believe that that is a duplication of your work?

Mr ALLSTON - It is probably of duplication of mine. I think I would pick up something like that very quickly and be able to refer. I think the ethics commissioner issue is particularly one of education. That is not a role that I think I could pick up in my functions.

Mr MARTIN - I noticed in your submission that you recommend the creation of an office of integrity commissioner. What is that integrity commissioner's role as opposed to an ethics commissioner?

Mr ALLSTON - I think we are probably talking about the same thing. That is what I assumed when Jim was asking the question.

Mr MARTIN - Right. So you do recommend the creation of the office of an integrity commissioner?

Mr ALLSTON - I think what they have done in Queensland in that respect is quite neat. That officer on my understanding is a retired senior lawyer. I do not think he is a retired judge. He works a couple of days a week, develops up codes of conduct and carries out an educational-type function, promotional-type function and I think that is a very useful thing that we do not have any counterpart of in our State.

Mr MARTIN - The second recommendation you make is that the definition of 'improper conduct' in section 3 of the PID act should be reworded in accordance with the section of the ICAC act. Not having the ICAC act with me, can you just explain what that is about?

Mr ALLSTON - Yes, it is actually explained on page 3, Terry, the third paragraph up from the bottom, where I say that in the ICAC act 'improper conduct' includes a substantial breach of an applicable code of conduct. I know that discussion with the PID act is quite complex, but the essential issue here is that a minister can only be investigated under the PID act - and this is true of an MP as well - if we are looking at criminal conduct, and often you will get conduct which is short of that which deserves investigation.

Mr MARTIN - Absolutely.

Mr ALLSTON - Yes, and that is why that proposal is in there.

Mr MARTIN - Yes, thank you.

CHAIR - On page 6 of your report you note the application for funding was declined without explanation. So was the application for additional funds needed to meet recurrent costs associated with our new case management database. How much cash did you need? I am asking you that question because it is relevant in relation to the costs surrounding what you wanted for this, and then, if there was going to be an expansion of it, the type of costs involved.

Mr ALLSTON - I don't know to what extent it is proper to trawl over what I am dealing with with Treasury at the moment. I don't suppose there is difficulty there, but stop me if you think there is. Treasury is carrying out this review. I have seen the first draft of their report. I have gone back with observations. I don't think my role is properly understood. I was basically saying there - and you might remember this from the Estimates committee - that I thought I needed a deputy, and I have also asked for an additional officer at Level 10. There are a few things intersecting here. The deputy is because I have a lot of roles at the moment, a widespread jurisdiction, and I keep on being asked to take on more. You cannot do justice to all of these different things without some help. At the moment we have a very flat management structure and it seems to me that I would be significantly helped if there was a deputy in there to help shoulder this, especially if this committee's recommendations expected more, if the FOI review demands more of me, and so on. But then aside from that, it seems to me that I need this investigation role. It needs people with very refined skills, so you need quite a lot of seniority in there, and so basically in my request to Treasury in the resources review, just based on what I do at the moment, I have said I think I need a deputy and I need a new band 7 officer, which is the old level 10, so it is quite senior. Then I could make some adjustments in my office, and I would probably look at having an investigation unit, which the deputy

and I would both have a lot of involvement in, which probably includes under the old terms a level 10 and a level 8 officer. I would feel blessed by that, noting that the Auditor-General has 8.5 FTEs to do his discretionary work and I have none, noting that the Victorian Ombudsman, who I think is an exemplar of how an ombudsman should operate in this country, turns out a minimum of six reports a year and is frequently asked by the Parliament and by the Government to look at matters of embarrassment. We do not have that standing royal commission-type function in this State. So it is a small venture in that direction to have just a team of two, with two skilled people like myself and a deputy closely involved.

But then today - and I don't want to steal anybody's thunder - it is quite clear that I am likely to be asked to take on more in the FOI arena, and that again needs separate resources. It also shows how you can get spread thin. It is obvious in a small State like this that to achieve economies of scale you have to give one person lots to do, but you can't get to the situation where you get so many functions and such a disparity in the nature of them that you don't get a good outcome, and that is something that really concerns me.

Mr MARTIN - You mentioned towards the start of your evidence the likelihood of getting additional responsibilities because of the Premier's 10-point plan. Is that right?

Mr ALLSTON - No, that is not what I said. All I know is - and I cannot speak about this too far because it is subject to announcement - because I am the FOI review officer for the State, it necessarily involves my roles, my responsibilities and functions and all I can say is that I can see increased demands in that area.

Mr MARTIN - That was the reference you made to the 10-point plan?

Mr ALLSTON - That is right.

Mr BEST - I think you do a great job, a really good job and I very much appreciate the work that you do.

Mr ALLSTON - Thanks.

Mr BEST - We have had some representations in regard to local government and some of the comments we have had are that it would be great if your powers went a little bit further in some of those areas, other than just administrative functions or making a comment or recommendation. I might be wrong here, and you might correct me if I am wrong, but perhaps it would be good if your powers could go a bit further in that regard and assist with correcting some things in some cases. I am not sure how you feel about that or what your thoughts might be on that front.

