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THE PARLIAMENTARY JOINT STANDING COMMITTEE ON INTEGRITY MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON TUESDAY 30 SEPTEMBER 2014.

Mr PAT ALLEN, PRESIDENT, POLICE ASSOCIATION OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Dean) - Welcome, Pat. Have you received and read the guide that was sent out to you by the committee secretary?

Mr ALLEN - I did.

CHAIR - A committee hearing is a proceedings of parliament which means it receives the protection of parliamentary privilege. This is an important legal protection that allows individuals giving evidence to a parliamentary committee to speak with complete freedom without the fear of being sued or questioned in any court or place out of parliament. It applies to ensure that the Parliament receives the very best information when conducting its inquiries. It is important to be aware that this protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the confines of the parliamentary proceedings. This is a public hearing. Members of the public and journalists may be present and this means that your evidence may be reported. It is important that should you wish all or part of your evidence to be heard in private you make this request and give an explanation prior to giving that relevant evidence.

You have provided us with a submission so I will give you an opportunity to speak to any issues you may wish. There may be some additional information you want to give to the committee. As you are going through, it may be appropriate for questions to be asked.

Mr ALLEN - I take it the committee has read our submission so I will just highlight the parts I think are important. I appreciate your time and apologise on behalf of the assistant general secretary who arrived at work not too well this morning. We have confined our comments to matters directly affecting our members. As you are all aware, we represent more than 99 per cent of serving policing officers throughout the state and we speak with authority on their behalf.

Police in Tasmania are subjected to rigorous scrutiny on a daily basis, more than any other group of employees in this state. They are subject to the highest standards of ethic conduct and our members' conduct is governed by legislation and other matters including the Constables' Oath of Office, the National Police Code of Ethics, the National Police Guidelines for Use of Force, Tasmania Police policy documents, the Police Service Act 2003, the Tasmania Police manual and powers conferred on members by various acts of parliament - local, state and federal.

The Police Service Act provides for governance of the service. I will quote some sections later if you wish me to refer to the ones that are very powerful. It is a very powerful act and the commissioner has almost unfettered authority in dealing with disciplinary issues.

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We have been briefed by the Police Service in relation to their submission. I had another briefing yesterday to see if anything had changed but at this stage it does not appear so. We support the Police Service position. We don't always support do that because we are a union, but we do on this occasion.

We submit that the Integrity Commission annual report clearly shows it is meeting its own objectives. When the was submitted by the parliament of the day in 2009, it was never intended for the commission to be another investigative agency with extraordinary powers as there was no demonstrated need for an entity that mirrored similar organisations in other states.

It is submitted by us that the case studies quoted by the Integrity Commission do not support any notion that their powers should be extended. The one case study commented on by this organisation in our submission to this committee highlights the negative aspect of the commission's involvement in a relatively straightforward matter. It was a straightforward matter when the emotion of the whole thing was removed.

Comments made by the chairperson of the commission in the report are supportive of cooperation provided by Tasmania Police and also shows there is no belief that systemic corruption exists in Tasmania Police. The memorandum of understanding between the two agencies demonstrates the commitment of Tasmania Police to transparency and accountability and our members accept that this is the case for a police officer. It is not a fact of whinging when there too much scrutiny. We accept there has to be scrutiny for what we do. We have fairly big powers and a fairly heavy responsibility put on us by the community.

The lack of own-motion investigations, in our submission, is evidence that the commission does not need any further powers. We are concerned that making all matters a complaint, as such - and this is not having a go at anyone in the commission - is just a lazy method of going about business. I have to ask if there is an issue existing that the commission has to rely on evidence to begin own-motion investigations. In other words, does the reliance on evidence get in the way? That is a worrying concept for police and the community.

The PAT submits that the commission's wanting unfettered access to Tasmania Police databases is not warranted under the current MOU that exists between the agencies. Tasmania Police databases are subject to strict controls and audits on persons accessing the system. Tasmania Police will still know who is accessing them and what they are getting out of them so there seems very little point in going beyond the MOU that currently exists.

The PAT submits there was never any intention displayed by the parliament of the day to set the commission up as a law enforcement agency with all access and powers that come with that role. Commissions in other states have been set up as a direct result of issues in those states. We all know the states I am talking about and I could go through that but I am not going to.

CHAIR - You said the database should not be accessed by the Integrity Commission. Have you any experience at this stage of where an attempt has been made for that to occur, an application by the Integrity Commission to access the database?

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Mr ALLEN - There is a memorandum of understanding where Tasmania Police will get the data out that they require.

CHAIR - That is how it is done?

Mr ALLEN - That is my understanding.

CHAIR - The Integrity Commission make application?

Mr ALLEN - I was speaking to Commander Colin Little before he retired in relation to this and it was done through Professional Standards.

CHAIR - So it is a matter of the Integrity Commission, in your understanding, saying that they wish to access a certain part of that database?

Mr ALLEN - That is my understanding. Anything inside the database that relates to an investigation, Tasmania Police have told me - I am relying on other people here - that they will get the information required. I have seen a lot of my members inadvertently go into the wrong areas and it is like a Spanish inquisition for doing it, and quite rightly so.

CHAIR - I have been subject to that myself.

Mr ALLEN - Commissions in other states all operate at different levels. In our submission, the commission in this state is operating at a standard which the Parliament of Tasmania intended.

I want to say a bit more on accountability and scrutiny. We are subject to the most scrutiny and oversight of any employer in this state, as far as we are concerned. Every decision that is made can be scrutinised by any one or more of the following, and I have listed them all: police supervisors right up to the rank of commissioner; Professional Standards and Internal Investigations; parliamentary inquiries; commissions of inquiry; royal commissions; Magistrates Court; Supreme Court; Civil and Criminal Coroners Court; Director of Public Prosecutions; Auditor-General; Ombudsman; Workplace Standards; Integrity Commission; and the media, the people who really scrutinise everything we do. We are under a lot of scrutiny in relation to how we do business and why we do business.

As to the authority to direct an action on an outcome, I have quoted sections - and I won't go through them unless you particularly want me to - of the Police Service Act, a very powerful act that gives the commissioner at times we think extreme powers but they are there and he is shown in the past that he is more than willing to use them. Personally, I have not seen any problems with him making a decision in relation to members who have made horrible mistakes and to a terminate a person he does not think is worthy of being a police officer.

Ms GIDDINGS - There is a danger in that we think of the current people in those roles rather than the process. I am interested in the process that you would have confidence no matter who the commissioner of the day was - because I think we all have a lot of respect for the commissioner's role - that there are sufficient checks and balances around that role so you could have confidence ongoing into the future.

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Mr ALLEN- It is better than it was when the Police Service Act first came out. I think your party may have made some changes over time in relation to it and that has strengthened the appeal rights. For lower matters there are no appeal rights and you can write all the letters you like but once he makes a determination it is pretty well over, but at this stage we are not uncomfortable with the way it occurs and we would not be uncomfortable if somebody else was in that position. I will be very careful what I say there, of course. We are looking to strengthen appeal rights. That is a matter we have to go through with the Police Service and the government of the day but at the moment with the appeal rights in place we are comfortable with the way it works.

You could have a look at section 44 in the Police Service Act, making a complaint; section 45, registration of complaints; section 46, investigation of complaints; section 48, integrity testing, which is really starting to fire up now, and that includes testing for alcohol and drugs; and section 49, financial statements. They are things the commissioner can do to his workforce as a matter of course. In our submission, quite rightly we are subject to high scrutiny, we accept and are always happy to be subject to high scrutiny, but we will not put up with unfairness or bad decisions and that is what we are here for.

CHAIR - Is integrity testing occurring to your knowledge?

Mr ALLEN- Yes it is. Without quoting any investigation, there was a recent check into the financial situation of someone. As you know, the random testing is taking place. In fact, it took place on Sunday morning after the AFL grand final. That was a very testing time but everyone passed with flying colours, apparently, so that is obviously having some difference to what is going out in the workforce. It may not have in the early days.

They are our submissions. The Police Association of Tasmania is not against the Integrity Commission which still regularly, as far as I understand it, attends the academy and provides training in relation to courses and people being promoted et cetera. We are very comfortable with that level of training provided.

CHAIR - That was a point I was going to raise. The police also have their own training in relation to integrity issues, ethical issues, corruption and all of that as is a part of the training curriculum the police go through?

Mr ALLEN- Yes.

CHAIR - So in addition to that they have the Integrity Commission there as well?

Mr ALLEN- Yes, they do.

CHAIR - The police used to - and I guess it is still the same - sign off on having had all of that training as a part of their curriculum as well. Is that working well?

Mr ALLEN- There is ongoing online training now. We have gone into the purview of the AFP with the online training so it is interfaced. It is not necessarily yearly on integrity but if you face an internal investigation the first thing you're questioned on is integrity issues. It is high in the minds of members and it is high in the minds of the bosses.

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CHAIR - Are members who have been in the service for, say, 10, 15 or 20 years, subject to any further integrity training or sessions with the Integrity Commission, for instance?

Mr ALLEN - If they proceed up through the ranks they will be but not necessarily yearly. I am not aware it is yearly but certainly it is reinforced all the time and members will tell you about training days. Every member will attend one training day every five weeks - well, allegedly; they try to get it done when they have the personnel to do it - and that will go across the whole range of what police do including any changes to legislation and any issues that have arisen out of internal investigations. Everyone gets knowledge of that and everyone learns from it and that's what it's about and that is a great system as far as we're concerned.

I really have no other points to make apart from answering a few questions. The submission is there for your perusal. I wasn't going to attend, I didn't know if I had to or not, but I just thought it might be better if I did, that's all.

CHAIR - We thank you for that, Pat, because it is an opportunity for members to ask questions on the submission you have put in and add to some of the issues you have already discussed with us today. I will open it up to members of the committee for general questions.

Mr McKIM - Thanks for your submission, Pat, and for coming in today. I think I know the answer to this but I just wanted to ask you to give you an opportunity to make it clear. On my reading of the submission would it be reasonable to say that the Police Association is not arguing for a reduction in the Integrity Commission's investigative powers but that the powers should not be increased? That is a correct summary, isn't it?

Mr ALLEN - Yes, that is correct.

Mr McKIM - Thank you. I just wanted to ask a couple of questions about access to the database. That is governed, as you have just informed the committee, by an MOU?

Mr ALLEN - Yes.

Mr McKIM - I think you said in your submission that you don't necessarily support all aspects of the MOU. It is not my intention to drill down into the specific details of the MOU today but what specific concerns would the association have if the Integrity Commission were granted access to the database?

Mr ALLEN - It is as simple as. Every time our members go in there is a path to what they have done.

Mr McKIM - Like a record?

Mr ALLEN - Yes, a record of where they have been, what they have seen, what they grabbed out and why they grabbed it out basically, and if you can't answer any of those questions then you are going to be hurting for a little while, if not lose your job, and quite rightly so. Who watches the watchdogs in relation to what is going on with that? It is a big concern to our membership in relation to it as to what is being accessed, why it is being accessed -

Mr McKIM - Do you mean currently or if the Integrity Commission -

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Mr ALLEN - If the Integrity Commission, yes - what will be accessed and why it will be accessed. If we go back - I think you were there at the time - to the second reading speech as to why it was set up, we didn't oppose the setting up of this Integrity Commission in any way, shape or form.

Mr McKIM - No, that's right.

Mr ALLEN - In fact, you would probably find that the executive back then supported it wholeheartedly.

Mr McKIM - I was on the committee that recommended its establishment and, from memory, that is correct.

Mr ALLEN - We haven't changed our position in any way, shape or form but we just don't believe in this state that the expenses need to be put into that type of commission at this stage because there is no proof of any systemic corruption. Don't get me wrong, members make mistakes, some more critical than others, and it is obvious -

Mr McKIM - So do politicians.

Mr ALLEN - I wasn't going to go there, not in this place - that is dangerous ground to go on, I would have thought.

Laughter.

Mr MULDER - I think it should be clarified that Mr McKim meant 'other'.

Mr McKIM - Sorry, Mr Allen - carry on.

Mr ALLEN - That's all right. We still support the Integrity Commission doing what it does at the moment. We have no fear of the Integrity Commission doing what it does at the moment and our members have no fear of it. What we are concerned about and what does go on at the moment is that a lot of time is taken up and, without going into it, I will refer back to the case I quoted in here, and we all know of the situation. I don't want to say it out loud but for the people involved in that there was a clear question of law, which was did they have the power to do it, and they did.

Mr BARNETT - Are we talking about the recent case into allegations of nepotism and conflict?

Mr ALLEN - No, I mentioned the strip search of a minor. Why were we bogged down in a matter of law? Why, when the member was clearly above and beyond reproach in the way they dealt with it, yet this is tied down for ages. These members are put in a position of going back and forth between the commission and the Police Service, that is my understanding of what happens, and this got totally out of control when it was a matter of taking it before the Parliament and saying, 'That won't occur again.'. Why didn't that happen? It got tied up in the Integrity Commission and as of January, as far as I was told - and I am in the hands of the Integrity Commission with this - that still had not been

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settled. How long ago was that matter? We can't afford to be bogging down police in that sort of situation, when some of us around the room are happy to cut police.

Mr McKIM - Isn't that part of the price you pay, though, Mr Allen, for providing the community with confidence that allegations of that type are thoroughly and independently investigated?

Mr ALLEN - Absolutely, but why does it take so long? It just takes far too long. Our submission is that that matter could have been looked at pretty quickly.

CHAIR - The database gives access, as I understand it, nationally.

Mr ALLEN - Yes, that's right.

CHAIR - It is a national database, so we're not talking about just a state database.

Mr ALLEN - There are two separate ones. There is the state one and through that system you can move into other areas and other systems.

CHAIR - So if, for instance, the Integrity Commission had the right to access the state database would that give them access or would that be a separate application?

Mr ALLEN - That would probably be a separate application.

CHAIR - So it would need to a split situation.

Mr ALLEN - I'm guessing, because I don't know -

CHAIR - We can follow that up with the Police as well.

Mr MULDER - I would like to put up something Mr McKim asked a while ago in relation to whether you are arguing, or not arguing as the case may be, for the removal of the commission. I accept that nowhere do you say to scrap the investigative arm of the commission but I think things have moved on a bit. Would you see any loss of functionality or oversight so far as your members are concerned if the Integrity Commission didn't have an investigative arm to look at issues? You don't argue for its removal but would you argue for its retention?

