

PUBLIC

THE PARLIAMENTARY JOINT STANDING COMMITTEE ON INTEGRITY MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON WEDNESDAY 22 OCTOBER 2014.

Mr DAMIEN BUGG WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Dean) - Welcome, Damien. You are aware of parliamentary privilege, the possibility of in camera hearing and so on.

Mr BUGG - The submission was written on the fly a couple of weeks back. You look at these things afterwards and think you should have said something differently or something more. There are some things I would like to add; nothing I want to change. I would have a concern about how far I could go with the matter I have direct experience of if it were to be available to the press. That matter still has some other issues to go and I wouldn't like to trespass into that too far. I think I can do it fairly anonymously.

CHAIR - If at any stage you believe there is evidence you would like to give to this committee in camera, the committee will make a decision and we can go in camera to receive that evidence. I will leave that in your hands at this time.

Mr BUGG - You have the submission I sent in by email on 10 October. Just to explain what I meant by a couple of things, I raised the question at the outset that I have had a concern all along as to whether Tasmania really needs a full-time, full-blown integrity commission. I said that before the legislation. Some of my experiences were a little dated by then as to my period as state DPP, which now looks quite historic because it was 1986-99. However, I raised the question - and I apologise for not having any statistics available to engage in the dialogue better than that - as to whether since the commission has been in place there has been a matter of serious misconduct of the type that I know you, Lara, raised as minister in the second reading speech. I looked at that closely at the time and was reassured this was not going to be a sledgehammer-to-crack-a-nut legislation, that for small matters of misconduct and other issues there are already mechanisms in place to deal with them and they would be dealt with in that way, and that the commission was there for matters of serious misconduct of the type outlined in the legislation. My feeling is, because there hasn't been any publicity of any serious matter, as I would call 'serious', that the commission has not had referred to it anything of the type that I think was always at the background of government's intention to pass that legislation.

I raised that question right at the outset: how many matters has the commission dealt with in three years that could have been dealt with by the oversight mechanisms we have - the Auditor-General; the Ombudsman; the Public Service Commissioner, which is now a different function and that position has been removed from ex-officio board membership of the commission - and the police? What if it's a matter involving an allegation of serious misconduct within the police department? It appears there hasn't been or we would have heard about it. Is three years a sufficient track record to have a look at it and ask, 'Do we need 14.5 persons in these tightened economic times and a six-person board to administer what is fundamentally an education process?'. I then have a concern that if you're not getting matters of serious misconduct and there aren't sufficient constraints in the

PUBLIC

legislation to focus the commission's attention on those matters which are serious, and to pass off those matters which aren't to the appropriate authority or authorities, you are going to have it investigating matters it shouldn't and all you've done is create another investigative agency at considerable cost.

I raised the dual question in that first paragraph of my submission: what about the education process? Does that need an integrity commission with a board of six to set up an education program and a monitoring system to determine whether there are in place integrity assurances through the public sector? I speak with some experience on this because I have recently stood down from a three-and-a-half-year engagement at the Australian Taxation Office as their independent integrity adviser. My role was to look at their integrity frameworks - that is, the structures within the 24 000-employee organisation to determine whether they had in place the right reporting mechanisms, the right oversight mechanisms and the right assurances to determine whether they were doing the right thing in accordance with their legislation. They were also overseen by the Ombudsman, the Inspector-General of Taxation, the parliamentary processes and the reporting mechanisms which the commissioner has to make to parliament through the annual reporting processes. It was an engagement where I was to work as I saw the need to do so. When I reviewed the role and recommended to the commissioner that he could downgrade it, before I left the average number of days per year I was engaged by the office was 30.

You need to look closely at each government department to determine whether you have integrity of processes and systems in place and whether you have the right oversights and assurances in there. Having done that and reassured yourself of that, what other role do you have? I will take you through the legislation which I think open up the gate for the commission to look at matters which were not within the contemplation of the Government when the legislation was passed - that is, matters of serious misconduct.

My one direct experience of the matter - I cannot go into too much detail about it, but being anonymous about it - was that after five months of what appeared to be an investigation, it turned out instead to be an assessment. The result of the assessor's report was a referral made to three different entities under the act, when I think the option is only to refer to one entity. What you had was an assessment that took five months and, as a former investigator, you would know by now the pool was pretty muddy. It is referred out to three and you suddenly have potentially three investigations into the one matter with people treading on one another's toes as they try to get their gumboots into a pool that is already muddy. Why did it take five months? Having complained about that to someone else, I was informed that their experience in a similar situation was not dissimilar to mine - that is, some considerable months for what is basically intended to be, and I will quote your words, 'a triage.' That is, let us have a look at it. What is it? Should it go out for investigation by one of these agencies? Your second reading speech reassured me that there would be this discretionary filtration. Or, no it is a serious matter so we need to look at it.

This was not a serious matter. The triage process turned into an investigation in reality because the assessor has that power under the act. After five months the assessor said 'That is far as I can take it' and the chief executive officer referred it to the Ombudsman and the head of the department and one other person to 'investigate and take action'. Then you have an unseemly rush unless there is some understanding between them. I repeat

PUBLIC

what I said in my email that one of the people that is referred to investigate is a board member. It is a strange governance structure when you have that flexibility about it.

I had some sections of the act I wanted to refer to, to demonstrate this. There are also some flaws in the drafting of the legislation which I think need to be examined, whatever this committee's view of it is. I would not take up your time with too much black letter law recitation from this table but I am open to questions. If you start with section 3 of the act, which is the object and objectives of the commission, subsection (3) says that the Integrity Commission will endeavour to achieve the objectives which are listed in subsection (2) by educating and by assisting public authority to deal with misconduct. There is not a lot of assistance in the matter that I have experience of. It was, quite candidly, heavy-handed stuff that upset a number of people.

Mr BARNETT - What do you mean there - on behalf of the commission?

Mr BUGG - The commission, yes. Then subsection (3)(c) of section 3 says, 'Dealing with allegations of serious misconduct or misconduct by designated public officers', and under the act 'designated public officers' are defined as people of senior rank. That is a clear mandate and a direction to the commission that it assists public authorities in dealing with simple misconduct but it deals itself with allegations of serious misconduct. That was the reassurance I had, bearing in mind the caveat I expressed when I first gave evidence about this four years ago.

Then it can make findings and recommendations in relation to its investigations and inquiries. That quarantining of matters into serious misconduct and misconduct is not repeated through the act so that when you get into the sections that refer to the commission's powers and functions in considering misconduct, misconduct and serious misconduct are lumped together. So there is not a continuum of that direction. The assurance that certainly the second reading speech gave was that this was not going to be a sledge hammer to crack a nut, which was the way in which it was expressed during the debate. That is my first concern.

The second concern I have relates to the actual functioning of the commission in terms of just how many matters of serious misconduct has it had either referred to it or alleged to it for investigation, as opposed to - what I do not want in any way to minimise by saying - simple misconduct for which there are already in existence facilities to deal with in this state. I think that needs to be examined. If you go to section 8, having just read section 3, you would be surprised to see that under 8(1)(f) the commission may receive and assess complaints or information relating to matters involving misconduct. Then it is followed by subsection (g) 'Refer complaints to a relevant public authority, integrity entity or parliamentary integrity for action', and so on, but it may investigate under (i) any complaint by itself or in cooperation with the public authority, and under (j) of its own initiative initiate an investigation into matter related to misconduct, so you lose that definition of distinction.

Therefore you need to consider - after in my experience the matter after five months - what in the end turned out to be an assessment, not an investigation. I could gain no indication or information about it. When I telephoned after three months to find out what it was about I was told it was confidential and I had recommended to me, to quote the words of the CEO, 'section 48 of the act'. I knew the provisions of section 48 because I had looked.

PUBLIC

That gave me the impression that what was confronting us was an investigation because section 48 applies to investigations. Two months later when the report was provided it turned out to be an assessment. Section 48 has no relevance to an assessment under the act. The confidentiality provisions in relation to an assessment relate to the written notices given by the assessor, not the chief executive officer, so there seems to be a misunderstanding and a confusion between what is an assessment, what is an investigation and what the roles of the various parties are. That concerns me. What are the government's mechanisms within the commission to ensure that this important piece of legislation is being properly applied by the officers within the commission?

Then the question of the principles of the operation of the commission under section 9 is that it is to work cooperatively with public authorities and integrity entities. I must say I would have expected a better level of cooperation in the situation that I had that I have mentioned and will retain the level of anonymity about it.

Under 9(1)(d) the commission is to ensure that action to prevent misconduct in a public authority is taken if the public authority has the capacity and it is in the public interest to do so. It is obvious after five months, because of the references made by the chief executive officer to both the Auditor-General and the secretary of the department, that the commission was of the opinion that this capacity existed, yet it took five months to meander through what was euphemistically called an assessment whereas I think it was more of an investigation, and certainly the investigative powers of the act were being used.