Mr ALLSTON - I have not seen any deficiency in that area yet, Brenton, because a council is a public authority under the Ombudsman Act and I do have the power to look very closely at what they do in that jurisdiction. I also have the power to look at them as a result of disclosure under the whistleblower legislation, as I did last year in the case of one council. As Ombudsman, I can make recommendations and I can also go a long way to requiring that they be followed through. At the moment I do not see a gap there.

Mr BEST - We had one witness in camera today, so I cannot really discuss it here without clearing the room and I do not think I will bother to do that. But I think everyone else in the committee is aware of where there could be something.

CHAIR - Simon, I know we are over time. Thanks very much for coming along. Thanks for giving us your expertise. We wish you well.

Mr ALLSTON - Thank you.

Mr LLEWELLYN - Simon, I wish you well with your battle with Treasury. You have my sympathy in that regard.

THE WITNESS WITHDREW.

Ms MARRETTE CORBY WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Welcome, Marrette, and thank you for your submission.

Ms CORBY - I don't think there was a lot in the submission that would have been revolutionary. Whether or not there is or isn't corruption in any organisation, particularly in the Tasmanian Government, I don't believe is necessarily the substance of the issue. The substance of the issue is that it smells as though there is some underhanded behaviour going on. The perception is that there is and we need something to be able stand up and say, 'No, it's not', and we need an authority to do that.

CHAIR - How would that help, as opposed to some of the bodies already in place - the Auditor-General, the Ombudsman, Estimates committees, select committees, Parliament, police, the Press? People can argue there are a number of bodies -

Ms CORBY - I believe all of those institutions have a vested interest in the Government or in some element of the status quo, because of employment, the State Service Act, a whole range of things. They were not set up initially to do that sort of thing. I believe if an independent authority was set up with relevant powers to be able to question the Government and question process about what is going on to ensure that appropriate processes occur, then it would have the authority to do that. If it was given that authority it would then be able to be seen as such, rather than any one of those other organisations that might do a similar thing and come up with a similar outcome but you always think, 'But they have connections to the Government' or they are in some way related to the Government, so what is their vested interest in reaching this outcome?

CHAIR - Do you believe that most people, if not all, in government go there with the belief and intention of doing the right thing or do you believe that people go there with other intentions?

Ms CORBY - I would hope the intention is that. I would like to think that everybody comes in with the right intention to represent the public, to serve the Tasmanian population, to serve their constituents, to serve the public, but I don't know and I can't say that there isn't somebody with an ulterior intention, whether it be self-interest, money or whatever.

CHAIR - In relation to the type of body to be set up, what type of body do you think it should be? Do you think it should have a full-time secretariat and full-time people employed, considering unfortunately the money sometimes runs out, especially in this climate. How do you cope with those conflicting interests?

Ms CORBY - Given the current situation in Tasmania - and I do not want to bring up a whole lot about Jack Johnston, Bryan Green and the pulp mill - I believe an authority needs to be seen to clear up the mess. I don't know whether it could be retrospective. I don't know whether there would be the workload for it to be full-time. If it were to have a look at those things, it would need to be initially full-time and then perhaps reduced. I believe it should probably be part-time in the future, given the workload, decisions made and what processes are being followed. I don't know entirely how an independent body of that nature can be established because a lot of people have different persuasions or

ways of thinking. I do not know how we can get around that but we need an authority that is independent to look at processes and procedures and ensure that what is legitimate is followed.

Mr ROCKLIFF - Do you believe it should also have some sort of educative role as well, particularly for new members of parliament, public service, even extending into local government where there is quite a closeness in terms of pecuniary interest or conflict of interest with planning decisions and the like?

Ms CORBY - Yes, I think that would be a really important role of such as thing, to show that there is some authority and for it to be perceived as such. I think it is really important to educate the community and the public that that is what it is about and what its role is.

Mr MARTIN - Marrette, one of the things that leads to poor public perception about politicians is that of donations to political parties and candidates. Do you think there should be full public disclosure? If so, is there a point where there needs to be a cut-off point?

Ms CORBY - I believe in full disclosure or in publicly funded elections so that we have a limited amount of money and everybody has the same amount of money to ensure that the playing field is level. It would be hard to have full disclosure. It would be hard to determine where the cut-off is. The \$2 donation might seem a bit incidental but if it is not done then somebody could argue, where does incidental stop and who has drawn this line? So I would be reluctant to say we should not disclose the incidental amounts. Somebody could make 20 000 \$2 donations. I do not know where to stop that. I do not know the logistics of revealing it all, and whether having a \$2 donation revealed will make a whole lot of extra work. I do not know the procedure behind that but I believe they all should be open.

Mr MARTIN - Or publicly funded elections?

Ms CORBY - Yes, so everybody is given the same amount. That is it. You have to account for how you have spent it, but that is it.

Mr BEST - The submission that you have given is very comprehensive. Thank you very much for that.

CHAIR - Marrette, thank you for coming along. You have expressed what a number of people have expressed in relation to the need for something.

Ms CORBY - I thought I would not be saying anything you had not heard.

CHAIR - No, it all helps because there have been well over 130 submissions. Thank you very much for both your submission and coming and expressing your views today.

THE WITNESS WITHDREW.