Mr ALLEN - As long as training processes were put in place for our members to be trained in this.

Mr MULDER - No, we're not talking about that side, we're talking about the investigative side.

Mr ALLEN - No, we wouldn't argue against its removal.

Mr MULDER - In terms of your submission I don't see, apart from the educative function, that it has added any value, so your view about whether you thought the commission's oversight of Professional Standards, for example, I don't see has added any value in the case studies or hypotheticals we've discussed.

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Mr ALLEN - This year, and as recently as yesterday when I spoke to Commander Bond, approximately 7 per cent of decisions made by the Police Service have been questioned, and it is all subjective. The only value when a subjective submission is made and then goes back and forth and they fight over it is that it makes people think about what is going on, but I don't see it would change anything. Internal Investigations, Professional Standards and the people high up in the organisation are very aware and very much want a clean image for the Police Service, there is no doubt about it. I don't think the investigations would change in any way, shape or form. There would still be a Spanish inquisition when you went in for the most minor of offences but we accept that is what we do.

Mr McKIM - Mr Allen, you said you would not argue against the removal of the investigative function of the Integrity Commission. In that scenario, would you be happy for your members to investigate allegations against the commissioner? I ask that question not in relation to the person in the role, just in terms of the role.

Mr ALLEN - We're into history here, aren't we?

Mr McKIM - No, I'm just asking a hypothetical question. Would you be happy for your members to investigate allegations of corruption against a commissioner and do you think the public would have confidence in Tasmania Police with officers investigating the commissioner who may have their careers determined in the future by that very person?

Mr ALLEN - The quality of the people who do those investigations is, in my humble opinion, beyond reproach. That has been proved in the past where, even with the allegations that were made in relation to threats, they were very capable of doing their jobs and they would be capable of doing so in future. You have to understand the quality of the people that I represent.

Mr McKIM - I understand that. Do you think the community would have confidence in the police investigating themselves?

Mr ALLEN - I don't see why they wouldn't and couldn't, especially on the history.

Mr McKIM - So you don't see any potential conflict or perceived conflict there?

Mr ALLEN - No. There are other organisation outside Tasmania Police that, if it really got that serious, you could bring in and do it.

Mr McKIM - Who is that?

Mr ALLEN - AFP.

Ms GIDDINGS - On a case-by-case basis.

Mr ALLEN - Yes. There is no reason they couldn't be called in and other investigators from other states called in and given power to do it. We have commissions of inquiry. I know they are expensive -

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Mr McKIM - And unusual.

Mr ALLEN - Yes, but lower levels of that. There is plenty of evidence to show that Tasmania Police will look at things openly and transparently.

Mr McKIM - Yes, I am not impugning any member of your association, Mr Allen -

Mr ALLEN - I understand that.

Mr McKIM - but I want to follow this through a little bit. In your opinion, there would be no perception of a conflict there and you have used the example of potentially calling another investigative authority on a case-by-case basis.

Mr ALLEN - There is a potential for anything, Mr McKim.

Mr McKIM - Yes, there is, but who would make that decision in terms of the need or otherwise to call in a third party or another investigative authority to investigate a serious allegation of corruption?

Mr ALLEN - That would be determined by people below the level - are you talking about the commissioner?

Mr McKIM - Hypothetically, let us use that example.

Mr ALLEN - It would be determined by the SEO.

Mr McKIM - The SEO?

Mr ALLEN - The group that sits over the Police Service.

Mr McKIM - Sorry, I'm one of the few at the table who hasn't served in Tasmania Police, Mr Allen.

Mr ALLEN - The management group, commanders and above. It will be made at commissioner level. Under the act, the minister has governance of the Police Service.

Mr McKIM - I understand and that is where I was going because, ultimately, wouldn't that then become a political decision for the minister of the day?

Mr ALLEN - Political decision? Everything is a political decision.

Mr McKIM - Wouldn't that then become a decision that was made by the minister of the day?

CHAIR - I am wondering whether this is fair questioning of the president of the Police Association of Tasmania. I think we are probably getting beyond that at the moment and we need to be very careful and fair to the witness.

Mr McKIM - I don't mean in any way to be unfair to Mr Allen. If he believes I am being unfair I offer him the opportunity to say so but what am doing, Chair, is following through what, to me, is a logical line of questioning. We have had a submission from the

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Government that they want to remove all of the investigative powers and functions of the Integrity Commission. That is on the table and out in the public. Mr Allen said that the Police Association would not argue against that in the evidence he has given to the committee today. I am now exploring a scenario whereby the Integrity Commission has no investigative powers or functions and asking what I think are reasonable questions about how certain scenarios would be dealt with.

CHAIR - As to how the Police Association would respond to that position, I am not answering for the witness at all but as president of the association he represents all police officers. It may be more appropriate to ask whether or not this has been discussed with the membership, for instance. I doubt that would have happened but maybe it has.

Mr McKIM - I will give Mr Allen the opportunity to answer.

Mr ALLEN - Would the minister of the day make the decision? More than likely, and I see no problem with that. I do have to take that part to the members because it has not gone that high, but I am happy to do that.

Mr McKIM - I appreciate that.

Mr MULDER - I do pick up your point. Mr Allen is here representing the members of the association and I think sometimes to ask him questions about his view of the law at the moment is a little unfair. The law is the law and that is what his members are required to follow.

Ms GIDDINGS - When you say in a sense you do not need the Integrity Commission and its investigatory powers, on what basis are you saying that? Are you saying you think the Ombudsman's role is sufficient to cover these sorts of areas of complaint from the public or do you agree that the reason the Integrity Commission was established was because there were gaps around those various Auditor-General and Ombudsman roles that needed filling with the umbrella of the Integrity Commission? Are you saying no to the Integrity Commission because of your frustrations with time delays? You pointed to one case study where there has been delays in the investigation. I think that is a frustration I have heard in other cases as well.

Mr ALLEN - That is correct, and there is more than one case. That is just the one I referred to.

Ms GIDDINGS - On what basis has your membership come to the conclusion that we could do without an Integrity Commission?

Mr ALLEN - Remember I am sitting here arguing about the extension of powers, and for me that is what this submission has been about. That is what the membership has spoken about and discussed at meetings. This notion of getting rid of the Integrity Commission is recent. I had not heard that until I walked into this room -

Ms GIDDINGS - Could we ask you to go back to your members and ask them whether or not they think the Integrity Commission should go?

Mr ALLEN - I am absolutely happy to do that.

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CHAIR - In fairness to the witness, the submission from the whole of government was only received by this committee two or three days ago. It is probably now on the website I think but with the greatest respect to members here, the president may not have read that and I think a lot have not read it at this stage.

Mr ALLEN - I have not but I will.

Ms GIDDINGS - We would be interested to get your views on that.

CHAIR - Perhaps the president will now look at that submission and the committee may want to recall him to answer further questions on that. I think that might be a way to go.

Mr MULDER - Chair, I want to clarify that. We are asking Mr Allen to go back to his membership and obtain their views on removing the investigative functions as proposed by the Government and come back to us with a response. I am wondering whether we need to recall Mr Allen or whether a letter from the Police Association on that issue would be sufficient?

Mr BARNETT - Point of order, Chair. We have heard evidence from the witness this morning and he has expressed a view with regard to the investigative powers of the commission. It is a matter for the witness to put forward further evidence which contradicts his evidence this morning. I do not think you can push or direct the witness how to -

CHAIR - I do not think it is a point of order. What we have said is there has been a submission made by whole of government in relation to this matter and that is now on the website. The president has not yet read that submission, and we are saying that once he has read that he may want to discuss it with his membership. You are right, we may not need to recall him; it may well be that he can answer that in writing back to the committee and the committee would make a determination from there.

Mr BARNETT - The witness may have nothing further to add to the submission he has made. He has put thought and effort into his submission, he is speaking to us about his submission and we are asking him questions about his submission. If he has something further to add, so be it.

CHAIR - This is a matter we can deal with afterwards in our own session. We don't need to discuss it further here.

Ms GIDDINGS - Chair, I believe it is very important to establish that a request has been made for Mr Allen to go away and have a look at the government submission and a request has been put that he comes back and tells us what the position of the membership is in relation to this.

CHAIR - The committee will need to resolve that position which we will do at a later stage today.

Mr MULDER - I would see it is a fairly simple, straightforward question and we could always take it back as a letter. If we wanted more information we could call him back, but we can have that discussion later on. I have nothing further except to highlight once again that

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the submission this witness made related to extension of the powers of the commission. All other matters are outside his brief of evidence and we need to think about that when we are asking questions.

Mr BARNETT - Thank you very much, Mr Allen, for your comprehensive and extensive submission. It is 12 pages long and you have obviously discussed it with your membership, thought about it and pulled it together. It seems comprehensive and professional, is that right?

Mr ALLEN - Correct.

Mr BARNETT - I want to take you to your opening remarks. You've said there is no belief of systemic corruption in Tasmania. Can you expand on that view?

Mr ALLEN - Inside Tasmania Police?

Mr BARNETT - Yes.

Mr ALLEN - I don't believe there is. What else can I say? It is proven that there's not.

Mr BARNETT - You said in your submission that the Integrity Commission's own website describes the role of the commission and then you refer to those three dot points which talk about the standards of conduct, ethics and enhancing public confidence in the quality of ethical conduct through a strong educational preventative and advisory role. Do you believe that is the key objective of the Integrity Commission?

Mr ALLEN - A key objective. That's the way it reads on their own paperwork and one they are clearly meeting.

Mr BARNETT - Do you think that's an important role for the commission? Is that a substantive objective? Is that the key objective for the commission? You say it's meeting its own objectives alongside the principles laid down by Parliament which underpin the formation of the commission.

Mr ALLEN - Yes.

Mr BARNETT - Those three dot points summarise the objectives of the commission, from your point of view, the importance of education awareness, improving standards of conduct, propriety et cetera?

Mr ALLEN - Yes.

Mr BARNETT - There are different roles and functions of the commission at the moment. We have that education awareness, promoting confidence in the community, and then you've got the investigative role, which is a different role. Do you agree it is a different function for the commission to the education and awareness role?

Mr ALLEN - Yes, absolutely.

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Mr BARNETT - The evidence you have just been sharing with us is that you believe the focus should be more on education and awareness rather than the investigative functions of the commission?

Mr ALLEN - Yes. If we look at integrity-style commissions around Australia that were set up for specific problems in specific states there were some fairly bad issues in some states in relation to not only police - and we can see what is going on in New South Wales at the moment - but this was set up for a whole different reason. As Lara said, it was set up to grab some gaps that were there. One of the gaps, outside the Police Service at the time, was that not many people understood much about integrity and the problems that can occur in government agencies if you don't have some sort of oversight. As I say, we have the Police Services Act specifically that will kick the butt of any police officer who goes outside of what they should do and some pretty strong powers with the Commissioner of Police.

Mr BARNETT - You feel as though you have the investigative powers within that Police Service Act to do the job?

Mr ALLEN - Yes, absolutely.

Mr BARNETT - And you don't need this at the Integrity Commission level?

Mr ALLEN - No.

Mr BARNETT - You also say on page 4 of your submission at point 5 that:

There appears to be a concerted effort on the part of the Integrity Commission to show that extra powers are needed to investigate Tasmania Police.

Could you expand on where you think there is a concerted effort for the commission to expand their powers and on what basis are you sharing that view with us?

Mr ALLEN - On the basis of the case studies that were referenced in the commission's submission. When you look at all those case studies Tasmania Police refuted a couple of those and, in their own words - and I am sure they will speak on this - the commission made some glaring errors. Now that happens, but there has obviously been some argy-bargy in relation to it and it has all been sorted out but, at the end of the day, to refer to the case studies that were used I, my members and certainly the executive of the Police Association feel that that was just a way to try to bolster the commission with the investigative powers to turn it into a commission like the mainland have.

Mr BARNETT - That is right, and you have said in your remarks - and I think you are pretty strong about it - that it was never designed as a law enforcement agency.

Mr ALLEN - No, it wasn't.

Mr BARNETT - And you strongly believe that?

Mr ALLEN - I do strongly believe that.

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Mr BARNETT - Like we have on the mainland at a federal level?

Mr ALLEN - I strongly believe that was not the case. They were not given the powers of a law enforcement agency and it is proven at the moment that they don't need the powers of a law enforcement agency.

Mr BARNETT - And you don't think we need it in Tasmania?

Mr ALLEN - No.

Mr BARNETT - In your opening remarks you also referred to the 'lazy' method approach by the commission. Can you expand on what you mean by that?

Mr ALLEN - Yes, I can. This is not having a go at anyone inside the commission but it is really easy to focus on Tasmania Police because when you get the file you have everything done, it is as simple as that. All the work has been done, everything has been put into it, so you can sit there and it is like anything with policing, I suppose - and I will do a little bit of whingeing here right now, having been involved for the last 34-35 years - the decision you make in a couple of seconds can be ripped apart over months and years by committees, by different areas, all the ones I referred to, including my friends over there in the media. You can be ripped apart by all that. Our investigators go in and do all the work, present all the files, do it properly and fairly and put it all up, and for the commission then to be able to nitpick at little decisions is lazy investigating. That's just laziness, pure and simple.

Mr BARNETT - Do you think that is part of the way they operate because of the functions they are undertaking, or what is the reason for it?

Mr ALLEN - I just think it is easy to target those that have done it all for you, it is as simple as that. You can grab every police internal investigation file, the reports on them are extensive. I have a member at the moment who has been suspended for coming up to 12 months and everything goes back and forth and back and forth and it is just harsh on the people who are involved.

It's just a lazy method. It all gets done for you and it all gets presented to you, and then they can say there's a little bit of a problem here or somebody can ring up and say that the police have lied or something like and they can just get a little part of the full investigation and start ripping into that, and then it goes back and forth and the time takes longer. If you've never been under an investigation you'll never understand what it's like. That goes for alleged criminals, too; they shouldn't have to put up with the time frames that are there.

Ms GIDDINGS - I know you are here specifically talking about the police perspective and at the time we formulated the legislation there was a lot of discussion with the Police Association and the Police Service to try to get the balance right in terms of police. I hope we hear back from you in relation to the role as to whether an integrity commission is required per se.

Mr ALLEN - I make a commitment that will be done.

PUBLIC

Ms GIDDINGS - That would be very useful, thank you. The Integrity Commission is not aimed so much in that respect at police as it is the broader public service. At the moment you have the option of complaining to the secretary of a department or going to the Ombudsman if it is relevant within the scope of power of the Ombudsman to investigate, but there was previously a gap in relation to these.