The other requirement is that these matters are dealt with expeditiously. I question five months to assess the matter and then, pardon my common language, flick pass it to three different people for them to investigate and take action. Then you have (g) 'not duplicate'. I raised that in my email to you. The words in that I do not think prevent duplication of a new matter. It only prevents duplication where a matter is either being investigated or has been investigated. They are the words of 9(1)(g).

Mr BARNETT - I take the point generally on duplication but not regarding subsection 1(g).

Mr BUGG - It is an invocation to not duplicate matters which are either already under investigation or have been investigated, but not new matters. In other words, if it is not already under investigation or has not been investigated, that invocation does not cover it. In other words, a new matter that comes to the commission because it is advertising for complaints. Why should it stay in the custody of the commission? Why shouldn't it be triaged, as you intended when you were minister, immediately and referred out, instead of muddying the pond for five months and saying 'We have taken it as far as we can. Here is the pond. You work it out.'? One of the people to have it had no power to investigate it, and that was pointed out.

Mr BARNETT - Which entity was that, may I ask?

Mr BUGG - No, but I could in private.

Mr BARNETT - No, that is fine.

Mr BUGG - The role of the board is to ensure that the chief executive officer and the staff of the commission perform their functions - section 13(a) - and exercise their powers in

PUBLIC

accordance with sound public administration practice and principles of procedural fairness and the objectives of the act. Now I go back to section 3 and the objectives of the act is serious misconduct and misconduct involving senior officers. What are the government mechanisms in place from the board of the commission to its staff to ensure that it does not chase small matters but rather concentrates on serious matters. I know, Nick, when you were minister that was the matter that was of concern to for you - and the education process.

For the two matters I am aware of aware of, one more closely than the other, they were not matters for which there was not the capacity within the public sector, and the mechanisms there for the investigation, to do them. So I question what are the mechanisms in place?

The other sections which I would refer you to is do raise this question of education. I think a lot of good work has been done by the commission in the area of education. Their website provides a really good, easily accessible program of factual situations which demonstrate conflicts of interest and other such matters, which are important. However, as I say in my email, does that require a board of six and a structure such as the Integrity Commission? Are there other sources, and can they do it just the same?

The question of assessment, which is the matter that I have some direct experience of, is under section 35 of the act. Under that section, 35(1)(b), if a complaint is made, 'the chief executive officer ... may accept the complaint for assessment'. Then it goes to an assessor and if the assessor conducts an assessment in relation to the complaint, the assessor can give written notice of his or her intention to conduct the assessment, and the people are listed under subsection (3).

To those notices, section 98 - which is the 'publish and be prosecuted' provision of the act - applies, not section 48. That applies to investigations. I'll read section 48:

An investigation by an investigator is to be conducted in private unless otherwise authorised by the chief executive officer.

I was seeking some indication of the parameters of this matter. I didn't know whether it was an investigation or an assessment but certainly the investigative powers were being used, to the best of my understanding, of documents that were being required and people being required to attend and be examined. So I assumed it was an investigation, and when it turned out to be an assessment, I wondered why I had been recommended to section 48.

Mr BARNETT - Were you effectively told that it was section 48?

Mr BUGG - Yes, in a telephone conversation.

Under the report of the assessor - and I think this is interesting because this is where I think -

Mr BARNETT - Have you followed up with the CEO and said, 'I was advised that it was section 48, an investigation, it appeared; it is clearly an assessment'? Have you made any inquiries or followed up?

PUBLIC

Mr BUGG - No, it was two months later. It was three months into the 'assessment' when I raised the question. It was two months later when I got the report. When I got that report I raised concerns that the directions that were given as a consequence of the report were in excess of the provisions of the act. I am coming to that now - sections 37 and 38.

If you have a copy of the act in front of you, section 37, which is 'Report of assessor', says that the assessor reports to the CEO and can recommend in the report that the complaint be dismissed or that it be referred to the principal officer of any relevant authority, or to an appropriate integrity entity, or to a parliamentary integrity entity, or to the Commissioner of Police, or to another person who the assessor considers appropriate for investigation and action, or that it be investigated by the Integrity Commission.

That is the assessor. Section 38 is the CEO. When the CEO gets the report, the CEO can do those same - or, or, or. What the CEO did was and, and, and - referred it to the Auditor-General and the head of the department and another person. I raised the question in an email: it's 'or', not 'and'. You've referred it to three people for them to investigate and take action. The section doesn't say that, it says or, or or. There is a misunderstanding, in my submission, of the provisions of the act. To support that I take you to section 78, which is where there has been a tribunal examination of it - and that is interesting in itself because you could actually have a matter referred to the commission for complaint which would be assessed, from which it would be then investigated by the commission, from which it would then be referred to the tribunal. On that process you would look at it and say that's open under the act.

But if you look at section 78, look at the language in subsection (2), which says:

Having conducted the inquiry, the tribunal

Mr BUGG - Section 2, which says, having conducted the inquiry, the tribunal 'may do any one or more of the following: (a) ...; (b) ...; (c) ...; (d) ...', et cetera. If you look at subsection (3), 'If the Integrity Tribunal makes a determination under subsection 2(b) - that is, making a finding that misconduct has occurred - 'it may refer the determination and any material that it considers relevant to ... the principal officer ...; or an appropriate ...; or ...'.

Having made the distinction in subsection (2) that you can refer it to any one or more of the following, under subsection (3) the 'or's come in again - in other words, you've only got one choice, yet the commission has taken the view it is a multi-answer question. I raised it and was told that it had been considered and the view of the commission was that 'or' meant 'and'. With all due respect, I believe that is misconceived and it is a misapplication of what are serious powers under the act and, quite candidly, a waste of public resources if you require three people to undertake that investigation.

Mr BARNETT - Was that the view of the CEO or the board, or both, to your knowledge?

Mr BUGG - I understood from the communication with the CEO that it had been considered by the board as well and that it was the view that 'or' meant 'and'.

Mr BARNETT - Did you get that response in writing from the CEO or via phone?

PUBLIC

Mr BUGG - I would have to check my computer on that, but my first communication was a rather lengthy email which raised not only that question but some others. There is an inconsistency in the legislation which I think is an oversight in drafting - and I won't take up your time with that; I can send you details of that.

Mr BARNETT - Was it a considered response by the CEO? Do you think she considered it and took advice from the board?

Mr BUGG - I don't think she went away and took advice, I think it was considered position.

CHAIR - On the language of 'or', have you had an opportunity to look at other legislation of other states as to whether that sort of language is used there, whether it gives the options?

Mr BUGG - No, I haven't, and I apologise for that. I only became aware of this review when I was in America; I came back last week but it was the week before that I sent the email in. My research resources aren't what they used to be and I didn't have them available - I had lousy internet access where I was driving.

Mr McKIM - It's possible to imagine a situation where a complaint is made and an assessment is done by the commission, and that complaint may cover more than one area or more than one issue. In the course of its assessment, the commission forms a view that some matters in that complaint are best dealt with by reference off to one body and some matters are best dealt with by reference off to another body. Is your argument that the drafting unreasonably limits the commission in the exercise of its powers and judgment as to who and to how many people matters are referred?

Mr BUGG - I would suggest the drafting of the act as it currently is doesn't permit the commission to do that which it purported to do in this particular case. In this particular instance, a matter of complaint was referred to the commission; five months later the investigation into it - not the assessment - had expanded beyond the matter of complaint to a number of other issues. If you look at the act, the focus of the assessor is on the complaint - your triage point: what do I have here, a serious matter or not? If it's not a serious matter, off it goes. It didn't happen; it took five months. It expanded dramatically and in the end, out it went.

Mr McKIM - I understand that and that goes to timing. I have a question about timing and how or whether the act may be able to be improved as to the timing of an assessment or an investigation. Just on the 'and ...; and ...; and ...' and 'or ...; or ...; or ...' issue, would you submit to the committee that the legislation ought to remain as 'or, or, or', or do you think more flexibility could be built in by the use of the words 'and/or', perhaps?

Mr BUGG - If you get the scenario you talk about where you have three different matters that can be merged - that is, it is a complaint of misconduct here, it also reflects misconduct there and it also reflects misconduct there - one of them is more appropriately dealt with by the Auditor-General, one is more appropriately dealt with the Ombudsman, so refer one to the Auditor-General and one to the Ombudsman -

Mr McKIM - Instead of the whole bundle to each.

PUBLIC

Mr BUGG - Don't bundle them. That is available under that section without changing it to and-and-and, because each one then becomes a separate matter of misconduct.

Mr McKIM - I understand.

Mr BUGG - I think the drafting was intended to be that way because otherwise you were going to find, as I said at the outset, three people being asked to investigate and told their investigation and whatever action they take will be monitored by the commission in the letter accompanying the report. They are all going to rush off and investigate and suddenly find they are interviewing people three times and tripping over one another and, as I say, most of these people have already been interviewed in the process of the assessment.