Do you agree that perhaps when the Integrity Commission receive quite a number of complaints each year and they break those down to hundreds which say 'no further action required', they are insignificant, or they triage to say, 'Send that back to the secretary, it is of a lower level nature so the secretary should be able to deal with that', or do they believe the Integrity Commission themselves should investigate? At that end there is a very small number that end up being investigated by this independent body. If that role is removed, who will do the investigations? Who will oversee those more serious issues? Do you have confidence, as you do in the police commissioner to do it for police, that the public service, secretaries or others, will undertake those investigations and root out any problems that might be there?

Mr ALLEN - They are given the power to do so. However, I cannot comment on their act and what their powers are compared the commissioner. I guarantee they will not be anywhere near the powers of the Commissioner of Police and maybe that is something that should be looked at.

Ms GIDDINGS - Do you think the perception versus reality is an important issue for decision-makers, governments and parliaments to be concerned about?

Mr ALLEN - Within reason. The perceptions of some in the community, and it is not always the majority, can be quite loud and you can be taken over by that. I see that inside the Police Service all the time in relation to a lot of matters and inside the union, the perception of the members taking over. This can happen and it can be the minority, while the solid majority just gets on and understands things are happening the way they should. Like I said originally, I'm talking police only and I don't want to concentrate on the public service because I don't represent those people and whatever I say could offend them.

Ms GIDDINGS - Okay. I put a caveat that when you talk to your membership about whether an integrity commission is required that they also consider it in terms of not just from a police perspective but more broadly because, to answer that question either way, yes or no, impacts outside of the Police Service. That is my point. If the Police Service was to come out and say, no, we do not need an integrity commission at all for anybody, that is a very powerful message.

Mr ALLEN - I would imagine it would make the Police Service very busy after that because who else would you rely on for the investigations?

Ms GIDDINGS - That is right.

CHAIR - It would have been an easier question for Mr Allen to answer if an example of those cases that are dealt with by the Integrity Commission are completed by the Integrity Commission. In other words, without knowing what those cases might be it is a difficult question to answer in the circumstances as to where it would go and who should handle it.

PUBLIC

Mr McKIM - Mr Allen, you said in your submission at the bottom of page 3 that the parliament of the day clearly accepted that the role of the commission did not include the fact that it would be another large-scale investigative agency, but isn't it the case that Parliament did foresee an investigative function for the Integrity Commission and created it with investigative powers?

Mr ALLEN - I wouldn't call it an oversight but, yes, there are investigative powers there.

Mr McKIM - What I am trying to drill down to is that you said in your submission that the parliament of the day clearly accepted that the role of the commission did not include the fact that it would be another large-scale investigative agency, but it did foresee it being an investigative agency because the Parliament created investigative powers for the commission?

Mr ALLEN - They gave it some investigative powers, yes.

Mr McKIM - I want to go back and ask a final question on access to the database. In the association's view, or in your view, is it possible to create a framework for the commission to access the database? I am talking about protocols and procedures around that access. Is it possible to create protocols and a framework around the commission accessing the database that would satisfy the concerns the association has?

Mr ALLEN - Anything is possible.

CHAIR - I have a question going back to the strip search you referred to in your submission. Was Professional Standards undertaking an inquiry into that themselves?

Mr ALLEN - They didn't start off an inquiry, as I understand it. It was spoken about at higher levels and no law had been broken, but it then turned into a Professional Standards inquiry because of everything that occurred outside it - the media et cetera. A decision was made at a very early stage that the police officers involved hadn't broken any laws, and that was the basic thrust of everything that was going on. Whilst it was all very emotional in the media, they hadn't broken a law. The one place that could have been taken to was parliament to be sorted out, if that is what they wanted to do, but it was turned into a major event for a long time for a lot of people.

CHAIR - You're saying you're still not aware of a result on that?

Mr ALLEN - No, I am not. I am not saying it hasn't happened but it hadn't when I made this submission on 14 January when I spoke to the ex-commander of Professional Standards.

Mr MULDER - Given your submission regarding the role of other oversight bodies, does the association - and I suppose you speak on their behalf without consulting them - have a high level of confidence, and should the public continue to have a high level of confidence, in the oversight of police internal investigations that currently occurs through the Office of the Ombudsman?

Mr ALLEN - There shouldn't be any problems with the way that occurs. It's not only the Office of the Ombudsman, it also goes to the DPP. More of those investigations go to the DPP for them to have a look at. There is a lot of oversight on everything we do.

PUBLIC

Mr MULDER - You're quite satisfied outside the Integrity Commission of all the oversight that occurs and the public should also have confidence in that?

Mr ALLEN - Very much so, yes.

Mr BARNETT - I'm not sure if you had a reflection on the report that was tabled in the Parliament on the investigation into the allegations of nepotism and conflict of interest, the due process in terms of that report, and whether there are ways to improve the protection of people's reputations that may or may not have been identified in the report, ensuring they are able to provide a defence or response to the allegations made and the findings provided in the report.

Mr ALLEN - I haven't studied the report in depth.

Mr BARNETT - But you are aware it does not include their response or feedback?

Mr ALLEN - Yes, I do.

Mr BARNETT - Do you have a view as the head of the Police Association about due process?

Mr ALLEN - I have a view of due process and fairness, and there is none there.

Mr BARNETT - As to that report and investigation, are you saying there was none in that report or process?

Mr ALLEN - There is going to be open action in the courts in relation to this, isn't there?

Mr BARNETT - We don't want to get into that but I'm just talking about the process.

Mr ALLEN - If my members were involved in that, I wouldn't have seen there was a lot of fairness given in relation to it.

Mr BARNETT - In terms in the process of them having the opportunity to respond and put their points of view forward -

CHAIR - I will call you to order here again. I think questioning of this witness in relation to a report that does not involve the police in any way at all needs to be treated with some care unless the president of the association is able to say it has been discussed with the membership and the membership has a position on it. We need to be fair to the witness in that regard.

Mr BARNETT - That is a very good comment and observation, Chair, I appreciate that. I think the witness is reflecting that if his members were involved in such a process he was suggesting it would not have been fair, so can you elaborate on that?

Mr ALLEN - The investigation was lacking, that's about all I can say.

Mr BARNETT - In terms of protecting rights to natural justice?

PUBLIC

Mr ALLEN- Exactly.

Mr BARNETT - All right, we will leave it there. I know we have the Integrity Commission coming in next and we will be asking them questions about that report. Thank you.

CHAIR - It has gone past the time for this witness so unless there are any issues that have not been discussed that are important to members I will call time. Thank you very much for your attendance today, for the submission and the way you have answered the questions which the committee will take into account in its final deliberations. We are hopeful of providing a report to the Parliament by the end of this year, it is going to be a pretty tough ask of us but that is what we are wanting to do to get our position known to the Parliament in relation to this matter.

Mr ALLEN- May I ask about a time frame for Lara's request?

CHAIR - The committee will meet again next month, we are setting a date for that now, so if we could have an answer back within three to four weeks that would be suffice for our circumstances. Three weeks would be great. Is it possible to come back within about three weeks?

Mr ALLEN- Yes, I will start branch meetings this week.

Mr BARNETT - Chair, what are we asking of the witness?

CHAIR - The report on their view of the government's submission in relation to the Integrity Commission.

Mr MULDER - I suggest the terms of this ought to be in a letter asking what we want to know to the association.

CHAIR - We will discuss that following the witnesses today.

Mr ALLEN- Thank you, Chair.

CHAIR - Thank you very much.

THE WITNESS WITHDREW.

PUBLIC

Ms DIANE MERRYFULL, CHIEF EXECUTIVE OFFICER, AND **Ms GAYLE JOHNSTON**, GENERAL COUNSEL, INTEGRITY COMMISSION OF TASMANIA, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Welcome. I think both of you were present when I read the position and obligations under which you appear here today. Parliamentary privilege is provided whilst you are here in this committee but once you leave this room it is no longer the case. It is a public meeting and it is being recorded for *Hansard*.

Diane, we have received two submissions from you in relation to this matter before us today so I will give you the option at this stage to go through and make any further submission you would like to make, add to or emphasise any points of your submission and then we can open it up to the committee but as you move through it may be appropriate for members to butt in and ask any questions rather than go back through it again.

Ms MERRYFULL - Yes, it would be good to have a dialogue. Our main submission has been in front of the committee for almost 12 months so I will not go to that in detail at this point in time. It might be more appropriate for me to just make some general comments particularly about the Government's submission and make some specific comments about some of the evidence that has been put to date and you can interrupt me about that and ask me some further questions and then we will take it from there. How does that sound?

CHAIR - Yes, that sounds great.

Ms MERRYFULL - We are really grateful to have the opportunity to appear before the committee. We all remember when the Tasmanian Parliament enacted the Integrity Commission Act it understood that it was a new body exercising a new jurisdiction and therefore would be essential to keep its powers and its functions and its operations under review. The Parliament determined that these reviews would be at arm's length from the Government and the agencies which would be under our jurisdiction. The Parliament was clearly concerned that the reviews of the commission would be non-partisan, non-political, considered and balanced, thus we have the set-up of this committee which represents all the major parties as well as the independents from the upper House.

The Parliament entrusted the first review to this committee and also considered that a second review would be necessary after five years which was to be entrusted to an independent judge. The commission is committed to providing as much information or assistance as it can to this review and the five-year review, however, having now seen the Government's submission to the review it is clear to us that the Government is not interested in a review of the commission, it is only interested in dismantling it. It wants to take Tasmania back to the old days and once again put it behind every other state in the country.

The Government's submission is long on rhetoric and short on evidence. It makes it clear that in general it does not favour or like integrity bodies and uses terms such as 'a proliferation of integrity agencies' and 'expensive and expanding integrity industry' and it says integrity bodies can create their own culture of complaint.

PUBLIC

From our perspective, it is no coincidence that as soon as the Integrity Commission starts to get some runs on the board in respect of its investigations as it starts to put information out into the community about the misconduct it is finding, the response is to shut it down. How can the community be assured that misconduct is going to be dealt with if it is all going to go back behind closed doors just like the old days?

The Government's submission will put the Tasmanian community in the dark about misconduct in the public sector. I remind everybody that 89 per cent of those we surveyed in our last community perception survey said that Tasmania needs an integrity commission. Those people were not talking about an education body; they were talking about an independent body that can have the confidence to fiercely tackle misconduct in the public sector.

I am sorry, but the idea that we can leave it to the employers to deal with this is both naive and self-serving. The fact is that employers cannot and will not always deal appropriately with misconduct. I don't understand why the Government thinks the Tasmanian public sector is better than its state counterparts that deal with misconduct, that it has a modern, shiny public service that does not need a corruption commission, unlike New South Wales, Western Australia, South Australia, Victoria and Queensland. It does not explain why the Tasmanian public sector does not need extra assurance that comes from an integrity agency, but those other jurisdictions do.

The Integrity Commission will deal with matters because it is not afraid of being embarrassed. It does not answer to a minister and it does not deal with the problems that arise by paying people off and closing the door. The commission has the skilled investigators and the power to get the evidence that is needed to uncover misconduct. Remember, our report to parliament, if it shows anything, shows that misconduct is not always dealt with appropriately. You will remember from the report to parliament the reference to the internal audit that was done that did not uncover misconduct. Only the Integrity Commission uncovered that misconduct.

There are plenty of other investigations we do that we do not always report on. I know a lot of emphasis has been given to the report to parliament but a lot of the work we do is not reported on. We can get information that agencies simply lawfully cannot get. Who is going to get that information if we do not? How would allegations of misconduct against ministers be dealt with under the proposed government regime, who would do that?

The Government's submission suggests the commission should have some kind of quality assurance over investigations as a way of ensuring the employer does the right thing. Our submission refers to our lack of capacity at the moment to follow up on investigations that are done internally, except to audit them. I am happy to give an example to the committee at some point about a recent audit we did of a departmental investigation where the response of the departmental head was simply to say, 'Oh well, I've noted your views', even though we found a number of deficiencies in their investigations.

If the Government is concerned about the way the commission is operating or concerned about whether its evidence is being able to be used then fix the problem, fix the blockages, but don't abolish the commission's investigative function. Clarify the areas of the confusion, improve the processes, but don't abolish the important work we're doing.

PUBLIC

I could spend a bit more time talking about the Government's submission but I want to deal with some the evidence that was given by the committee because I am sure you want to ask me some questions about that.

Regarding the Law Society's evidence, with the greatest respect to the Law Society, I think they were a bit confused in their submission because on the one hand they talked about the right to silence and on the other they talked about the ASIC model where you would be able to compel evidence but not have it admissible. The president clarified that in his evidence where he said that it would be one or the other, and we absolutely agree that the idea of compelling evidence but making it not admissible is the right way to go. That is the way the other commissions do it and it solves all those problems of claiming privilege.

CHAIR - I think Mr Mihal said it should be protected - that was the word he used.

Ms MERRYFULL - Yes, what they call derivative use immunity from the evidence that is given. That makes it easier for everybody. You get the evidence but it is not able to be used in criminal proceedings.

In relation to notices, I have brought some template notices along with the information we attach to the back of those notices. This is just a template notice so you can see what information is given to people who get a notice. We made a submission to the committee that the investigator should not make the decision to issue a notice, it should be the CEO. That was one of those matters the committee deferred to consideration without supporting it at that time.

No investigator issues a notice without me signing off on it. I am a legal practitioner of more than 30 years' standing. The general counsel also looks at all the notices before they are issued and she is a legal practitioner of 15 years' standing. It is not practical for the chief commissioner to look at all his notices because he works part-time, he is the chair of the board and he doesn't involve himself in operational matters. We provide that disconnect between the board that looks at investigations when they are completed and the operational side of the business.

The Law Society said that notices should be proportional to the investigation and only issued to the extent necessary to conduct the investigation. There is no evidence that we are not doing that. We do that. Notices are important to the person giving the evidence. There seems to be this idea that people are reluctantly receiving notices. Agencies like to receive notices because it relieves them of any legal problems they might have with giving us the investigation. It protects people to get a notice. They are not breaching confidentiality or the personal information requirements and it helps people make the decision to give evidence. If you just go and have a chat to people they may not be confident or comfortable talking about their fellow employees, but if you tell them they must talk to you, that relieves them of that burden of guilt of possibly dobbing in their mates because they know they have to give evidence.