It did not look clean, it looked untidy, and when I looked at the act, quite frankly, I felt that something was either being misunderstood or I wasn't getting the message. I may be wrong. I don't set myself up as an expert in statutory interpretation, but when someone says 'or, or, or' you have to make a choice, particularly when section 78 says you can do one or more of the following and then in the next subsections it says 'or, or, or'. I think the draftsman of that act intended it to be quite disjunctive and not conjunctive, which is the way in which it is currently being interpreted.

Mr McKIM - Thank you. On the timing, do you think it would be beneficial to put indicative timeframes in the act around the length of time the commission has for an assessment? I don't know what issue you are referring to and I'm not asking you, but part of your evidence is that it took too long. That is a reasonable view for you to bring to the committee, but the commission could respond that it was simply doing its job and being thorough in its remittance of its mandate. There are time frames in various other pieces of legislation, not necessarily in relation to investigations and assessments, I might add, but how would you see the act being changed, if at all, to address that issue?

Mr BUGG - There is an encouragement to be expeditious in the legislation itself, firstly. Secondly, I am really concerned about prescriptive time limits. Investigations can become complicated. People ought not be rushing off to seek extensions of time. The people who impose time limits on investigations sometimes don't understand what's involved in an investigation.

Mr McKIM - And they can evolve as well.

Mr BUGG - Absolutely. I think it would be inappropriate. We're not talking about an investigation, we're talking about an assessment. Should this matter be dealt with by the commission or should it go out to one or other of the following? Five months later the decision was made. It should have been fairly apparent, I would have thought, within a very short space of time, certainly not five months. When silence under some sort of statutory compulsion is also imposed on people who are trying to operate around this examination and, first of all, that imposition is later shown to be inappropriate and, secondly, it curtails, even if it is appropriate, a whole lot of other activity, these things should be expeditious. What was intended under the act as a triage wasn't being used as a triage.

PUBLIC

Mr MULDER - Coming slightly from a different perspective, you did make mention earlier on that there were no internal processes about their procedures or guidance given to people when they were performing these functions, so I am wondering whether -

Mr BUGG - No, I didn't make that allegation, I raised the question. In light of the board's responsibility to ensure that under section 3 the objectives of the act are being met by the commission, what governance mechanism do they have in place to ensure that it is only matters of serious misconduct and misconduct by senior public officials that the commission is concentrating on? If it isn't getting them, don't then pick up the minor matters just to keep yourself occupied. You're not meant to be doing that.

Mr MULDER - It seems to me the commission could use the advice of someone with your experience of the tax office and doing a review of their own internal processes and procedures and matters like that. What would your view of that be?

Mr BUGG - I think this committee is entitled to ask what governance mechanisms they have in place to ensure the requirements of section 3 are being met by the commission under their obligations under section 13. You don't want another watchdog to watch another watchdog.

Mr MULDER - No, but that's what this comes around to - they're going to create a super watchdog to watch the watchdogs and you are raising some serious concerns about the way that super watchdog is functioning.

Mr BUGG - When you look at the order in which the powers and functions of the commission are spelt out in the act, sections 8 and 9 in particular, it is the educative and encouragement functions which are given emphasis and the investigative functions are referred to later. You would expect to see the commission engaging with the agencies and looking at their mechanisms and saying, 'Look, you're a bit thin here, you need to do this, you need to do that, and what about educating your staff?'. That is why I raised the question. I didn't have anything available to me when I wrote that email to reassure me that this double purpose of this commission - that is, the educative process - was being followed as assiduously as I think government's expectation was when the commission was set up. But even if it is, I raise the question: do you need an integrity commission with coercive powers to educate your public sector into establishing integrity frameworks and maintaining them to a level to give the public and Parliament a high level of assurance that integrity standards are being maintained in the public sector?

Ms GIDDINGS - My question goes to the assessment versus the investigation issue and how far an assessment should go. Are we talking about a paper assessment where a complaint comes in, you read it and decide it should be investigated by the Ombudsman, the Auditor-General or whoever, or is there an obligation on the Integrity Commission to do some level of investigation to understand that assessment process? Is there an issue in terms of greyness between what is an assessment and what is an investigation?

If it is a basic paper assessment and a complaint comes in and you think, 'This really ought to go back to the Ombudsman', if in the process it has gone back to the Ombudsman and through his or her investigation he or she decides this could be far more serious than their investigation should go, are you aware any mechanism to refer back to the Integrity

PUBLIC

Commission? What happens if serious misconduct is found through that process, particularly if it is just a paper-based assessment with no investigation?

Mr BUGG - Dealing with your first question, I think the examination should be more than just a paper-based examination. People write complaints, make statements and write reports and you need to tease those out and see what it is. I am not suggesting this should be just a look at the paper complaint and the distribution of it to whoever it is determined to be the right pigeonhole to send it to.

If the integrity agency, person or entity to whom the assessment, report and complaint are referred to finds that, on their examination of it, it is bigger or worse or requires something more than their powers permit, the facility is there under the legislation that the action taken under the covering letter that comes with the report will be monitored by the Integrity Commission. I doubt whether, for example, a matter that was initially sent to the Auditor-General that required perhaps police intervention, if we are talking of something of that nature, the Auditor-General needs to ask anyone else for permission to call the police in. If you find it is something a little bit bigger than you can handle, there is another agency to deal with it, such as the police - go ahead and do it and keep the Integrity Commission informed because that is the nature of the provision in the section which says you have to investigate it and take action. There is an internal inconsistency between the two sections - I cannot remember now which one it was - section 38 and section 45 I think, I would need to look at that. Section 38(1)(f) says that if the matter is referred to another person, 'to refer the complaint to which the report relates, any relevant material and the report to any person who the chief executive officer considers appropriate for action'. It just says 'for action'.

Then if you go to the reporting provision, section 43, 'Referral of complaint to other person', it says:

If a complaint is referred to a person under 38(1)(f), the chief executive officer is to notify the person in writing that the chief executive officer is to be informed of the outcome of the investigation including any action taken ... by that person.

I emphasise 'of the investigation' because 38(1)(f) does not talk about an investigation and the matter can be referred to a person, which I can say in this particular instance it was, for investigation and that person has no investigative power.

The section for the referral, section 38(1)(f), just says 'to take action' but section 43(1) says 'investigation including any action taken'. That needs to be tidied up because when you go back to section 37, which is assessor's referral, it talks about investigation and action. So there is a word missing or a word added one way or the other. I don't think that was the intention of the legislators -

Ms GIDDINGS - How do you know where to draw the line in an assessment before it becomes an investigation, and can you legislate to ensure that does not happen?

Mr BUGG - The assessor is given all the powers to investigate under the act so that at a point there might be this seamless transition from an assessment to something that requires

PUBLIC

investigation. The assessor is therefore given investigative powers so that they can dig that little bit deeper with those powers and I do not have a problem with that.

However, at a point the assessor can say, 'This matter should be investigated by the Integrity Commission - that is one of the 'or's under section 37, and it is also one of the 'or's under section 38. Then it can be investigated as a proper, full-blown investigation by the Integrity Commission. This is to be a short, sharp triage under section 37. You do not get two bites at it and start to have a look at it and think, 'This is an investigation; I would like to investigate this - oh no, I have taken it as far as I think can, let's pass it off to someone else under section 38.'

The simple answer to your question is: you need the investigative powers so that you can have a thorough assessment. But if the assessment is intended to be triage to work out where it should go, once you put on your investigator's boots, then you need to anticipate that it may be turning into a full-blown investigation for the commission. But there is a flashing amber light up there that says, 'Hang on a minute, this is, on the face of it, not a matter of serious misconduct, and where are you heading with this?'.

Mr MULDER - That seems to be the issue, that the assessment should be about not whether allegations are substantiated, but whether this is a serious matter the commission should be concerned with. If that is the key point, then we need to get around that because there is a fair amount of indication, from stories such as yours, that the commission is taking some time, in the hope that the further they assess the more serious it will become so that they can take it on.

Mr BUGG - You have just almost paraphrased the then minister's second reading speech on this subject. The assessment period was to ensure it was a triage process to filter out those matters which were not in the domain as intended by the government, which was: do not take a sledge hammer to crack a nut on matters of misconduct, we are looking for serious misconduct. I agree.

Mr MULDER - Thank you. You have always been a witness.

Ms GIDDINGS - Looking at the time, Chair, it might be appropriate to have a short period in camera to give Mr Bugg -

CHAIR - Thanks for that, Damien. How much more did you have on the sections of the act that you wanted to raise because we may well run out of time?

Mr BUGG - I could provide you with a one paragraph statement about those couple of sections.

CHAIR - Maybe if we can cover that and then come back and address the in camera situation. I will let Damien continue in the open forum.

Mr BUGG - I have referred to the 'or's and the distinction you get from section 78(2). Then I pointed out the drafting error, which I think there is, between sections 38(1)(f) and 43(1). I say investigations do not have the direction within the act which should be there in light of section 3, which I have referred to, in the second reading speech. If you go to the investigation sections, that is section 45 particularly, and you look at it, misconduct is

PUBLIC

referred to in there as a subject of investigation without the same rider that you get some from sections 3 and 13.

The layering of investigations and tribunal work seems to me to be heavy-handed. That is, an assessment could morph into an investigation that then could become a matter for the tribunal examination or inquiry, after which it may then be referred, under section 78, out to those agencies that I have already referred to. You could have this process. Something might turn out to be terribly serious and therefore require the intervention of the tribunal. But you would like to think that it would not take an assessment and investigation to get to that point. It should be identifying itself fairly early on in the piece.

That is all I wanted to add and I am happy to answer any questions if I can.

CHAIR - We will take questions in the open forum at this stage and then we will come back.

Mr BARNETT - In your submission, Damien, about the board and its role, and the key members of the board who may or may not have some overlapping responsibility, do you have a view on the appropriate composition of the board? Should they be on it or not be on it?

Mr BUGG - Yes, that was my email written from somewhere in New Hampshire. When you look at the structure of the board, you have permanent appointments to the board and then you have ex officio appointments. When the act was first set up there were three ex officios - the Ombudsman, the Auditor-General and the Public Service Commissioner. With the rearrangements of the Public Service Commissioner's office there was an amendment to the act and that ex officio post was deleted, but you still have two people on the board who under the act are defined as integrity entities and they will, as happened in the one matter I have any understanding of, have the potential to be recipients of matters referred out by the commission for further disposition.

It seems strange to me that if they ought to be the first port of call for some matters of complaint but because of an advertising campaign, for example, people are bringing matters to the Integrity Commission which should either be going to the Ombudsman or the Auditor-General, and you've got those two persons sitting on the board, and then the matter is triaged through an assessment and it comes out to the Auditor-General or the Ombudsman, the objective onlooker is going to say, 'This is a bit interesting. These people are sitting up there' -

CHAIR - Some people are already saying that.

Mr BUGG - Right. As I say, I only had cause really to look closely at this legislation earlier in the year and when I looked at that I thought, yes, I remember that, but when you see the referral process that is anticipated within the operations of the commission it seems to me to be an odd model to have, and I don't think you'll find that replicated in any other state where you've got either an anti-corruption agency or an integrity commission.

Mr BARNETT - You've made some criticisms around duplication, the 'sledgehammer to crack a walnut' issue, the investigation and assessment areas. You made the observation in your opening remarks about the importance of setting up appropriate processes and systems to

PUBLIC

ensure integrity and public process. Do you think that should be a key role as well as education for the commission?

Mr BUGG - I think when you look at the broad educational mandate that the commission has - that is in sections 8 (1)(a) to (b) and 9(1)(a) to (c) - you'll see that that educational role is so broadly expressed that there is the capacity to examine integrity frameworks within government agencies to determine whether or not the appropriate integrity mechanisms are in place and functioning properly.

Mr BARNETT - You asked the question about how many matters of serious misconduct have been investigated, hence my question. We had some discussions with the commission about the definitions of misconduct and serious misconduct. Do you have a view or can you share your experience on what is serious misconduct?

Mr BUGG - I think with misconduct and serious misconduct, as they juxtaposed within the act and as best I can glean, the intention of government was to leave those matters of misconduct for which there are mechanisms already in place to deal with them to be dealt with in that way, and serious misconduct was where you had either the possibility, I suspect, of criminal conduct or an outcome that required something more than the code of conduct disciplinary processes within the State Service Act or the sanctions or criticisms that might be available through either an Auditor-General's report or remedies available to the Ombudsman. It is something of a wavering answer but we're dealing with a piece of legislation where it is contained. Some matters of serious misconduct ought to be investigated by the police.

Mr BARNETT - A report has just been delivered by the commission - and is now a public document - entitled 'Prosecuting serious misconduct in Tasmania: the missing link'. I don't know if you have seen reports on it but it is a submission so say that the law should be changed, amended, in Tasmania to make serious misconduct an offence and a crime. Do you have a view on that? The view put by the commission is that it is set out in other states but we don't have it in Tasmania. I'm not sure if you've reflected on that or seen that submission.

Mr BUGG - No, I haven't, but just looking at it in terms of how this act was set up, I suspect the Government felt that matters of serious misconduct were those which might in any forum be regarded as criminal conduct and therefore we had a commission with some coercive powers and a tribunal process set up to deal with it. How do you define it? In light of what I've said, I think it probably needs better definition within the act to ensure there isn't this jurisdictional blurring that seems to be going on.

CHAIR - I need to reassess our position on the time left to us. Lara has indicated she would like to go into camera because there are some issues she would like to explore.

Ms GIDDINGS - I just think it would be useful if Damien wanted to be able to explain a bit more about his experience.

Mr McKIM - I don't have a problem with that, except I have one more very brief question.

Damien, just to be clear, are you suggesting to the committee that the commission should be stripped of its coercive investigative powers, or is it your position that Tasmania needs

PUBLIC

a body that is not Tasmania Police or in addition to Tasmania Police that has coercive investigative powers?

Mr BUGG - I asked the question in the email: is there a demonstrated need for it? I think I'd rather leave it at that question than make a statement. As you will see from the preamble in that email, I apologised for the lack of information I had to make any more informed comment than that, hence I raised the question. I raised the question when this legislation was first being contemplated - that is, four years ago - I think in this very room, as to whether we needed a permanent commission or something leaner and flexibly responsive to particular situations rather than with a broad mandate where you were likely to get some confusion. Once set up, you have issues of permanence and public perception - is there serious misconduct out there, has there been an instance of it? I don't know. Has there been a tribunal convened under the act in three years? I didn't have that available to me when I wrote that email, but I think that's something that would be readily available to this committee and we'd be governed by that answer, wouldn't we?

Evidence taken in camera.

CHAIR - Damien, can you quickly cover off on that point for us?

Mr BUGG - Chair, the only other matter I wanted to mention is what I think is an important part of anyone's responsibility as a public officer and particularly principal officers in the public sector, and that is to ensure that there are proper integrity mechanisms in their department or agency and there is a good framework around them and reassurance that that framework is working.

If you go to part 4 of the act, which is sections 31 and 32, I know all the mandates about statutory interpretations say that you don't just rely on the headings, but part 4 is headed 'Educative, preventative and advisory functions of the commission.' If you go to section 31 it talks about them - and that was in some of the dialogue we had, Nick, about that - and it has the following educative, preventative and advisory functions, all of section 31. Then you go to section 32 which is under this same part, 'Public officers to be given education and training relating to ethical conduct.' That is the heading and you would immediately think that it to be given by the commission. Section 32(1) says:

A principal officer of a public authority is to ensure that public officers of the public authority are given appropriate education and training relating to ethical conduct.

I'd say it's a given, you assume it, but that imposes a statutory duty on principal officers in departments and it's hidden away under section 32(1) of the act under a heading that public officers are to be given education and training relating to ethical conduct under a heading talking about the functions of the commission. It is important to recognise that responsibility on public officers, particularly those who hold positions of seniority and authority in the public sector.

That is really my last comment about the rather odd, quirky nature of some of the provisions of this act that, if what this committee looks at is an amendment to some of the provisions, they are some that I think require the attention of the committee.

PUBLIC

Mr McKIM - Would that be better off in the State Service Act?

Mr BUGG - I suspect it is probably in the State Service Act.

Mr McKIM - I am not sure that it is in such explicit terms.

Mr BUGG - It is ideal. I says what I guess everyone in this room thinks should be said but it is a pity that is said in section 32(1) under the wrong heading.

CHAIR - Thank you very much for being here, Damien, and for answering the questions in such forthright manner. We appreciate it very much. I just remind you that on leaving this room parliamentary privilege no longer applies. Thank you very much.

Mr BUGG - That you, and I do apologise for the overlap on time.

CHAIR - That is probably my fault in chairing the meeting.

THE WITNESS WITHDREW.

PUBLIC

Professor JEFF MALPAS WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Before you commence, I think you have given evidence before these committees before so I can shortcut by simply saying that this is being recorded, it is a public hearing and parliamentary privilege applies whilst you are in here. Once you leave this room it no longer applies. If you reach a stage in your evidence where you felt that you might be able to better discuss a matter in camera, in confidence, then the committee would determine that at the time. We are happy to do that. It is typed, the evidence is recorded by Hansard.

You have provided a submission, Professor, if you want to add to that, please do so, and then we will have questions as we proceed.