I don't agree that having a chat to people is a good idea because they may give incriminating evidence about themselves and if they haven't been served with a notice and had the opportunity to have legal representation they could say something they might regret. It is not true that there is discretion around people having legal representation.

PUBLIC

When the act says a person 'may' have representation, it means they are allowed to have representation. It doesn't mean I decide if they have representation.

Ms GIDDINGS - I don't think he was saying that, I think he was saying there was pressure around it to say, 'You don't need it. You've got the option of having it but you don't really need it. I'm just here to ask you some questions about Gayle. I'm not really here to ask questions about you, Diane'. His view was his concern for you in the scenario, that you would then feel you shouldn't get legal representation because you didn't really need it. His feeling was that you should be more encouraged to get legal representation than discouraged.

Ms MERRYFULL - We don't discourage people from getting legal representation. He asserted he had a couple of clients who might have said that. What happens usually is the person will say to the investigators, 'Do I need a lawyer?', and the investigators have to say, 'I can't tell you what to do. I can't give you legal advice', so they have to make that decision for themselves about whether they need legal representation. We have come under a bit of pressure about telling people they are 'just a witness' and that they are not the subject officer. We resist that pressure as much as we can because people may incriminate themselves; they may somehow be involved but they don't realise. It is better that everybody be cautious. We think they all should have a lawyer; everybody should think seriously about bringing a lawyer along because they may not know the extent of what we know or how they are connected to what is going on. I can talk about legal representation a bit more because there is some work that has gone on in that space, in the state sector at least.

Mr BARNETT - They gave evidence to us that there was the perception, real or otherwise, that they weren't encouraged to have a lawyer.

Ms MERRYFULL - We don't encourage or discourage people. We say, 'Here is some information, you must make your own decision'.

It was not an oversight that the provisions of the Evidence Act have not applied to the work of the commission. That is consistent with every other integrity agency. The Evidence Act is about how to get admissible evidence. We are not about getting admissible evidence for court proceedings, we are about uncovering misconduct.

I have talked about representation. The Law Society's view is that I should be able to certify costs for a tribunal matter without going to Taxation. I'm sorry, it is taxpayers' money so if I get a bill from a lawyer I'm going to send it to Taxation to make sure taxpayers' money is not just handed over on the presentation of a bill.

Ms GIDDINGS - So you don't think you would have the expertise to do that taxation process yourself, you would still need the Supreme Court to oversee that?

Ms MERRYFULL - Yes, particularly when the kinds of matters they are talking about at a tribunal hearing would be quite expensive, I would prefer a taxation of costs. We have had legal proceedings ourselves. Somebody sued us and we went to Taxation and at least everybody can accept what the Tax officer says. It is independent. I am quite careful with taxpayers' money.

PUBLIC

I absolutely wholeheartedly agree with the CPSU that the relationship between the Integrity Commission and employment direction 5 needs to be clarified. We have tried and tried to have this addressed. We have had numerous interactions with the State Service Management Office about ED5 and trying to get it to take account of commission matters. It is important to remember that an ED5 is simply a document the Premier signs; it is not law or a regulation. It can be changed with the stroke of a pen. All these problems the Government submission refers to, which only apply to the State Service, could be solved if people would do something about ED5. One of the commission's functions is 'to gather evidence for proceedings for a breach of the code of conduct'. Parliament told us to do that, so Parliament clearly intended that our evidence would be used for breaches of the code of conduct. Whatever blockages there are because of ED5 can be fixed by amending ED5.

Mr BARNETT - Is that what you think should happen, that ED5 should be amended to provide better clarity?

Ms MERRYFULL - Yes, absolutely, for the use of commission evidence in code of conduct proceedings.

Ms JOHNSTON - We've already made several fairly lengthy submissions and met with the Solicitor-General in relation to that. We understand our ED5 recommendations are currently with DPAC.

Ms MERRYFULL - We have had a number of interactions with DPAC about it. There have been drafts circulated around to amend it but it has never happened.

Ms GIDDINGS - Is it possible to share that with the committee?

Ms MERRYFULL - I think it would be better if DPAC shared those drafts, as they were theirs. I am not sure those drafts entirely do the job. I am saying this is the way to solve the problem and we have been trying to encourage DPAC to do this but it has not happened yet. So again, these issues that are raised in the Government's submission about how commission evidence can be used for code of conduct breaches can be solved if people would do so.

Ms JOHNSTON - In fact we say it can be used for code of conduct proceedings and it has been used in the past, so if there are any issues now that have arisen we don't understand why they have suddenly arisen and why they're not being used because we know they have been used previously.

Mr BARNETT - But you do agree there is a lack of clarity at the moment?

Ms MERRYFULL - It would be much better for the agency heads and everybody to clarify - and for the people.

Mr BARNETT - You have to say yes or no because *Hansard* doesn't pick up nodding.

Ms JOHNSTON - Yes.

PUBLIC

Ms MERRYFULL - Yes, absolutely. Anyway, ED5 only applies to the state sector, it does not apply to GBEs, local councils, UTAS and state-owned companies. None of those things apply and they can easily use our evidence for whatever purposes they want to use them for. Again, that sweeping statement in the Government's submission about how it cannot be used is not accurate.

One of the main things the commission does that nobody does with respect to police matters is that we audit the way the police handle their internal complaints. Internal Investigations and Professional Standards manage and deal with the way police handle their internal complaints, and who watches that? We do, by auditing their complaints each year - nobody else does that - and then publish a public report. There is more information in our public reports about the way police handle their internal complaints than is ever put out by the police. Our next audit will be published shortly and once again will have an enormous amount of information about how the police handle their complaints. Without us, that information does not get into the public arena. It is not about being critical of the police, it is about being transparent and accountable. They do not publish that information about the way they deal with their complaints, we publish it.

Mr BARNETT - Do you think the police should publish it or you should publish it?

Ms MERRYFULL - I think the more information you put out in the public arena the better. It is my audit so I publish it. If they want to publish their own information about complaints they should do so.

In relation to access to databases, when I was at the Commonwealth Ombudsman's office we had access there to their online complaints handling system. There were no issues with that.

Ms JOHNSTON - It is the Federal Police.

Ms MERRYFULL - Yes, the Federal Police's complaint handling system. I know for a fact the New South Wales Ombudsman has access to the systems there. Your access is audited in accordance with the legislation in the same way that any member would be audited. We wanted access to more than that, obviously, to their information databases. We have put that on the table in our submission and that is a matter for the committee to consider. At the very least we should have access to the complaint database because we need that for auditing their complaints. At the moment we are restricted to hard copy records and a printout of the complaint database and I personally don't see if the Commonwealth Ombudsman can access the Federal Police complaint database why we can't as an integrity commission access the Tasmania Police complaint handling database. These things can be walled off from other databases.

Ms JOHNSTON - We're certainly not saying we should not be subject to audit. We absolutely accept that if we go into someone's database we need to have a reason for it. We don't go on fishing expeditions looking for something because we don't have a complaint. We can only use our power if we have a complaint, so if we have a complaint we need to access some of those databases. Currently we do access Tasmania Police databases.

Ms MERRYFULL - We don't access their databases, they give us the information. We send them an email saying, 'Please give us information about Joe Bloggs and Mrs Bloggs, we're

PUBLIC

conducting an investigation', and they will then provide that information to us. We don't go into the database itself. That could be a problem if we are investigating police, asking them to give us information so that we can investigate those issues.

Mr McKIM - In that it might become known to some officers that you are investigating?

Ms MERRYFULL - Yes.

CHAIR - That information from the database is provided to you by Professional Standards, I would think, not the commissioner - is that so?

Ms MERRYFULL - Yes, it is provided by Professional Standards.

CHAIR - Professional Standards have certain oaths of office in relation to confidentiality.

Ms MERRYFULL - It is more a matter of keeping it confidential to us.

CHAIR - On that point, have you experienced any real difficulty with the current process in the short time you have been operating so far?

Ms MERRYFULL - In relation to?

CHAIR - I think you said it is only the complaints handling database you are wanting to access, or are you wanting to access the whole of the police database?

Ms MERRYFULL - Originally we did and that would be ideal from our perspective but at the very least we would like to access the complaint database. The whole of the police database would be important for misconduct investigations. There are two arms of our business, police misconduct investigations and auditing of police complaint handling, and there would be different databases applicable to those different functions.

CHAIR - Is the reason for wanting to access the police complaints database for the purpose of doing an audit or is it for a specific issue that you may be inquiring into or looking at concerning a particular incident?

Ms MERRYFULL - It might be both. Again, I can only go back to my experience with the Commonwealth Ombudsman, but they would access the AFP complaint database if they had a complaint about something. Often people would complain about the way their complaint was dealt with so they would go in and look at that database under their act.

CHAIR - Your concern then, to take up what Nick said, is that if you do that through the current position of having to go through Professional Standards that others may well be made known to other people within the organisation of what you are doing. Is that the concern?

Ms MERRYFULL - If I can just pull it back a little bit more, I am concerned about the information getting outside of the commission. That is my concern. I am not casting any aspersions whatsoever on Professional Standards and their confidentiality but I am saying that when we investigate we prefer to keep these investigations confidential as much as possible, which is why when we seek information from people we impose confidentiality notices on them. It is more about keeping it inside the commission. Does that make sense?

PUBLIC

CHAIR - Yes, it does. This is an important issue and that is why I am dealing with it in the way I am. You are aware that for police themselves to access any of the databases police control and have there is a very strong process that must be identified before that can happen and where they do it they have to be able to satisfy very clearly why they need that information and access. Should that apply to you if you were given access in exactly the same way?

Ms MERRYFULL - Absolutely, of course, and for all other agencies that access police databases it is the same. You can run audit logs on what they do and they have to justify, if questioned, why they accessed the database.

CHAIR - The other question I want to ask is if the current MOU was strengthened in relation to your having access through Professional Standards so that any information you were accessing was strictly confidential and was tied up there within Professional Standards - I am not quite sure but I suspect it could happen - would that alleviate any of the concerns that you might have, or are you saying that could not happen?

Ms JOHNSTON - What we were actually seeking, Mr Dean, was to have online access so that we are within the commission as opposed to emailing TasPol or going down to TasPol. Within the commission we currently have access to AusTRAC, for example, and that is online access, and we have to justify why we do it. Strengthening the MOU is not going to work because police and the commission have legal advice that it would be a breach of the commissioner to provide us with online access, so the current way we are getting the access is not a breach of the privacy principles but the advice is that to give us online access, even though it would be audited, will require a change in the legislation and I think we made that clear in relation to -

Mr BARNETT - When you say 'the legislation' you mean the Police Service Act?

Ms JOHNSTON - No, the information protection act and in the technical amendments we have set out some of the advice there that we received, so it is a legislative amendment and the MOU can't repair that problem.

Ms GIDDINGS - What is AusTRAC and how did you get access to that?

Ms JOHNSTON - It is a Commonwealth site about financial transactions.

Ms GIDDINGS - How did you get access to that?

Ms JOHNSTON - We put a case study to the CEO of AusTRAC. A number of organisations, including integrity organisations, are able to access AusTRAC. It is all financial transactions and we have been approved for that.

Mr BARNETT - You currently access AusTRAC -

Ms JOHNSTON - Yes, online.

Mr BARNETT - What about CrimTrac?

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Ms MERRYFULL - No, we don't access CrimTrac.

Mr BARNETT - Are you seeking access to CrimTrac?

Ms MERRYFULL - No.

CHAIR - How many occasions since you have been operating have you had good reason to access the police complaints database?

Ms MERRYFULL - We would want to access the database for our audits which we do annually. Sometimes we will audit a police complaint investigation on an ad hoc basis. If we have referred a matter to them and they come back saying, 'This is what we did with it', and rather than wait for the annual audit we feel strongly that we want to have a quick look at it, I will look at and we would want to do it then. Access to the police database is desirable for us. I do not want to get too bogged down in that because it is not as important as some of the other matters that we like to discuss and for the commission's fundamental operations, but it would be helpful. It would help us a lot, particularly for the audits.

CHAIR - The police complaints system is audited by way of annual report which must contain information in relation to the complaints undertaken and that covers that well. There are processes in place by the Commissioner of Police in relation to the auditing of the complaints system within Tasmania Police and you are saying you have this extra layer on top to also audit.

Ms MERRYFULL - I get my financial accounts audited every year by the Auditor-General. The Auditor-General does performance reviews all the time of what agencies do. I refer you to the last annual report of Tasmania Police and its reference to complaints where it barely says a word about it, whereas our reports give a lot more information and provide assurance to the community. If you are going to have police investigating police that is fine, but you need an independent assurance mechanism, as you have in every other jurisdiction, that what the police are doing is right, just like you need an independent auditor to audits people's financial accounts. We audit other people's investigations as well. It provides assurance to the community.

Mr MULDER - You have talked about this data from the commissioner and you say you get by either emailing or going down and handing them a letter or serving a notice or whatever you might do. Do you have any examples where when such a request was made of the police department it was denied, or examples of where you probably wanted to access information but were reluctant to ask?

Ms MERRYFULL - Yes, I can think of the latter, not the former.

Mr MULDER - So whenever you have asked you have been provided information?

Ms MERRYFULL - Yes.

Mr MULDER - But there is an example of where you were reluctant to ask?

Ms MERRYFULL - I don't want to talk too much about that in a public hearing but it was in relation to -

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Mr MULDER - No, I don't want you to answer that.

CHAIR - Diane, I am glad you raised that. If it gets to a stage where you would like to go into camera if you feel you would be in a better position to put your position and your case, please ask me and we will consider it.

Ms MERRYFULL - I will answer broadly.

Mr MULDER - I was not going to ask for specific examples or facts of a case. I was about to interject myself to say just keep it as a general provision because my question is why were you reluctant to ask?

Ms MERRYFULL - Because it was a complaint about a police officer, a serious complaint.

Mr MULDER - And you were reluctant to ask because?

Ms MERRYFULL - Because of the nature of the allegations, the wrongdoing that was alleged and what it might mean and who might be involved if it was substantiated.

Mr MULDER - You were reluctant to ask in the sense that you may have personally asked the commissioner, or that you did not trust that the person would keep it confidential?

Ms MERRYFULL - No. I just preferred to keep it within the walls of the commission. I can't go any further than that. I thought it was better for everybody's interests and better for the officer to keep it within the confines of the commission because these things can be -

Mr MULDER - Was this for an investigative purpose, not an audit purpose?