Prof. MALPAS - My submission is fairly general. It refers back to the submission that Sir Max Bingham and I made originally, prior to the setting up of the Integrity Commission. I think most of what I have to say is pretty straightforward. I do not see any need to add to it in any great detail. I have not focused on the details of the act. I am not a lawyer. That is also not my primary interest. I guess I am particularly interested in the character of the commission and the character of its operations in general, and that is what I have tried to talk about in the submission. I am happy to answer questions.

Mr GAFFNEY - I was interested, in your letter, by the sentence where you said 'I believe that it could be formed in a way that would be less costly and more effective but such reformation would involve quite a radical shift from the nature of the commission and the manner of its operation.' Could you expand on that a little bit?

Prof. MALPAS - I don't think I included with this a copy of the original proposal that Sir Max and I drew up some years ago now. Our proposal was for a much smaller, leaner sort of operation and organisation. We wanted a commissioner and possibly two or three people who would assist him with a very small ancillary staff. We were not envisaging the sort of large organisation that actually developed.

That was based around the idea that Max and I were very much of the view that there was not a significant issue of organised crime in Tasmania. Most of the significant issues that were likely to come up would be quite specific. They might not occur frequently. It also seemed to us that the most important task of the commission was going to be to not necessarily undertake itself but to direct and organise in an educative function. I think that is, in our terms, the most important side of the commission's work. But we did not envisage the commission's undertaking that itself because the expertise required for that might not be best vested in the commission and, probably, it was going to be better for the commission to find other people who could undertake that work for it. We really envisaged the commission as a very small body that undertook investigative work as necessary, but which also oversaw educative and training work. We set the structure for that out in the documents we provided. We believe that could have been done with fairly simple, straightforward legislation. I was party to some of the conversations that took place around the development of the commission but what developed went in a direction that did not fit quite with what Max and I would have liked - but that is how it went.

I have said here that I do not think the commission as it is currently constituted works. I think in some ways it exacerbates some of the problems we were trying to address. I have

PUBLIC

a number of reasons for thinking that. If it were to be re-formed, my recommendation would be to go back to the sort of body Max and I were talking about originally. I am very happy to supply another copy of that original submission and the plans that we drew up but I am sure you have them on record anyway.

Mr GAFFNEY - In reflection on the last three years' work of the commission, would you alter or change any of your and Max's initial proposal because you have seen different things have happened or there have been others things that you forgot about or you should have looked at that or -

Prof. MALPAS - I do not think so.

Mr GAFFNEY - Okay.

Prof. MALPAS - I have talked to Max on various occasions about this; for various reasons I doubt Max has put in a submission and I know for personal reasons he has withdrawn in lots of ways. But I have no reason to think Max's view has changed. My view has not changed. I think we would still stand by the original submission and the original structure we set out, partly because that structure is based on a particular conception of what an ethics commission ought to be doing. We were not envisaging an ICAC; we were not envisaging that sort of large body, the sort we have seen in other states. Those bodies do have some problems of their own of course, but we did not think Tasmania needed that sort of body and we did not think Tasmania could afford that sort of body. We were really trying to tailor it to what we thought the needs of this state were. I would concur with the comments Damien made that we probably need a much leaner, smaller body than the one we have.

Max and I were concerned when we first saw what we have. What we were actually setting up was a very large organisation that was going to be quite costly, that we thought was oriented in the right way and that was going to create a certain sort of work for itself. I had some engagement with the commission when it was first set up but it very soon became clear they were not particularly interested in the sort of approach I was going to recommend, and I have had no contact with the commission other than the contact I had in the first maybe six to 12 months. In fact, I found it quite amusing sometimes when I have on occasions at university functions met members of the commission who have then proceeded to tell me what the commission is, how it developed and what it does. I would still stand by what we said in the original proposal.

Mr GAFFNEY - Thank you.

Mr McKIM - Professor, to be clear, does it remain your view that the commission ought to have investigative powers? I think you said in your most recent communication to the committee that you think it should have powers akin to a royal commission. Just to be clear, that remains your view?

Prof. MALPAS - That remains my view.

I heard a brief report on the radio this morning to the effect that there is a suggestion that the Government would like to strip the investigative powers away from the commission -

PUBLIC

Mr McKIM - That is correct.

Prof. MALPAS - I think that would be a retrograde step. I think it would also send the wrong message in terms of this Government's position. Having been so much in favour of having a commission established in the first place, it is probably not, in public relations terms alone, the best look to be then, when you are in government, wanting to strip back the investigative functions. The investigative functions are important and they have to remain, but they are not the only function of the commission nor are they necessarily the most important function. How those other functions, the educative functions, are discharged, I believe need to be discharged in a slightly different way from the way in which the commission has been doing so thus far. I think it needs the investigative powers but it also needs - and I would be closer to Damien Bugg on this - the educative role as well.

Mr McKIM - I will come to the educative functions in a minute. You said you think the government's position - and I can confirm it is a publicly-available document that the Government has submitted to this committee - that the investigative powers of the Integrity Commission be removed, sends the wrong message. Could you expand on that, on the role you think, as an expert in ethics, the Government has to promote ethical behaviour and behaviour of integrity through the public sector?

Prof. MALPAS - First of all, it sends the wrong message. A party that has been in opposition was supportive of this move in the first place. One would hope there would be a commitment to continuing that support even when one is in government. If a commission of this sort is doing its job, one of the things it might well be is critical of aspects of government policy or action. I would like to see a much more proactive commission that was much more ready to speak out on matters of ethics in the public domain. That is one of the shortcomings of this commission. It sees itself as a sort of code-and-compliance body rather than a body that is proactively committed to trying to raise the profile of ethical conduct within the public domain. I believe that is the most important task. One of the serious problems we have today is the understanding of ethics in the public domain. I think we are a bit embarrassed to talk about ethics, which is why we talk about integrity.

It is a bit of a mistake on the part of the Government to make that sort of a move as it sets things up in the wrong way. I also think governments have a commitment to advance, support and promote ethics within the public domain. That is important because at the very heart of ethics there is the idea of open debate and open questioning. The capacity to question is what underpins any form of ethical conduct. A part of the responsibility of government is to ensure that sort of public debate takes place, even if sometimes it may not be seen to be in the Government's best interests. I know that may be thought to be somehow an impractical and idealistic conception but I think it is vital. Part of the reason we have a problem in politics, not just in this country but in many western democracies, is because of a tendency for governments to shrink back to defend themselves, to see themselves as concerned, to make sure the right spin is out there. I believe we would have a much healthier democratic system if governments were willing to promote the public debate, which is the essence of democracy.

I have this peculiar view that the ethical, the political, and especially the democratic, ought to be seen as directly tied together. The maintenance, the encouragement of an open domain of public questioning is essential to ethical conduct. Ethics thrives with secrecy. It thrives in situations where we try to cover things up. It doesn't thrive particularly well

PUBLIC

in the public view. Governments ought to have a commitment to that sort of task. That doesn't just mean a commitment to education; it also means a commitment to sometimes being willing to make yourself vulnerable. That means allowing a body such as this to have some investigative functions. If you look at these sorts of bodies elsewhere, those investigative functions have been important. If you look at the way in which this issue is dealt with in Canada and other countries of the Commonwealth and in the USA, it is very important to have some sort of independent body that can speak to government, and sometimes speak critically. The investigative function is important, so is the educative function, and so is this task of broader ethical education that supports critical public discourse.

Mr GAFFNEY - On the number of staff the commission has - 14.5. Are you suggesting in the investigative power that the commission has the function to investigate or they have the staff to do the investigation, because you cannot have your cake and eat it too? If we want to streamline the process with the cost, how would you see that working, because I would suggest the CEO would say 'I need my staff to be on board so I can have consistency, that I can nurture them through the investigation, instead of outsourcing that role'? How do you work that?

Prof. MALPAS - I am not sure. It depends on how good you think that argument is. I do not think it is particularly strong. Our initial proposal was for a very small committee, but where the need for real investigations came to light additional staff could be brought in from other agencies. We envisaged the commission as cooperating with other agencies rather than overlapping with other agencies.

We saw no reason to have a large standing staff. If you go back to our original proposal, we tried to set out a model which might be able to operate, maintaining the investigative function but not maintaining a large standing investigative staff. That is really important. We put that proposal together at a time when we thought it was really important to pay attention to budget constraints. We were not interested, because the circumstances then were perhaps not as difficult as now but they were still constrained. We tried to put together a proposal that would do what we thought needed to be done but do it in a way without imposing a significant additional burden on the state's budget. I would stick by that view and I would stick by the proposal we put in.

Mr MULDER - If it is to retain an investigative function and if, as you say in your submission, it has gone too far down the code-and-compliance method, how do we build constraints around it to make sure that what it does investigate is serious and important and stuff that cannot properly be moved to another agency? If you have the idea that you co-opt in other agencies when it is required, the alternative is that if you are continually co-opting investigative resources from agencies because you are involved in the less serious matters, it is a question of this triage function. How we build ethical concerns around that because that is the issue the commission has involved itself in. We have heard plenty of evidence and it is question of judgement, but plenty of evidence of engaging in matters that really are not matters that it needs to get engaged in that are well within the functions of other agencies. If we are going to retain the investigative function, how do we keep that focus on the things it needs to be focused on?

Prof. MALPAS - You may say this is predictable, but I would suggest that one of the reasons you get this proliferation of investigations or proliferation of attention is precisely the

PUBLIC

code-and-compliance mode of operation. Part of what I am suggesting is a re-orientation in terms of what it is the commission is focusing on. That requires a much larger rethink of what is at issue.

It is important that the commission have its independence. It cannot be a body that is simply being directed from outside, so it must have its independence. How do you ensure good judgement on the part of the commissioner and the commission generally in terms of what it looks into. Partly by choosing the right people, people who will fit with the model that you are proposing. That is an important point. I am not intending any criticism of any existing individual but I do think that is important. Second, by ensuring the right forms of communication take place. The right forms of communication with other agencies who also have to understand the nature of the commission's work, but also the right communication with the committee in parliament that oversees the work of the commission. That is really important. Max and I talked about how we could ensure articulation with parliament without losing the committee's independence. Our solution was a bipartisan committee that would be able to engage with the commission, that the commission could report to, that the commission might sometimes seek advice from.

Three key things. First, shift away from the code-and-compliance approach. Second, make sure you have individuals who understand the different framework that you want. That has been a problem with the commission right from the start, I would suggest. Thirdly, establish effective channels of communication and discussion so that if something comes up you've got ongoing communication that means you can test out whether this is something that perhaps requires further investigation or not.

There's no single or simple solution to it. It actually requires something that's at the heart of ethical conduct anyway, which is the cultivation of good judgement. There's no recipe for good judgement. You have to get the right people, the right culture and the right communication. Those are the only ways you ensure that it happens.

Ms GIDDINGS - My questioning is along the lines of Mike's in respect of how you realistically have an ethics body that has royal commission powers but doesn't have ongoing structures for sufficient staff to accept these allegations, do an assessment of them and work out whether or not they need to invoke those royal commission powers or not. If you start talking about it in terms of powers of a royal commission the question is also around what form of misconduct or corruption are you thinking this body ought to be involved in, because some misconduct is referred back to ombudsmen and Auditors-General and others to deal with. Of course we also have the commission of inquiry legislation that sits there that can be invoked at any time by any government, the problem being that it is a government political decision to participate in that.

If you were to be radical and look at a total reformation of this body as you suggest that still has royal commission-like powers, where do you draw the line around what they should be taking on? What version of serious misconduct are we talking about that may in fact go into the realm of royal commission corruption allegations? In my history I only know of two royal commissions that have occurred: a political one about bribery, and the second about a police matter. I'm a bit concerned that there is an idealistic model being put forward by you and Sir Max that in reality is very hard to put into action unless you were to have very defined areas to say, 'No, we want ongoing royal commission powers

PUBLIC

with this group but we don't expect them to use them other than maybe once in every 10-15 years', as has happened.

Prof. MALPAS - I don't think we thought that there would be significant investigations very often and we were interested in serious misconduct. We looked, I think, to some of the Queensland legislation for a definition of the sort of misconduct we were interested in. I don't think it will happen that often. That was one of the reasons we did not want a large standing body associated with this. I understand fully the reasoning behind the commission being set up in the way it was, and we talked about that at the time. I am not unsympathetic to that; I can understand the reasoning that lies behind that.

I think when you have a large body like that moving in the direction of the sort of code and compliance operation that I talk about in my submission, I think you have a recipe for a body that will need significant resources, that will probably start focusing on a large range of possible areas of complaint, and this is probably the most important point, will not necessarily do anything to add to ethical conduct within the public domain. Yes, in one sense the position that Max and I have is an idealistic one, but we think we should be idealistic, particularly when it comes to ethics. The ethical imperative is not one that you can pick up and put down as you choose. In one sense it is purely idealistic but it is an idealism that in fact all of us ought to be thoroughly committed to.

We also tried to offer an approach that was not only idealistic but practical. What seemed to us to be the simplest and most practical way of setting this up was in terms of the small body that we talked about. We talked about it as a small body because we did not envisage there being very many investigations because we did not envisage this body being one that was going to focus on small complaints or disciplinary issues within the public service. It seemed to us we already had a framework to deal with many of those issues within the State Service Act. One of the issues I have thought about over the last few years has been to some extent the lack of integration between the State Service Act and the operation of the commission. Sometimes it seemed to me that the commission was actually duplicating tasks - for instance, the formulation of codes of conduct that are already well covered by the State Service Act.

I understand the direction in which you're heading, I understand why the commission was set up in the way it was, but I also think that has given rise to some of the problems we have now seen. I think it is possible for us to go back to a smaller commission. It does mean accepting that perhaps its inquiries and investigations will not be many but they will be into more significant matters. It probably also means accepting that some of the sorts of complaints that might go to the commission are perhaps best dealt with by other bodies or within other frameworks. We might just have different views, too, as to how realistic my position or the existing position is. It does, as I say, come back to matters of judgement on the part of the commission and how the commissioner understands his or her role.

It may be that the decision to be made here is not one that can be simply based on a set of empirical facts that tell us one way or another which way to go. It may be that we are really faced with a decision that is ultimately about the values that we think are important here and the principles that we want to embed. That might be the real basis for any difference.

PUBLIC

I think that the primary issue is the ethical one. The investigations will not be frequent. If you think back to some of the matters that gave rise to the commission, they might also be investigations that governments might not ordinarily want to initiate, and I think that is important. The commission has to be independent because it might find itself in a situation where it is going to be critical, let's say, of policy processes or planning or decision-making processes where it thinks there has been some breakdown in the proper process at work there. That might not be to the liking of the government of the day.

It's not going to happen very often and it shouldn't happen very often, especially not if the educative function is being discharged adequately because that ought to shift the character of public debate and public perception. It is also why that is so important. If you can shift the way in which the public perceives the commission you will change the sorts of complaints it gets as well. Again, part of the problem is that the commission has not been able create for itself a public profile that communicates to the public what it's about and what it does. As a result, of course people aren't going to be quite sure what goes to the commission and what doesn't. It's a complicated set of issues and I don't think there is a simple answer.

Mr BARNETT - Thank you for your submission and opening remarks. You mentioned the issue of duplication and we have had some other criticisms of the duplication from other authorities as well. In your opening remarks you said the Integrity Commission doesn't work, so I'd like you to elaborate on that. What does that actually mean? Then I want to take you to your recommendation for a commissioner plus two or three people. If it does have an educative role, where does it get its resources or where might they come from to support their efforts in terms of education and awareness, and in terms of the investigation, where might their resources comes from with regard to a serious investigation?

Prof. MALPAS - First, on the investigative side of things, it was certainly Max's view that within the public service there was already significant expertise to be able to undertake an investigation.

Mr BARNETT - So they would co-opt them?

Prof. MALPAS - They would co-opt them, they would second them from other agencies. They might come from the Police Service or any number of other places within the public service. We did not think it was necessary to have those sorts of investigative officers permanently as part of the budget as part of the salary of the commission. That is the first thing.

If the commission is investigating theses sorts of large-scale potential cases of misconduct that we're talking about, and they are going to be intermittent occasions, that would seem to be the only way you could really handle it. On the educative side, our view is also that the commission should not be seen as having a large body of people who are there all the time undertaking the educative work. We had a number of reasons for thinking that. One is the budgetary issue because we were looking at ways of trying to keep the budget under control. Second, we did not believe the commission would necessarily be capable of maintaining that expertise. One of the problems with bodies like this is they can very easily develop their own internal ethos and way of doing things.

PUBLIC

Part of the reason you don't necessarily want to maintain a body there constantly is precisely because you don't necessarily want a single view, single mode of approach being adopted, one that isn't capable of being flexible and adjusting itself to the circumstances, so our suggestion was that you look outside for that sort of expertise as well and contract it from other bodies. At the time, the university still operated a centre for ethics and applied philosophy and Max always thought that was the appropriate body to use. I was a little wary of suggesting that because I've been associated with that body so I had a conflict of interest, but certainly I would be looking that sort of partnership.

Mr BARNETT - And you've recommended a streamlined, less costly approach, but you said the Integrity Commission doesn't work and I want you to elaborate. In what respect?

Prof. MALPAS - What I was envisaging was not an integrity commission, it was an ethics commission. Max and I were focused on the idea of an ethics commission because we thought misconduct arises out of a culture that allows it to arise and encourages it. The first task is not investigation. The need for investigation suggests you have something wrong. You will always have some failures.