Ms MERRYFULL - It was for investigative purposes. Unfounded allegations can be just as damaging to the officer or public servant as a founded one.

We are not opposed to improved accountability and oversight for us. We believe that would be a good thing because accountability is what we are about. We welcome accountability and transparency but we are concerned about the increased cost of an accountability mechanism. If you look at our second submission, it gives you an idea of some of the costs of some of these public, parliamentary inspectors and special interest monitors in other jurisdictions. If the money for the funding of a parliamentary inspector came out of the Integrity Commission's already-reduced budget, you would have these people sitting there oversighting no work because we wouldn't have any money to do any investigation, so there would be nothing to oversight. Frankly, if the Government's proposal to cut out our investigations is put into effect, why would you need a parliamentary inspector for triaging complaints and providing education? You wouldn't call it the Integrity Commission anymore, it would be the ethics study group or something. You don't need an independent commission to provide education.

The suggestion the commission should focus on the education function, which has been made by a couple of submitters, is both misguided and misinformed. You need both. The investigations provide the incentive for agencies to take up the education and prevention stuff we do. It is a fact of life that agencies have many pressing concerns to deal with.

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They have a bottom line to deliver, everybody has budgetary issues. They have antidiscrimination training and workplace health and safety training. They have a lot of things on their mind and if you don't have a reason to focus on ethics and integrity it will not be focused upon. It is our investigations that give agencies the incentive to focus on education, training and prevention, otherwise it is just another tick in the box, isn't it?

The issue of procedural fairness was raised many times yesterday. The committee will remember I gave you a full briefing on Operation Delta, including the full 155-page investigator's report which had all the footnotes of all the evidence we used to rely on our 27 or so findings. I also provided to the committee the whole procedural fairness responses that were received from the subject officers. The investigator's report, which was provided to the Premier, contained references to those procedural fairness responses and what the officers had to say about it. The report to Parliament did not, but the report to the Premier did, which you've seen. If the committee thinks the commission should publish full investigation reports and the full responses of people in their public reports, that's fine. If you want to make those change to the act, that will be fine, we will do that.

Mr McKIM - So the commission would not have a problem with that?

Ms MERRYFULL - I will do whatever the legislation tells me to do.

Mr BARNETT - I know, but do you have a view as to the merit of it or otherwise?

Ms MERRYFULL - I think you would have to be quite careful about what you are putting in the public reports. The full responses refer to the full report, so they won't make any sense unless you publish the full report. The full report has a lot of information in it from witnesses and a lot more people are named as witnesses, so it might be difficult. It might be better to publish a redacted report in Parliament and get the officer to respond to the redacted report, so there might be a second stage. You would respond to the full investigator's report that goes to the decision-maker, which in this case was the Premier or head of agency, but we could provide a smaller version of the report with some of that information taken out which we would also get them to provide a response to. I would be quite happy to do that.

Mr BARNETT - Do you see the merit of providing the response and feedback of those who are subject to an investigation and then a report and certain findings in Parliament?

Ms MERRYFULL - They are not findings, they were actual findings based on the evidence. The full investigation has 27 findings that were based on the balance of probability's findings of the evidence. The issue of procedural fairness is about people having an opportunity, which is what the legislation provides, to respond to adverse findings, and they did have that opportunity to respond. What you are talking about is a different mechanism. It is not about procedural fairness, it is about something else.

Mr BARNETT - Do you support that approach?

Ms MERRYFULL - I would support it.

CHAIR - And that would make a better report? I think your question is would that make a better report or an improved report, or would it not?

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Ms MERRYFULL - Improved for what purposes?

Mr McKIM - I think the question is would it improve procedural fairness and natural justice?

CHAIR - Yes, would it improve procedural fairness in doing all of that?

Ms MERRYFULL - I think it would make everybody feel a lot more comfortable and if people are more comfortable with our public reporting that makes me happy. I am about putting things out in the public arena. The public needs to know. I don't think anybody can seriously question that the public needs to know what is happening with their money and that the public should not have known what was going on. If people have some level of discomfort about the way it has been reported I am happy to do whatever makes people more comfortable.

Mr BARNETT - When you put things out in the public arena you need to ensure that procedural fairness and natural justice applies to those concerned.

Ms MERRYFULL - It did. Procedural fairness is about putting your comments about an adverse decision, and they did that. They gave the decision, the decision-maker had all of those comments and our report was our report, but that is a different thing. What I am saying is if it would make people feel more comfortable about our public reporting I would be happy to do that because I want people to welcome our public reports and get as much out of them as they can.

Mr BARNETT - So you're saying you would be happy with that variation to reports if it included that feedback as we have discussed, and it would improve procedural fairness and natural justice and you would support that?

Ms MERRYFULL - I think they get procedural fairness and natural justice by providing a response to the full investigator's report. That is my understanding of procedural fairness and natural justice. You are talking about public reporting, aren't you?

Mr BARNETT - Yes.

Ms MERRYFULL - The investigator's report had all that. We are only talking now about the public report and if it would make people feel more comfortable with a public report then I would be happy to do that.

Ms GIDDINGS - Can I ask in that scenario, is there an issue in the process around having to present a report to the Parliament in that way? That may be where some of the feeling of lack of natural justice and procedural fairness occurs because it puts it straight into a political realm. When you do an investigation you give all parties the right to respond before you give the final report to the employer. I guess it is a bit of what would happen behind closed doors in a sense that the report would be provided to a head of agency, for instance, or the Premier if that is where it has to go, and that is then considered by the head of agency. They then make a decision to remove the person from their role, for instance, and sack the person on the basis of what they have done and normally that would happen in a more private sphere than a public sphere of the Parliament. Then of course after that action has been taken people may say, 'For what reason was that person removed from

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their office?', and at that point people are provided with, 'Well, they were removed because they breached these codes of conduct, or for this level of misconduct', and these are the reasons why the person was removed from their office.

In the scenario we have now that did not happen. A report was provided into the public forum of the Parliament and a public response given by a minister which, for right or wrong, I think left people with a bad feeling that this was not handled appropriately, even though perhaps from your perspective it was. You did everything you were asked to do - you investigated, you found findings and you presented your information on that investigation to the employer.

Ms MERRYFULL - We can only report through the Parliament.

Ms GIDDINGS - This is the question I raise with you. Is that something we need to change in relation to process with the three-year review, because I think what has occurred in the one and only example we have before us has left people feeling very uncomfortable?

Ms MERRYFULL - This is the only example where we have named somebody. We have provided earlier reports of investigations that de-identified and explained why we named the people in that sense. For commissions like us, that is what we do. We investigate and report and put things out in the public arena so people know what is going on so that mistakes can be learnt from and systemic issues can be identified. To some extent we are not responsible for any disciplinary outcomes, we don't prosecute, we investigate and report. If there is another mechanism for us to report, if you felt that reporting to Parliament is political, there is a possibility that is an issue, but I know the Auditor-General reports to Parliament and his reports don't seem to be political. All the other integrity agencies table reports in Parliament and that is what they do, too. The ICAC tables reports in Parliament, the ACCC tables reports in Parliament and they name people when they table their reports. I understand what you're saying but I think the committee needs to think about - I guess I am not providing any answers here - what it thinks the Tasmanian community would be comfortable with in terms of a reporting mechanism.

Ms JOHNSTON - Can I just say that if you were to delay the report one of the problems with that is where it is a complex investigation there might be multiple subject officers and if are you delaying it until all disciplinary action against everybody was taken - because most of the work that we do results in disciplinary action as opposed to criminal action - it could be several years later, so at what point are we able to table it? What are we waiting for? For the employer to make a decision and then that to be appealed by the employee and then to be appealed again? At what point are we able to table? There are a few issues there.

Ms GIDDINGS - There are some issues and it does need teasing out, in a sense, and thinking about it to a great extent. When this legislation was brought forward it was deliberately done not to have an ICAC, not to have that sort of public hanging that happens to people the minute they are called as a witness to an investigation that is very public. In the end they may end up being found not to have done anything but the damage done to their public reputation in just being called in a public forum of the ICAC is so damaging in that respect. We have tried to find a way in Tasmania that enables you to uncover any problems and not hide them but neither have it so public as we have seen with ICAC.

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Is there another way of being able to say perhaps in the first instance that a report is provided simultaneously to this committee confidentially and the employer so there is an accountability mechanism that a head of agency - or, indeed, the Premier - can't sit on that report before it becomes a public document in the whole of the Parliament where other steps get in the way or the momentum shifts so quickly that there is this discomfort that is left with people asking if it was handled the most appropriate way?

Ms MERRYFULL - That's a possibility. We're open to any ideas from the committee about that but it must be put in the public arena. We must have the ability to publicly draw to people's attention what is going on. I understand the concerns about the private interest but, of course, the commission is really concerned with the public interest. It is a very difficult balance but we can work that through.

CHAIR - I am trying to simplify where Lara is going on this. It might be difficult for you to answer the question and you have the responsibility of having to provide the report to the Parliament, but are you able to answer whether or not the process that followed that, in your view, was the way to go or whether there needs to be some changes in regard to that? I think that is virtually the question Lara was getting to. Do you believe - yes or no - it was the right way to go? You may not want to answer the question but -

Ms MERRYFULL - No, I don't want to be in a position of commenting on the minister's actions.

CHAIR - I did say that and that is why I am very careful about it and being fair to you. You are saying it is a matter now for this committee to make a determination on where it should go and what should happen.

Ms MERRYFULL - Keeping in mind the need to keep the public informed, because that is what we are about, exposing this conduct, and balancing the public interest and the private interest. Just keep in mind, too, what was happening at the time because we had sent our draft report for consultation and everybody knew about it. It was in the media and people were saying, 'Where is it? What's going on? Who's keeping it secret? What's happening, what's happening?'

Mr BARNETT - But it wasn't meant to be public, was it?

Ms MERRYFULL - At that stage, no.

Mr BARNETT - My reading of the act was that that is not meant to be public.

Ms MERRYFULL - That's right, but somebody knew about it, though. When you give it to people -

Mr BARNETT - But under the act it is not meant to be public.

Ms MERRYFULL - The consultation draft?

Members interjecting.

CHAIR - Order. Nick, you wanted to follow an issue -

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Mr McKIM - Yes, I do, but I also make the point that I don't think we need to hector the witness here. Ms Merryfull had already agreed with Mr Barnett's hypothesis and then he was asking it again.

Mr BARNETT - We don't need your commentary on the discussion.

Mr McKIM - I just think you should treat people with a little bit of respect.

CHAIR - Order. Just ask the questions.

Mr McKIM - I would like to follow up on that briefly, but I understand we don't have much time. There are many general questions of a very significant nature I wish to ask Ms Merryfull but I wanted to ask one question on this. Ms Merryfull, you have basically said that one of, if not the driving imperative behind providing reports to Parliament is so that the public can have confidence in the work the commission is doing.

Ms MERRYFULL - Yes.

Mr McKIM - Are there other mechanisms that would allow the commission to address that need for the public to have confidence, that would not necessarily result in a specific report into a specific investigation with specific findings being tabled in the Parliament? Can you think of any that you could suggest to the committee?

Ms MERRYFULL - The Ombudsman tables reports in Parliament as well. The Ombudsman is allowed to publish reports under protection. We do not have any of that. In our submission we talked about the possibility of being allowed to publish a report ourselves which would attract privilege and the protections you get from tabling in Parliament and we draw your attention to what we said in our submission about that.

CHAIR - Are there any other jurisdictions similar to our position here with the Integrity Commission as to how they table their reports, how it is handled?

Ms JOHNSTON - Each of the other integrity jurisdictions have their own rules around tabling reports and they are much more extensive. There are some areas in our act, and that is why we put forward the technical amendments, where because it was drafted so quickly they have not taken into account some of those additional steps. In South Australia they are required to keep their investigations private. I understand they do not table at all unless it is in the annual report. They have only been going a year, so we have not seen anything outside of that. It might be worth looking at the South Australian legislation.

CHAIR - That is what I am asking, what jurisdiction should we have a look at, and you are saying South Australia.

Ms JOHNSTON - It is one way of looking at an entity that keeps it private. On the other side you have the larger organisations but they have to meet certain steps in relation to tabling.

Ms MERRYFULL - Western Australia has an interesting jurisdiction. I was recently reading a report from their parliamentary committee, their equivalent to you, who were expressing issues around the fact they had not tabled a public report about an investigation they did

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because the commission decided it should be kept private because of the individual's personal concerns. The committee was saying it should always be a default mechanism that these things should be out in the open and you have to justify to us why you didn't put it out in the open. There are different processes in different jurisdictions.

The commission keeps its eyes on the prize of the public interest and we are always keeping in mind what the public interest is. I understand people's concerns about individuals, but so little has been said arising from the tabling of that report about the misconduct. What was revealed in that report? What was going on in that report? What did it mean for the governance of those agencies and what did it mean for the agencies themselves? What does it mean for the people in the north-west for whom money had been allocated by Parliament for their health needs and that money was used for something else? Very little discussion took place about those important issues.

Ms GIDDINGS - Which is why we have to look at the process because something is going wrong. If there are they genuine issues there, why have people felt so uncomfortable with the way it was handled, that it has been lost, that the issue is there, for right or wrong? It may mean taking on board that there needs to be some time lines around these thing, that these reports are presented to this committee in confidence and the Government but within a month or two months of that process it must be made public and tabled, probably a month is sufficient, which gives an opportunity for an understanding of what is going on outside of the political realm. Once it has landed in Parliament it becomes political, which is not necessarily what we are all trying to achieve.

CHAIR - I think that is a statement rather than a question.

Ms GIDDINGS - It is a statement in terms of trying to put some issues on the table to think about. I don't say I have the answers either, I'm trying to put ideas out there to think about how you can improve the process.

Mr BARNETT - On the process, to clarify, I understand the Government was acting in accordance with the Integrity Commission Act in keeping it private and then it was tabled in Parliament in accordance with the act.

Ms MERRYFULL - The draft went to a number of different stakeholders for comment and was confidential at that stage. The final report was sent to them by the board and we then tabled a report.

Mr BARNETT - And that remained confidential?

Ms MERRYFULL - No, it is not confidential anymore.

Mr BARNETT - Sorry, I am trying to clarify as to the confidentiality. The draft report goes to the stakeholders, it remains confidential. Take me through the next process until we get to the Parliament.