The first task has to be the educative one. The first task has to be building a stronger ethical culture within the public service and within government. I don't think the Integrity Commission can do that and I don't think it is doing that. My view on that is partly a reflection of anecdotal evidence I have but also a reflection of the mode of approach. I have both theoretical and empirical reasons for thinking that mode of approach is one we can show is not only ineffective but actually operates against some of the key elements that underpin ethical culture. I don't think it works. In one very specific sense, I don't think it's capable of promoting the sort of ethical conduct that Max and I were looking for when we argued for the setting up of an ethics commission.

Mr BARNETT - Is that because of the character of the commission you referred to in your opening remarks?

Prof. MALPAS - It is because of the character of the commission. The character of the commission and the approach it adopts is a very commonplace one that is widespread within the so-called integrity industry. It is also an approach that is increasingly the subject of criticism by people like me and my colleagues, very often coming not from a legal framework because the code and compliance approach has its roots and a certain legalistic approach to ethics, but from managerial, ethical, philosophical and other similar domains.

It's very widely recognised that codes and compliance approaches generally don't achieve the sort of outcomes we're interested in when we're talking about ethics. This is why I talk about ethics and not about integrity, because integrity has been concept that has been very much allied with this approach which is widespread but which I think has also been increasingly the subject of criticism.

CHAIR - Conscious of time, is there anything else, Professor Malpas, you would like to cover at this time?

Prof. MALPAS - My submission and the previous submission that Max and I put in gives a fairly succinct account of our concerns and interests and I am very grateful for the

PUBLIC

questions because they have also enabled me to elaborate on what I think are the crucial points.

Mr MULDER - A general comment. In case members were not aware, Sir Max was the chair of the Queensland Crime and Misconduct Commission post-Fitzgerald, so if anyone had an idea about how these bodies should work, it was Sir Max.

Prof. MALPAS - I'm only sorry Max couldn't be here today.

CHAIR - Professor, thank you very much for coming along today and for your submission. I appreciate the way in which you answered the questions and provided your evidence today.

THE WITNESS WITHDREW.

PUBLIC

Mr RICHARD PARKER WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you very much, Richard. I think you would be known to some or probably all member of the committee. I have worked with you so I know you well. A committee hearing is a proceeding in parliament. This means it receives the protection of parliamentary privilege. This important legal protection 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 Parliament receives the very best information when conducting its inquiries. It is important to be aware that the protection is not accorded to any statement you make once you leave this room.

This is a public hearing. Members of the public and journalists are present. It is important that if you reach the stage where you would like to give to the committee in camera - if you feel it would defamatory or what have you - the committee would determine that issue at the appropriate time. The evidence is recorded. It is on *Hansard* and will be made public. Are you understanding all of that?

Mr PARKER - Yes.

CHAIR - Richard, you have provided us with a submission and I will give you an opportunity at this stage if you want to expand on your submission or add to it any further information that you might want to pass on to the committee. You are aware of the terms of reference. We can go straight into questioning but we give you the opportunity to expand.

Mr PARKER - Thank you. Since the submission was sent in I admit I have had a few changes in my own thinking and those changes are very brief.

I was very clear that I did not want to see the commission continue in its present stage. It had obviously failed a number of people over the three years and had failed me personally. In my criticism of the investigative committee I am now of the opinion - and a personal opinion at that, discussed with no-one - that perhaps the investigative arm may be prudent to keep. I would only comment on that. The actual positions of the commission on the administrative side I don't think are worthy of their role. I think any branch of the Justice department or any sub-branch of the Police department could take control of a short, small investigative team.

I base my real belief on the fact that of the thousands of public servants in Tasmania, and politicians, the majority of them are not criminal. This act is designed to catch criminals. Our public service know the standards of integrity. They know what is just, right and true, and that is all across the board. They do not need a big stick waved at them, or even invitations to do in their fellow workers. To me that is the worst case that we in Tasmania could proceed with. We have a group of people who belong to political networks and strong power networks. That is one of the fruits of democracy. I would not expect anyone to want to eavesdrop or listen in to any private conversation between two members of any group, whether they be of a party nature, local government nature, whether it be two public servants in the Health department or the Police department. I make the point that the Tasmanian public servant is not a criminal, neither is the politician, and it does not need such strong powers to curb behaviour which is non-existent. Having said that, where

PUBLIC

occasionally there have been serious allegations, we have a number of bodies in this state that should deal with it.

I conclude by saying I have put my problem behind me; I do not want to raise it again. It was serious and went to the level of Director of Public Prosecutions and he failed me miserably, as did the Director of Local Government. For the future I believe we need someone to keep an eye on the machinations behind the scenes and the discussions. The end result for this state can only be that we will continue to have public servants who are loyal based on doing what is right, saying what is true and being fair in all their dealings. If I am wrong, I am wrong, but I don't think we are going to change the nature of the human being to have private conversations and make private decisions. As to the thought they should be listened to by phone taps, that is ludicrous.

Mr MULDER - Richard, you mentioned you had come to think it should keep the investigative arm so that it doesn't clash with what the roles of other people are. What exactly did you want the remaining investigative arm to do? How would you focus it on what you think it should do?

Mr PARKER - I know the budget constraints have limited the number of police officers available in the state and I recognise that not everybody in the public service is cut out to be an investigator. I appears we have a team of investigators who may well be available on any complaint that is serious enough to warrant investigation without bringing it to the police. I was strongly against that originally and leaned more towards the education side of it. My view is that when you look at the standard of public servant in this state, and politicians, they know what is right, just and true. But when one does lean over the fence and act against these three principles, which are in essence the components of integrity, perhaps there is a need for an investigative group. There doesn't have to be but I am being kind to my own recommendation that maybe the police could do it. I do not trust, for instance, local government. In my case it was a local government issue - never got off the floor.

Mr MULDER - Was it a serious issue?

Mr PARKER - It was serious to me and I can tell you, after close to 30 years as an investigator myself and managing an investigative branch, I presented the Integrity Commission with a very simple file. Prior to the Integrity Commission ever being mentioned, my case was brought to Parliament by Tim Morris I think, of all people, and it was discussed openly in Parliament for about an hour and got nowhere. Okay, I made allegations of a serious nature against the DPP who was not involved in the beginning but through his neglect, in my humble opinion. I still believe there is a role for the investigative branch where there is obviously a major breach of integrity in a government department, be it by a politician or public servant. But, again, that role could be carried out by the police.

Mr MULDER - We have heard that the Government's position is that the commission ought not to get involved in investigations into the future but ought to be in a triage position which is a suggestion of assessing them and then allocating them to those agencies with the capacity to investigate them. What would your view on that be?

Mr PARKER - I would have to support that in principle, without looking at paperwork. Again, in recent history I know what it is going on in the courts, what has been alleged, what has

PUBLIC

appeared before judges. I am familiar with those major cases and there is no doubt that the police handled them to the best of their ability. Sometimes they went very close to getting convictions. We always rely on the fairness of the Supreme Court judges and if there is anything serious enough in the future that needs to go before a Supreme Court judge, I would not have thought that any information would be withheld by whether they were an Integrity Commission investigator or by a police investigator.

The future lies, I believe, in not having a second arm of investigators with powers to tap phones and do things to that extreme. That is my personal view. We just do not need that but we may need somebody skilled to look at a serious complaint against a local government member or employee or likewise any other department, be it health or fire or police or whatever.

CHAIR - If a technical surveillance method was necessary by the Integrity Commission, could they not approach the police, for instance, which has those powers in certain circumstances? It might mean an amendment perhaps, I don't know. Would that not be a better course?

Mr PARKER - Of course. I have commented on that in my submission. I believe the police have adequate powers to tap phones and do what is necessary.

Ms GIDDINGS - I was trying to find the *Hansard* that you refer to and I can't find it.

Mr PARKER - It was 2004-2006, within that two-year period.

Ms GIDDINGS - That is when it was discussed in Parliament?

Mr PARKER - That was when Tim Morris brought it to Parliament, yes.

Ms GIDDINGS - That was prior to the Integrity Commission?

Mr PARKER - Yes. You can start with Tim Morris. If you rang Tim you might get a date from Tim but that is as close as I can recall.

CHAIR - You mentioned the educative role of the commission. How do you perceive that is proceeding? Is it getting what it is set up to do in the educative role? That is one of the main functions in the directions for the Integrity Commission.

Mr PARKER - Again, this is where my change of opinion has occurred because I am working on the assumption that right across the public service, in whatever department, there are degrees of integrity that should be a given. People should not be taught in this day and age how to tell the truth, how to be just and fair in their dealings. I am working on the assumption that all politicians and all public servants operate that way. If we are that bad that we need to be told by a professional department, so be it, but I would have thought any middle manager worth his salt in this Government and this day and age, in 2014, should be able to determine from its staff who is not doing the right thing. I do not see any great future for education, I really do not.

CHAIR - That was going to be the question I was going to follow up with. How do you perceive the senior managers' roles within these departments in educating their staff on

PUBLIC

ethical behaviour, misconduct issues and so on? Do they have a role and what is your knowledge of it and background?