Ms MERRYFULL - The responses from the stakeholders come back, it goes to the board, the board makes a decision - it is still confidential - and then the board sends it to the relevant people, including the Premier, and we then table the report. It remains confidential until we lift the confidentiality, which I think is when we table the report.

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Mr BARNETT - That is what I am clarifying with you, in accordance with the act. Thank you.

Ms MERRYFULL - That is my understanding.

Ms GIDDINGS - Is it compulsory that a ministerial statement is provided at the time of tabling the report?

Ms MERRYFULL - That has nothing to do with us.

Ms GIDDINGS - That may well be where the problem is.

Ms JOHNSTON - It's not the minister who tables our reports, we table them - we give them to the Clerks and they are tabled.

Ms MERRYFULL - It is not in the public interest to deal with misconduct behind the scenes and hush it up and shuffle people out the door with a payout. That breeds community distrust and loss of confidence. That is the old way of doing business. The new way of doing business, the modern way of government, is all about open transparency and honesty. We acknowledge mistakes and wrongdoing and learn from them. The Integrity Commission plays a very important role in that and I am gratified by the number of submissions that were made to the committee that said the Integrity Commission is doing its job. Tasmania Police say the Integrity Commission is doing its job. We have an important job to do and I commend the work we are doing to the committee. I will take questions on anything now.

Mr McKIM - You have had your budget cut by more than \$3 million through the Budget out years in the state Budget and you've previously made public comments about that. The Government has now put a submission to this committee that recommends abolishing the investigative functions of the Integrity Commission. How do you intend to go forward now, given that the act requires the commission to do certain things? Your budget has been hammered, in my view, so can the commission fulfil its statutory obligations under its reduced budget?

Ms MERRYFULL - Like any agency, we will cut our cloth to fit the sail as to what we can do. We have been anticipating a \$600 000 cut across the forward Estimates for a while and have taken some steps to reduce discretionary expenditure. We will continue to perform our functions as best we can because it is important they be performed.

Mr McKIM - Does it compromise your capacity to fulfil your functions?

Ms MERRYFULL - It will make it challenging. Some things we will be able to do more than others. There will be positions, for example, that we won't fill. We might have to reduce the quantum of what we do: the number of investigations we do and the number of education and prevention products we produce. It is a matter of shrinking ourselves down to fit within the budget envelope we have been given, but I cannot walk away from the investigations function and I am not going to walk away from the education function. The other way we do it is to not do one or the other, and I guess that is the stalking horse behind the budget cuts, isn't it, where you can only do one, so do education -

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Mr McKIM - I think that's right.

Ms MERRYFULL - I am not going to do that. I am going to try to do both because both need to be done, both are essential and the Integrity Commission was set up to do both of those things.

Mr McKIM - You have gone to this to some degree in your opening statement, Ms Merryfull, but I am referring to the Government's suggestion to remove the investigative powers of function of the commission, so this is not budget related, it is specifically in relation to the Government's submission to this committee. In your opinion, what would the effect of that happening be on public confidence and integrity of the public sector, including local government in Tasmania? What would its effect be on the openness and transparency of government processes in Tasmania?

Ms MERRYFULL - I think it would be detrimental in the extreme. What openness and transparency would there be about misconduct? Who would be reporting about it? When was the last time you had a report from the head of an agency about investigating misconduct in their agency? It doesn't happen. A total of 89 per cent of the people we surveyed said Tasmania needs an Integrity Commission. Where else can they go for that independent assurance? People seem to forget the reason the commission was set up. Like all agencies such as ours they are set up in circumstances where there appears to be, as judged by the Parliament, a lack of confidence in the community. If the confidence has improved in recent times that is because of the work we have been doing, so I think it would be a very retrograde step for Tasmanians' confidence in the public sector and I think it would be a retrograde step for the public sector.

The vast majority of public servants are honest people trying to do a good job and they are the ones who are damaged when there is somebody in the workplace doing the wrong thing. I would love to talk to you about our Speak Up campaign we are launching among some lead agencies encouraging people to speak up in their agencies about misconduct. That is the work of the Integrity Commission and agencies are taking it up because of the investigations. DHHS is a lead uptaker, if that is the right word -

Mr McKIM - A leader in take-up.

Ms MERRYFULL - A leader in take-up - because of the investigation. People now can have confidence that if they speak up and come to us, something will happen.

Mr McKIM - You would suggest, I guess by implication, that that level of confidence would clearly be reduced if the commission did not have investigative powers and functions.

Ms MERRYFULL - What is the community going to say? The community would say, 'What have they got to hide? What's being hidden here? Why can't the Integrity Commission continue to do its work?' Who will bring these matters to public attention?

Mr McKIM - There are a number of comments in the Government's submission and you have gone to some of them in your opening remarks. I put it to you that the Government has made it very clear that, in its view, employing authorities cannot readily use the

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investigations conducted by the Integrity Commission in any disciplinary action. Would you agree with that statement?

Ms MERRYFULL - No.

Mr McKIM - You think that is an incorrect statement from the Government?

Ms MERRYFULL - I do. I don't know what public authorities they're talking about. Remember, we cover everybody.

Mr McKIM - Employing authorities.

Ms MERRYFULL - Employing authorities could be a council.

Mr McKIM - Yes.

Ms MERRYFULL - They haven't explained why, so there is an assertion about it. Let's see the explanation about why that is so.

Mr BARNETT - Do you think they're referring to the Evidence Act?

Ms MERRYFULL - No, I don't know what they're referring to.

Mr BARNETT - In terms of litigation in the Supreme Court?

Ms MERRYFULL - They haven't explained their assertion. It is just an assertion. As I said, if it is in relation to the State Service Act and ED5 there is some lack of clarity around that. We think they can use those things but if there is a lack of clarity it can be fixed.

Mr McKIM - It is your very clear submission to the committee that any issues around ED5 can be fixed?

Ms MERRYFULL - They haven't even suggested fixing it.

Mr McKIM - In your view would it only be necessary to amend ED5 or would the legislation governing the commission's activities need to be consequentially amended to deal with any of those procedures?

Ms MERRYFULL - We think the legislation is quite clear. The legislation says it is the job of the commission to gather evidence for use in disciplinary proceedings - section 8(1)(m) I believe it is. Parliament intended that we should gather evidence so I think if there is any issue for the State Service at least, and I am not aware of any issues with respect to any other agencies, it must be in relation to ED5 and that can be fixed.

Mr McKIM - Thank you.

Ms JOHNSTON - If I can add, Mr McKim, they have used our evidence before in code of conduct investigations involving State Service officers.

Mr McKIM - That directly contradicts the assertion in the Government's submission.

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Ms MERRYFULL - They have used the evidence, yes.

Mr McKIM - And that does directly contradict, or it seems to.

Mr BARNETT - It depends in what context.

CHAIR - Order. I will give you a chance in a moment.

Mr BARNETT - It is not for Mr McKim to be rewriting the Government's submission.

Mr McKIM - I am quoting directly from it, Chair, so I am going to keep doing it.

CHAIR - I think he asked a proper question there as to whether or not Diane was of the view that what was said there was not correct and I think that is a proper question.

Ms MERRYFULL - It has been used. That is my evidence - that it has been used.

Mr McKIM - The Government further says, and I will directly quote from the Government's submission, 'The need for dual investigations does not serve the interests of justice well'. How would you respond to that?

Ms MERRYFULL - I would agree with that. I don't think you need two investigations.

Mr McKIM - The implication being that under the current framework there are two and therefore yours needs to go.

Ms MERRYFULL - Ours needs to go rather than look at a way to use the evidence that we produce. Keep in mind, too - and I really need to say this - the evidence that we can gather is more evidence than employers can gather. There seems to be this idea that the employer can get all the evidence and they don't need us, but we can get far more evidence than the employer can get. We can get bank records. We got bank records for an agency which allowed them to dismiss somebody. They could not get those records. They came to us and asked for them to help them. We can get records about people and all sorts of records that they can't, and we can use surveillance devices. It is a nonsense to think that they have the same capacity as we do to gather the evidence that is necessary to get the outcome.

Ms JOHNSTON - I think it is important to remember, too, that once we give the evidence the employer is about disciplining the employee. We are not about that. We are about finding out why misconduct occurred in the first place. Some of the misconduct or some of the actions we find or the recommendations we make go to preventing it occurring again. It is not about just dismissing an employee or somehow disciplining them. It is about ensuring the misconduct doesn't occur again, so it is a much broader remit.

Mr McKIM - Where the Government talks about the need for dual investigations and raises issues around a first investigation, presumably the commission's tainting or distorting subsequent processes - and I am again paraphrasing the Government's submission - that is the area in which you are submitting to the committee that a change in ED5 could resolve those issues? Is that correct just so I understand that?

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Ms MERRYFULL - Yes.

Mr McKIM - The Government has suggested that its proposal to remove the investigative powers and functions of the commission is not a licence for complacency. Can I ask you what you think, given your experience in this area, would be the response in the public sector to the abolition of the investigative powers and functions of the commission? Just to be clear, what message do you think that would send the public sector in Tasmania if the investigative powers and functions of the commission were removed? Do you think it is a desirable message to send or an undesirable message to send?

Ms MERRYFULL - I think that the Integrity Commission is important for the whole public sector. It says the Government is interested in the integrity of the public sector. It is important to spend a bit of money on integrity in the public sector, that integrity is a top priority for the Government. The message sent would be that integrity is not that important, that we are not interested in finding systemic mistakes or systemic misconduct. We are not interested in having the highest possible ethical standards because without the commission things will go undetected, and we have proven that.

CHAIR - On the dual investigation, I think one of the concerns there, and I think the police raised it, was that because of the confidentiality, because of the secrecy around some of the work that you do, there could already be an investigation underway by a department and/or an organisation and the Integrity Commission also carrying out an inquiry and investigation into that same issue. That has been a concern raised. Is there some way around that or -

Ms MERRYFULL - It is a hypothetical concern because it has not happened in practise.

CHAIR - No, but that has been an issue that has been raised.

Ms MERRYFULL - As a hypothetical possibility. I know the CPSU referred to our submission and some of the percentages around notification. Some of those were earlier work that we did. It is now generally our practice to notify the head of agency when we start an assessment, which is a preliminary investigation. If you are investigating the head of agency, you cannot do that. When you move from an assessment to an investigation, you are obliged under the act to notify the principal officer, and you do that. It is important to notify the head of agency because they need to help us get information. We need a contact point in the agency to go to. They have a duty of care to their employees, so we want the head of agency to be able to refer their employees to an EAP, Employee Assistance Provision. Under ED16, which is about legal assistance for people, a head of agency will need to know for those purposes. It has not happened and we do our very best to make sure that it does not happen.

Ms GIDDINGS - Looking at the Government's submission, it seems to me that their real problem in trying to savings is with board. They say here that they had set up this office of Inspector-General, which is interesting in terms of duplication of costs with overheads and everything in having two bodies running side by side. That officer of the Inspector-General would monitor performance and deal with complaints against integrity entities and report to Parliament. To some degree it seems that the office of Inspector-General would take over some of those investigative roles that you have and you would be left with the ethics and training side of it.

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The only thing they point to here that is a bit different is that savings could be achieved through more cost-effective and efficient means, rather than having a formal board structure. From my reading of their submission about this office of Inspector-General, the only real difference between you and that new office is that they will not have a board overseeing them.

From your perspective with the Integrity Commission, how important is that board structure to oversee the work the Integrity Commission does? With the budget cuts you are experiencing, I understand they expect one board member role to disappear as part of those savings. If that was to happen, which role would be most likely to disappear and will that impact on the importance of the board? It is those two elements of how important is a board and do you need a board? If you do need a board, then how important is it that you maintain the board as it is, or is there the ability to get rid of one or more roles on the board?

Ms MERRYFULL - I think what the Government is proposing with respect to the parliamentary inspector is that they would take the place of the board and oversight the work of the integrity entities as described. Although, if we are not doing any investigations then there is nothing to oversight that we are doing. Oversight the Ombudsman's investigations, oversight the Children's Commissioner, who does not do any investigations anyway, so I am not sure what they would be oversighting there. Sit over the top and report to Parliament about how these integrity entities are working.

From our perspective, the board is a governance mechanism. The funding that has been reduced for the board across the forward Estimates is for all of the community members to go because they get \$20 000 each. The funding across the forward Estimate has gone at \$60 000. That is it for the community members. All that would be left on the board then is the ex-officios, which is the Ombudsman, the Auditor-General and the chief commissioner. The community members and the chief commissioner terms expire in August next year. I do not know what will happen after that.

The board is cost-effective in the context of Tasmania. It is \$60 000 for the community members and last year we spent only \$30 000 for Murray. It came in at just over \$90 000 a year for the board. If you look at the cost of these parliamentary inspectors, they are going to be way more than \$92 000.

Mr BARNETT - That is a big reduction on what it was a couple of years ago.

Ms MERRYFULL - Yes. We have done a lot of work to reduce because we are about efficiency and effectiveness in the commission. We take care of taxpayer's money. We have structured our operation to be much more efficient and effective. The chief commissioner does not need to spend so much time in Hobart and the board trusts me to run the commission.

Ms JOHNSTON - When you say a reduction, the highest we have ever spent with the board and the chief commissioner was just under \$203 000. That was the year there wasn't a chief executive officer, so somebody had to be running the place. It is \$133 000, \$203 000, \$136 000 and \$92 000 this year. That is for the board and the chief commissioner. It is a cost-effective governance mechanism.

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To answer your question, Ms Giddings, as to what role the board plays, it plays an important governance role. We will work with any governance role but it would be disastrous if it costs so much money to run the governance mechanism that we didn't have enough money to do anything to govern. There would be expensive people sitting up the top looking at no work being done. From our perspective the board is quite cost effective in providing that assurance to the community about what we do. We keep the investigations away from them until they are completed. They are hands-off in operational matters so they can bring a fresh, clean look at what we have done and assure the community it has all been above board and is sound and reasoned.

Mr McKIM - So in a way it's a further accountability mechanism for you and the employees of the commission?

Ms MERRYFULL - It is, absolutely.

CHAIR - Have you addressed any other model in relation to the board? Have you had an opportunity to address the position the Government has articulated in its submission?

Ms MERRYFULL - We have put a submission to the committee about the costs and structures of some of those parliamentary inspectors. From our perspective at the commission we operate according to what Parliament tells us to do. We don't have a view at this point about which kind of governance mechanism the community and the Parliament prefers for us, but it has to be an effective mechanism and cost effective to allow us to do our job as well as providing assurance to the community.

CHAIR - Have you had an opportunity to look at other jurisdictions in this regard to see whether there is another model that may well be another option?

Ms JOHNSTON - In our first submission we set out the models the others have, so there is some information there about their operating expenses and what sort of model they work under. We didn't go into it in a great deal of detail because we took the view that the three-year review was going to look at our current act and there is an independent five-year review built into the act that might look at some of those big policy issues. If you wanted us to go away and look at what some of the other organisations do, we can say we are the only one with a board, but it is a cost-effective way of working.

Ms MERRYFULL - I notice the Government submission talks about something like \$900 000 spent on the executive management of the commission.

Mr McKIM - Board and senior management.

Ms MERRYFULL - That kind of implies we have all these senior executives sitting around looking out the window when in fact that is my salary and the salaries of the managers of the different teams. There is a manager of misconduct prevention and research; a manager of operations, which is investigations; a business service manager who runs the corporate side of things; and at the time it included a strategic communications advisor but we got rid of that position to save money.

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Ms JOHNSTON - It also includes everyone's annual leave grossed up, long service leave, pro rata parking, iPads, all the board members and the chief commissioners. Two of those positions are now not filled.

Ms MERRYFULL - So it's not really what it seems. They are one-fifth of staff across the board.

Mr BARNETT - I want to draw your attention to the Government submission on the investigations. They do an analysis from 2010 through to this year on the investigations, they look at the complaints and give percentages of those dismissed after triage and so on and I think that leads to the observations they share on the effectiveness of the commission with those key dot points about fraudulent behaviour, criminal activity should be dealt with by police, harassment. We have talked a little bit about duplication and this came up with a couple of the other witnesses, I think CPSU and the Police Association. I am happy to get your feedback on their analysis of the investigations and then their summation of the effectiveness of the commission. I wonder if you would like to respond.

Ms MERRYFULL - We do triage our complaints. We get complaints of allegations about lots of different things and if it is more appropriate to refer those allegations to somebody else to deal with, if the act says we should, we do. We are not a commission of 150 staff; I only have a handful of investigators so where a matter can be dealt with by another agency of course we refer it on, but where it is appropriate for us to do it, then we do. It is not a large number of matters but they are very often those precise matters nobody else does and that wouldn't get done if we didn't exist. Just because they are a small quantity doesn't mean they're not big matters, it doesn't mean they're not important or complex matters that require a great deal of attention. There is a lot of focus on numbers in all of this but the numbers are not an accurate reflection of what is actually going on behind the scenes. Complaints are complaints. There are simple complaints, there are complex complaints, there are systemic issues, there are isolated issues. This idea that we only do the tiny weeny little things that fall through the gaps is completely misleading in terms of the importance of the work that is done and the consequences of the work we do.

Ms JOHNSTON - The figures they have used were at the end of the previous financial year. There has been another 15 months since then. We have had almost 1 500 allegations over the years we have been operating. It might be a single complaint but they might have multiple allegations involving multiple officers.

We have changed the way we are accounting some of the allegations now because we have been going a couple of years and you are constantly refining your processes. I don't think it is necessarily a great idea to lump a whole heap of them into fraud, say. That doesn't really provide a lot of information to agencies as to whether or not it is because there have been recruitment issues, so we are changing the way we look at some of the allegations, hoping to provide more informative to agencies.

Ms MERRYFULL - Before we might have said there were *x* amount of allegations about conflict of interest but now we are saying there is a conflict of interest in recruitment, there is a conflict of interest in procurement, there is a conflict of interest in something else because that then gives you a better idea about what is actually going on. Conflict of interest could be anything, fraud on credit card et cetera. We are changing the way we report. Even though I'm saying numbers aren't numbers, our complaints have gone up

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significantly this year from what they were, according to the Government's submission, last year. You will see that in our annual report.

Mr BARNETT - I wonder if you would like to respond to the Police Association's observations this morning because you were listening into their views and submission. I would be keen for your feedback on that because they expressed a view that they thought you were seeking further powers and I am interested to know whether you are seeking further powers to expand the powers of the commission.

Ms MERRYFULL - There is a bit of a misnomer. I know people talk about us as a law enforcement agency but that has a particular meaning under the Telecommunications (Interception and Access) Act. It doesn't mean we are going to go out arresting people or anything like that, it is just an expression that is used in that act that allows agencies to take the full range of telecommunications information. That is was the context for that. All the other integrity commissions can do telephone intercepts, for example, so it's about that power. It is not a power to run around arresting people or anything like that.

The other issue they raised was a case study that they said had taken so long and there had been no result. We received a complaint, we did an assessment of that complaint and sent it off to Tasmania Police under the act to say, 'Please investigate this'. There is no result to be had. We have given it to you, we have done a bit of work, you go away, we are passing it over to you to investigate. There is nobody to be told about it. There is no result to be entered into any kind of system. As it turned out, when they came back to us with here's what we have done, we put that into our annual audit to judge what we thought how well they handled it.

Mr BARNETT - Do you agree with their view that there is no systemic corruption in Tasmania?

Ms MERRYFULL - I don't think the police are in a position to say. I don't think he says corruption 'in Tasmania', I think he said 'in Tasmania Police'; that is my recollection.

Mr BARNETT - What is your view?

Ms MERRYFULL - I will preface it by saying this. We have very limited powers in relation to Tasmania Police, much more limited powers than we have in relation to the public sector. We cannot investigate police to the same extent that we can investigate the public sector; it is much narrower. We can only go based on our current investigative limits and what we are seeing in our current investigative limits. I haven't seen, based on our current powers, systemic corruption in Tasmania Police. That doesn't mean that there is not misconduct, which is our remit.

Mr BARNETT - Sure, and generally would you make the same observation about the public service in Tasmania about systemic corruption.

Ms MERRYFULL - I think there is a reasonable amount of misconduct in the Tasmanian Public Service and I think I am the one person in Tasmania who can say that with confidence. There is misconduct that is worthy of the Integrity Commission's attention.

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When you say systemic, what do you mean by systemic? Those across every single agency on the one thing. You might get a third-world country where everybody has to pay baksheesh to get a licence; I am not talking about that kind of thing. People get misled by talking about systemic corruption, like it is only important or serious if every agency has it, and that is not true. But is there misconduct? Yes, there is. Is there misconduct that the Integrity Commission needs to look at? You bet.

Mr BARNETT - Have you undertaken any investigation of any person that has led to a charge and a conviction of a crime?

Ms MERRYFULL - No.

Mr BARNETT - Any investigation of any person charged or convicted of corruption?

Ms MERRYFULL - Funny you should say that because when we appeared at the last committee hearing we talked about the lack of a misconduct in public office offence in Tasmania. It is the only jurisdiction that does not have a misconduct in public office offence and how that made it difficult in terms of criminal convictions if that was said to be an important thing. I said we would be doing a research paper on that. We have completed that paper and it is going to the board on Thursday and they will then supply it to the committee. It has some recommendations about what a misconduct in public office offence would look like in Tasmania. That was a deficiency, as I told the committee last time, identified in the very first parliamentary report that recommended establishment of the commission. It was never dealt with. So we have gone away and come with something that could be used.

CHAIR - You haven't preferred a charge of criminal activity et cetera. Is there any matter that you have referred to another organisation, either a criminal matter or what-have-you, and to your knowledge have any of those referrals returned a charge and/or a conviction for any criminal matter or any matter at all?

Ms MERRYFULL - Not as far as I am aware in terms of criminal.

Ms JOHNSTON - Not in terms of complaints. Obviously we receive voluntary notifications from some agencies, so they tell us about misconduct activity which they are investigating themselves. It is a notification to us; we don't do anything with it. It becomes part of a database and they certainly get convictions out of those. So there is misconduct that gets convictions, but insofar as complaints to us, no, not that I am aware of. I also think it is wrong to focus solely on criminal charges.

CHAIR - My question was around any matter referred to the police, for instance, involving criminality which you may have had. I restrict my question to that. Are you aware whether any charges of criminality have come from the matters that you have referred to Tasmania Police?

Ms JOHNSTON - No, not that we are aware of.

Ms MERRYFULL - That is again one of the reasons we have done this work on misconduct in public office offence, which is used in other jurisdictions to achieve those results because there is a gap in the law and it does need to be plugged.

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Mr MULDER - You mentioned the duplication. It is a difficulty, isn't it, when you have someone with power to investigate here and someone with power to investigate there, and it is the same set of circumstances and this one has this procedure and that one has that particular procedure. I am wondering what your view would be on making it a true public sector Integrity Commission by doing two things: taking over all misconduct from agencies, including the police, and then becoming an investigative agency all the way. I think corruption is an easy word to use but it is difficult to define. For example, misconduct could range from not putting 20 cents in the tea cup to outright fraud and embezzlement at the crime stage. Is there a role here, given your experience and given the way the community feels about you, that it is now time to centralise the investigations of public sector misconduct within your agencies? And should that also extend to GBEs because they, too, are using public money?

Ms MERRYFULL - It would be a big step forward, wouldn't it. There is some merit in -

Mr MULDER - It would certainly make your budget bigger.

Ms JOHNSTON - We couldn't do it on the current budget.

CHAIR - I doubt it.

Ms MERRYFULL - I understand to some extent what the Government is now talking about that agencies need to be responsible for their own people. That is all well and good, but is it always done well enough, assiduously enough and do they have enough powers to do it? You have to think about what is proportional for Tasmania, too. We are a small jurisdiction. The really important thing about the three-year review is it gives us a chance to have a look at the act itself. The Integrity Commission Act needs a lot of work done on it to enable it, even in its current sphere of influence, to operate more effectively.

I would prefer to have two years of a really well functioning Integrity Commission Act if we could get some technical amendments through, and get some support from the agencies for what we are doing so we can really operate at the highest end that Parliament intended, before we looked maybe at the five-year review. I am not sure at this stage they really have enough evidence to support that. What I would like to see is the Integrity Commission functioning at 100 per cent of its capacity, although with the reduced budget obviously that is going to be hard, and see where we end up at the independent five-year review.

Mr MULDER - Then we can take it to the next point. You have made reference several times to the old way of shuffle out the door, keep it quiet and hide it. Do you have any examples of that? In particular, do you have any examples in the police, because I don't think that would have occurred in the last 30 years. I can think of some early examples in the early 1970s where that might have occurred, but certainly there has been a rigorous accountability mechanism running through there. You have to be careful when you make sweeping statements about going back to shuffle out the door and hide it under the carpet, as if that was rampant before you came along.

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Ms MERRYFULL - I wouldn't say it was rampant but I would say that is what the community perceives has happened. I didn't say anything about Tasmania Police. The Government has made plenty of sweeping statements in its submission.

Mr MULDER - And no doubt they will have to account for them when it comes, like you are now.

Ms JOHNSTON - There are some examples. When we say 'shuffling out the door', people resign and the public service does nothing else with that complaint or that behaviour. The head of agency is rid of the problem once that person resigns.

Mr MULDER - That is the issue about an appropriate reaction to something that is a subjective judgment written in generic codes of practice. I am just wondering whether a much better model which would ensure procedural justice and fairness for all would be if we actually created offences for this kind of behaviour, which could then be established where we have an investigative agency - you or the agency's own, whichever way we go - but that that evidence must be presented to a tribunal which makes a determination of fact and a recommendation as to sanction.

MS JOHNSTON - It was an offence, though, surely it would be a criminal offence you are talking about. You are talking about a DPP or a Tasmania Police -

Mr MULDER - No, your offence like misconduct by a public officer, which exists in other things. In other words, before you could take action the investigators would not just report to the head of agency and you would then move down this path, but we would go back to the system where, in the interests of fairness, the person who is subjected to this investigation or subjected to this allegation of 'misconduct' would then have had to have the investigating agency prove that to an independent body.

Ms MERRYFULL - But mostly what we are talking about here - and this goes on in every business, government business, private business and probably every day of the week - is if an employee is thought to have broken their contract of employment or behaved badly then the employer will deal with them by dismissing them. If they feel they have been unfairly dismissed, they will deal with that in a tribunal, whether it is a commonwealth industrial tribunal or the local industrial tribunal. That is what we are talking about here. The employer gets information, whether it comes from us or their own investigation, and makes a decision about the appropriate sanction for the person, which may or may not be dismissal, and the person is either dismissed or dealt with. That is the way it works. It is reasonably private and if they feel wronged then they go to an industrial tribunal for unlawful termination or unfair dismissal.

Mr MULDER - That is an extreme example. There are those who are broken back a pay grade, or taken out of some area where they feel they have been making a contribution and put into some back office where they are bored stupid at lower pay. Where is the avenue of appeal for those if we don't have an open, transparent fact-finding body to determine whether that action was warranted?

Ms JOHNSTON - That still occurs; they can still appeal those decisions. They are rights that are built into the State Service Act for state servants. If you are only talking about the State Service - we do much more than that - we provide our evidence to the head of agency

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and that will form the basis of them commencing an ED5 investigation. We have already talked about some of the tensions inherent with the ED5, but during that process they are given an opportunity to look at all the evidence, including any the head of agency relies on that we have provided to them. They still have all those avenues built into the State Service Act and the regulations.

Mr MULDER - As investigators you haven't crossed the first hurdle of establishing the facts before you move down the path of sanctions.

Ms MERRYFULL - We don't sanction anybody. We gather evidence. For example, when we do an assessment, which is the preliminary investigation which mainly goes to the head of agency, we gather a whole lot of evidence.

Mr MULDER - I know what you do, but I am suggesting to you that in the normal course of investigations, investigative agencies would seek to take their material to an independent body to have the facts established independent of the investigators. What we do at the moment, and the Police Service is no different, is we do the investigation, gather the material and give it to the head of agency. He then responds to that action and then the employee gets to challenge the facts. To me, natural justice would be that as investigators you really should be taken to the point where you assemble your body of evidence but don't present it to the head of agency for judgment. You present that evidence and have it tested in a tribunal arrangement, in a proper court of law, where it would be open and transparent as to what the facts alleged were and whether it satisfied the tribunal.

Ms MERRYFULL - It is a bigger question than for us to deal with here under the current act.

Mr MULDER - I know, but I am asking your view. You are talking about these increasing investigative powers and I am wondering how they should be misused.

We have several commissions here and you have repeatedly said, 'powers like they have in some of these other independent commissions', and how Tasmania is the poorer because we don't have it at that particular level. A number of these integrity entities in other jurisdictions have their origins in royal commissions and inquiries that have revealed high levels of entrenched corruption of a serious nature and that this has not been the case in Tasmania. Then we go to the commission's own report, which I think is what Mr Barnett was referring to, your own first report in October 2011:

During this time the commission has seen no evidence of any systemic corruption in any part of the public sector. Rather, the evidence before the commission is that most complaints have concerns relating to perceptions of misconduct by individuals in the public sector.

Don't ask me to define 'systemic corruption' because the commission itself used those words, not me. Has anything changed from the first year until now?

Ms MERRYFULL - Three years on and we have seen a lot more misconduct. In relation to the reference to 'other commissions', some were established as a result of royal commissions, but not all. The South Australian ICAC, which has just been established, was established in circumstances where there was community unrest but not a particular royal commission. Our organisation was established in response to community concern

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which was exemplified by the Parliament in the tripartisan support that was applied at the time to the passage of the bill. There are similarities across the jurisdictions but each one speaks to itself in terms of its origins and the work it does.

CHAIR - You have said there are more cases of misconduct coming forward, so what sorts of cases of misconduct are we talking about?

Ms MERRYFULL - It is pretty early for our annual report which will have some case studies but you see conflict of interest, and not just the one we tabled in Parliament but other avenues of conflict of interest, misuse of confidential information, misuse of resources in the workplace, those sorts of things. All of those things are breaches of the code of conduct. The main misconduct we see is breaches of codes of conduct, whether it is state service or a council or whatever, but we do not have a misconduct in public office offence so I cannot characterise those as fitting within those offences.

Mr MULDER - I will go back to the first part of my question and use the quote again. 'During this time, the commission has seen no evidence of any systemic corruption in any part of the public sector.' Given the fact that you have seen lots of misconduct in the subsequent two years, have you seen any evidence of systemic corruption in any part of the public sector?

Ms MERRYFULL - I think I answered that question for Mr Barnett earlier. The answer was, if you mean systemic across every single agency, systems and processes across every single agency that are exhibiting that, no.

Mr MULDER - Have you seen any systemic corruption within an agency?

Ms MERRYFULL - It depends on what you mean by systemic.

Mr MULDER - In the way they handle complaints?

Ms MERRYFULL - In actions that are undertaken in terms of serial things happening, multiple people being involved, yes.

Ms JOHNSTON - Don't forget, our act does not specifically talk about corruption. We talk about misconduct or serious misconduct.

Mr MULDER - You also made some mention that you have access to much better information than heads of agencies and therefore are in a better position to investigate lots of this misconduct. On the other hand, you complain about the lack of access to information the police have, particularly in terms of telephone intercepts and call charge records information. Would that be an example of where you do not quite have the tools at hand?

Ms MERRYFULL - It would be helpful to have those additional powers. I am saying that we have some and in our submission we have given reasons why we would like others, but even the some we have is more than a head of agency has when he or she is investigating a breach of the code of conduct.

Mr MULDER - Particularly with electronic surveillance-type powers, and we are talking about telecommunications intercepting here which you have sought access to, how would

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making you as a law enforcement agency authorise the police commissioner to give you records he has obtained because he has to satisfy the authorities that he is only obtaining that information in relation to some fairly serious crimes and the investigation of those crimes is the only reason he can gather that information? In the gathering of investigation of serious crimes, he would be gathering all sorts of information that does not relate to that crime - it might be a misconduct offence or something else - but that evidence is not available for him to use himself, let alone pass on to you. I am wondering how your getting direct access to that information is lawful and meets the requirements under which that evidence was gained? That is Commonwealth legislation.

Ms JOHNSTON - We would only be able to have direct access if we were authorised as a law enforcement agency. I think there are a couple of strands crossing over. The desktop access to the databases is a different issue. That is just about desktop within the commission. We have already obtained status as an enforcement agency under the Telecommunications (Interception and Access) Act which will enable us, when we are doing an audit about a police complaint, to access some information, but there is also other information such as interception information we will not be able to access, that is absolutely true. That is about authorisation under specific legislation. It is not just a matter of us saying we are a law enforcement agency, you have to cross all the thresholds within those legislative acts before you can access that information. We are not talking an unauthorised access.

Mr MULDER - We will take interception and put that aside because that is a real-time thing - you've either got it or you haven't. The other thing was the call charge records and things like that and particularly with mobile phones now it is a powerful tool for working out where people were. If you are an enforcement agency why can't you make application for access to that evidence directly to the relevant authorities and establish -

Ms MERRYFULL - We can now.

Ms JOHNSTON - We can; that is in our second submission.

Ms MERRYFULL - We have to be investigating a particular crime -

Mr MULDER - Yes.

Ms MERRYFULL - There is a threshold there which we are not going to cross over unless we are actually investigating that particular kind of thing. Now the Attorney-General's department has said we are that kind of agency and we will hang onto that status until we are investigating something which crosses the threshold where getting that evidence would assist investigation of that particular matter.

Mr MULDER - If you can't establish the threshold to ask for that information yourself, don't you need to cross that same threshold to get it from the Police department?

Ms MERRYFULL - We're certainly not seeking to get it from the Police department if we can't get it ourselves.

Mr MULDER - Okay.

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Ms MERRYFULL - We're not seeking to do that at all. We're not seeking a backdoor way of getting information that would not be available to us at all. The fact that we have become an enforcement agency is in our second submission which we only just provided before the end of August period and is different to the first submission which we made in October last year. That is an updated position. I don't think we have told Police about that. Obviously our submission is not yet online because there were some names mentioned that weren't redacted so Police are not aware of that and neither is the Police Association.

Mr MULDER - I may have missed it, but can I get a record on whether you thought you should also be considering taking on GBEs?

Ms MERRYFULL - We already cover GBEs.

Mr MULDER - Do you?

Ms MERRYFULL - Yes.

Mr MULDER - So things like Forestry Tasmania, you can now go and sort those things out?

Ms MERRYFULL - Yes, just about everybody. It is a pretty broad definition of public authority except for judges and magistrates.

Mr MULDER - Have you found any systemic corruption within Forestry Tasmania?

Ms JOHNSTON - We wouldn't talk about individual agencies without going into camera.

Mr MULDER - A fairly minor matter relates to my concerns in relation to your accountability which primarily I guess is basically through your annual reports and your disclosures. I will take you to a case which no doubt you have picked up in the police commissioner's submission relating to his attempt to correct the record. Your audit report at page 9 states that the most commonly sustained class 2 allegation was 'crime', with four allegations from four complaints.

Tasmania Police's view, which they put to you, was that the statement conveys that four criminal allegations were sustained from Tasmania Police in the period covered by the review. The Tasmania Police position is that the material audited by the commission indicated that no criminal allegations were sustained against Tasmania Police officers. Then when the police commissioner took this to you, your response was that Tasmania Police disagrees with the commission's view of this matter. I would have thought that a little bit of honesty and integrity might have explained what you meant by 'sustained allegation' and if you had it wrong you would have had the temerity to say so.

Ms MERRYFULL - I think you are mixing up a few of the things the police commissioner said in that submission.

Mr MULDER - All my quotes were from page 8 of his commission report.

Ms MERRYFULL - We did the audit of Tasmania Police complaints -

CHAIR - Before you answer, I am looking at our terms of reference and we need to be -

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Mr MULDER - I will withdraw the question.

Ms MERRYFULL - No, I would like to answer it.

Mr MULDER - You might not be allowed to.

CHAIR - Answer the question if you'd like to.

Ms MERRYFULL - The paragraph you are referring to says:

The view of Tasmania Police is that the final version contains information that is incorrect. Tasmania Police's view is that this information sustains this.

The Tasmania Police position is that your material doesn't say that. That paragraph doesn't say that they told us that. There were other matters in here which they told us when they responded to the audit committee report, and that is in the paragraph before, but in relation to this particular matter, when we sent them the draft of the audit report - which they had for six weeks - they did not draw that issue to our attention. There were 19 pages of response and they did not say that was factually incorrect at that time. There were a number of other things they didn't like but that particular sentence was not drawn to our attention in the response to the audit report.

Mr MULDER - So eventually Tasmania Police disagrees with the commission's view of this matter. What is your view of the matter, then?

Ms MERRYFULL - There are a couple of possible explanations for this. One of the reasons we send draft reports to agencies is so they can correct factual errors if we have made them. When we audited those complaints we did not have access to the IAPro printout, which we have for this year's audit. We don't have access to their database. This year's audit we have a printout of the findings and the allegations but last year when we did the audit we weren't given that, we only had the hard-copy files. We found this year when we had been comparing the hard-copy files to the IAPro printouts, which is where their version of the information came from, there were numerous errors, which they have acknowledged - translations between what is on the hard-copy file and what goes into IAPro. Any number of changes were made to IAPro in this year's audit reflecting the differences. Because we hadn't looked at the hard-copy files, there could have been a mistranslation and there could have also been a mistranslation in respect of the difference we now know that Tasmania Police place between an offence and a crime.

Mr MULDER - When you talk about 'sustained', do you still hold the view that four allegations from four complaints were sustained as class 2 allegations?

Ms MERRYFULL - Based on our audit of the records and the information we took off the hard-copy files, that is our position.

Mr MULDER - And with this new information that Tasmania Police sent to you, which was that -

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Ms MERRYFULL - Sorry, this paragraph doesn't say they have sent us that information. They said they disagreed with it.

Ms JOHNSTON - The first time we saw this allegation in relation to the audit was when this was published by this committee online.

Mr MULDER - What I am saying now is that has all gone through, you have heard what the commissioner has had to say about 'sustained'. Do those four cases you have referred to, in your view, still fall into that category of 'sustained' class 2 allegations relating to crime by members of Tasmania Police?

Ms MERRYFULL - I have gone back and had a look at the records we have in relation to that and I believe that's what our records are showing. I don't have those files anymore -

Mr MULDER - What do you mean by 'sustained'?

Ms MERRYFULL - I have the complaint number.

Mr MULDER - What do you mean by a complain has been 'sustained'? Do you mean you have convicted someone or you've found prima facie evidence of it?

Ms MERRYFULL - It has been 'sustained' by Tasmania Police. They have 'sustained', 'exonerated', 'unfounded' and 'not sustained'. They are my records.

Mr MULDER - So class 2 allegations around crime were 'sustained'. Were they ever prosecuted?

Ms MERRYFULL - I don't know.

Mr McKIM - I think you're asking the wrong person.

Mr MULDER - I know I'm asking the wrong person but that's what they say in their report. This is the problem with accountability.

Ms MERRYFULL - This is what my records show.

Mr MULDER - I don't wish to argue with other members of the committee but if you make statements like this in your reports I believe it is the role of this committee to ask you to explain them.

CHAIR - I think you've made your point and this needs to move on.

Mr McKIM - I want to remind anyone who may be reading the *Hansard* or listening that in fact the Integrity Commission was formed out of significant community and political concern about corruption and senior public sector misconduct in Tasmania. That is an indisputable fact.

The Government in its submission raises the issue that there may be a conflict of interest held by the commission. It says it is important to guard against any conflict of interest where one body undertakes both an advisory and educative role and is expected to work

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with office holders and on the other hand is empowered to investigate cases where it may have provided education or preventative advice or an order that processes proceed. Do you believe the commission has a conflict of interest?

Ms MERRYFULL - No.

Mr McKIM - So you completely disagree with the Government on that matter?

Ms MERRYFULL - I do, and can I say that that has been lifted out of the Callinan review of the Crime and Misconduct Commission in Queensland, which says:

The risk of conflict of interest when anticorruption agencies are requested or empowered to investigate cases of misconduct in agencies where they have previously provided education for preventative advice or undertaken an audit.

That is a direct lift. The result of the Callinan inquiry was to recommend that the CMC remove itself from the education and prevention sphere and focus entirely on investigation. The consequence of this Government's submission is completely the opposite, that we remove ourselves from investigation and focus entirely on education, while still relying on the same assertion.

CHAIR - The one area we have not touched a lot on is one of your main functions of education.

Ms MERRYFULL - Yes.

CHAIR - That is a significant part of your operations and what you are required to do. When you carry out your education activities do you record the names of the people present during those activities? In other words, if you have a session are they individually recorded as having been present during your session?

Ms MERRYFULL - There are two kinds of education that goes on. One is the direct education we do and we don't do much of that because there are 3 000 public servants and I can't get around all of them. We record when we do that direct training. We keep a record of who has been to it.

CHAIR - You individually record the names of persons?

Ms MERRYFULL - I believe that is what we do. I know we keep the numbers.

CHAIR - You say you believe you do.

Ms MERRYFULL - I will check that for you. Let me take that on notice for you.

CHAIR - Thank you.

Ms MERRYFULL - The other training we do is for agencies who will keep track themselves. I just wanted to talk about Speak Up, a new campaign we are launching across agencies. There will be posters, intranet banners and a range of materials encouraging people to speak up. This is just one of the things that we do in education and prevention. Some

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agencies, of course, are more willing to get on board than others but I am hoping we will get most of the public sector speaking up.

CHAIR - That is good.

Mr MULDER - We will take that as a matter incidental thereto, will we?

CHAIR - No, education is the main role. We are happy and no changes need to be made there. You have that covered pretty well.

Ms JOHNSTON - Mr Dean, if I could just respond to that question you had in relation to the names. Where the commission goes to provide education and training that has been organised by a particular agency, the agency organises the attendees and they have the names, so the agency keeps it. When we organise the direct training we keep the names, so they are kept in any event.

CHAIR - Thank you for that. If there are not other questions I would like to thank you both very much for being here. Are there any other issues you wanted to raise that you have not had an opportunity to discuss?

Ms MERRYFULL - I understand there might be some more public hearings and if there are I would like an opportunity to come back and address anything that is raised in those hearings. I think it is better to speak to those things rather than put in yet another written submission. I am sure the committee has more than enough in front of it, so I just want that opportunity.

CHAIR - That is a decision for the committee to make at the appropriate time as we move forward and I suspect it could well happen if there were any matters that came out which we believed we would need to talk to you further about. We are doing a thorough review that we are required to do under the act and that is the way we are going to proceed.

Thank you both very much for being here today and for your submissions which have covered a lot of areas. You have heard me say before that we are trying to get a report into the Parliament by the end of the year.

THE WITNESSES WITHDREW.