Mr PARKER - I think they are the key. In my case I had the privilege of going to the Mt Eliza business school, which was then the Australian Management College, and ethics was at the forefront. It was a very expensive course paid for by my employers but it cemented in me an understanding that integrity is the key to all government operations. I add that I have, in the last 10 years, in a number of schools and one government department, one including the whole Cabinet of the Zambian Government including the President, addressed them on these issues: doing what is right, saying what is just and saying what is true. To me, any middle manager who does not understand that should not be paid; he should be terminated immediately.

Having said that, I have prefixed it by saying there are political networks in this state, powerful ones, who would always do things behind the scenes. That is to be expected and in fact it is to be applauded.

Mr MULDER - It depends what they do behind those closed doors.

Mr PARKER - It goes without saying, we are judged by our fruits and I believe this state has a good history of integrity. I have been in this state now for close on 60 years, I have been interested in integrity for 60 years, ever since I have been here. I have seen a lot of premiers come and go and I have only seen one or two court cases.

CHAIR - Richard, thank you very much, thank you for your submission and the manner in which you have given your evidence today. I just remind you on leaving here no parliamentary privilege applies.

Mr PARKER - Thank you for the privilege.

THE WITNESS WITHDREW.

PUBLIC

HON. VANESSA GOODWIN MLC, ATTORNEY-GENERAL, AND Mr SIMON OVERLAND, SECRETARY, DEPARTMENT OF JUSTICE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Dean) - Welcome to you both. I am sure you are aware that parliamentary privilege applies here but not outside the committee. It is a public meeting and is being recorded by Hansard so it will be on the public record. If at any time we reach a stage where there is evidence you would like to give the committee that you believe should be given in camera, please make that request and we will make a determination on that point.

Dr GOODWIN - Thank you very much for the opportunity to appear before the committee this morning. I would like to make it very clear at the outset that the Tasmanian Government does not want to abolish or gut the Integrity Commission, as has been falsely asserted recently. We want to ensure it operates efficiently and fairly. The Integrity Commission will continue to play a central role in ensuring that all complaints are triaged and dealt with in an appropriate way by the appropriate authority. I want to make it abundantly clear that we believe matters of misconduct and serious misconduct should be investigated. What we are questioning is the appropriate authority to be doing those investigations at those two levels of misconduct and serious misconduct.

It is important to acknowledge there have been serious concerns expressed at how the Integrity Commission is currently operating. These cannot be ignored, particularly when the cost to taxpayers is more than \$2 million a year. The Integrity Commission is a taxpayer-funded body and the Government must make sure, given the challenging budget conditions, that it represents value for money. Our view is that the Integrity Commission can be more efficient and effective and that is why we have asked it find to \$3.1 million in savings over the Budget and forward Estimates. This will reduce its annual budget allocation from around \$2.9 million in 2013-14 to \$2.2 million per year over the forward Estimates.

It is fair to say there have been concerns about the way the Integrity Commission operates since its inception in 2010, including issues to do with the act, which the CEO of the commission, Ms Merryfull, has highlighted to the committee. It was a new body with a new legislative framework and there have been issues with how it works. That is perhaps not unsurprising given it was a totally new body for Tasmania, and in some ways a unique model for Tasmania. We do not believe the current process is delivering good outcomes for the community and it is an opportune time to try to get it right for the future. To this end the Tasmanian Government submission to this committee makes recommendations which will ensure the commission remains focused on educating public officials about misconduct prevention, and changing their behaviour where appropriate; achieves its legislative objectives efficiently and effectively; operates openly, transparently and fairly; and promotes modern public sector practices assisting public authorities carrying out their duties in respect to dealing with misconduct and maladministration.

Our submission is about ensuring all misconduct complaints are managed appropriately, removing expensive duplication and eliminating stakeholder and legal concerns about lack of fair process.

PUBLIC

The vast majority of the complaints received by the Integrity Commission are referred back to the relevant agency after triage. The Government believes this triage function should remain and that the Integrity Commission should continue to quality assure investigations by other agencies and ensure they address misconduct concerns.

We also believe there is a greater role to be played by the Integrity Commission in educating public servants about misconduct. The issues and areas of concern identified in our submission are echoed by the submissions of other stakeholders. None of these concerns are new and all have been raised now and previously by various stakeholders, particularly in relation to recent link with the health investigation.

Many stakeholders have noted that investigations by the Integrity Commission can result in individuals being named, despite the fact that to get an outcome the relevant agency is required to conduct its own code of conduct investigation to resolve the issues raised. This duplication of effort does not represent value for money or enable the timely resolution of misconduct matters.

Tasmania is also well served by a number of different entities which regulate the conduct of individual citizens and ensure ethical and appropriate conduct on the part of state servants and other officials, including the Auditor-General and the Ombudsman. Misconduct which amounts to a criminal offence is most appropriately dealt with by Tasmania Police. Government agencies regularly conduct code of conduct investigations and are already required to do this to resolve any misconduct concerns identified by the Integrity Commission.

In closing, it is more than appropriate that the Parliament reviews the functions, powers and operation of the commission. It is a privilege to appear before the committee today to inform that process and I look forward to answering the committee's questions.

CHAIR - Thank very much, Attorney-General, for being here today. It has not been all that easy in the past to have ministers coming forward to a committee, so thank you for that.

Mr OVERLAND - Chair, I am very happy to answer questions the committee might have. There is some evidence I would like to give to the committee but I want to apply to do that in camera because it would go to particular cases and there is a level of detail that would perhaps be best provided in camera rather than in public.

CHAIR - We can progress at this stage with what we can take in public.

Mr McKIM - Attorney-General, do you accept that Tasmania Police are under the direction of the minister?

Dr GOODWIN - There has been a long-standing debate about this issue. When I was in my previous role with the police department I had quite a bit to do with that issue. There were some recommendations that came out of the previous joint select committee on ethical conduct around making abundantly clear the difference between policy directions and operational directions. That is something that still needs to be addressed. My view is that the minister of the day is able to provide policy direction, and does, and that is entirely appropriate. But as far as operational matters are concerned, they are a matter for the police commissioner.

PUBLIC

Mr McKIM - What advice are you relying on when you make that statement, which I disagree with?

Dr GOODWIN - In terms of whether that should be the case or is the case?

Mr McKIM - Have you had legal advice? What advice are you relying on?

Dr GOODWIN - I am drawing on my background, working within the department, and my understanding of the issues, having worked on the police commissioner's response to the first round of consultation on the joint select committee on ethical conduct. I was intimately involved in the preparation of that submission. I had to canvass those issues in that work. That is my understanding of the distinction between policy directions and operational matters.

CHAIR - I want to remind members that this inquiry is about the operations and functions of the Integrity Commission, so I would ask that members address that issue without becoming side-tracked.

Mr McKIM - Chair, I might respond to that. The issue here is that Tasmania does not have a statutorily independent police service. Therefore it is a legitimate question to raise because the Government has submitted to this committee that the investigative powers of the Integrity Commission should be removed from the legislation. My question, therefore, is who would investigate allegations of criminal behaviour against, for example, the Premier, the Minister for Police or the Commissioner for Police?

CHAIR - I will allow question. I think that is pertinent.

Mr McKIM - Who would investigate allegations?

Dr GOODWIN - In the past there have been instances where the police have successfully and appropriately investigated members of parliament who have been accused of matters of misconduct. If you are suggesting somehow that the police cannot do that because they are under ministerial control -

Mr McKIM - I am, absolutely.

Dr GOODWIN - I would certainly take issue with that and I imagine that the police commissioner would take issue with that as well. I think one of the strengths of our system should be that the police commissioner and the DPP operate independently of government. That has always been the intention when it comes to criminal matters. I would be concerned if you think that this is not occurring.

Mr McKIM - I do.

Dr GOODWIN - Certainly, as I said, this was a matter that was raised in the joint select committee on ethical conduct. There was that recommendation around strengthening the Police Service Act, which the previous government chose not to act on although it was certainly discussed at one stage. I remember asking a question on it in the Legislative Council.

PUBLIC

I would certainly take that up with the Minister for Police if this committee thinks that is an appropriate amendment to be made to the Police Service Act, but my view is that the police commissioner does operate independently when it comes to operational matters from the Police minister of the day. If you think there is a perception that does not occur, and by amending the act that that can be resolved, then I am not in any way concerned about that. I think that would be an appropriate step to take but my view is that the police commissioner does operate independently when it comes to operational matters.

Mr McKIM - I make no comment about that last matter, but I do want to read evidence that was provided to the joint select committee on ethical conduct, which was the committee that I sat on and recommended the establishment of the Integrity Commission. Sir Max Bingham said 'There is no statutory basis for the independence of the police'. That was in the context of Tasmania Police so Sir Max, who has nearly half a century's expertise in this area, believes there is no statutory basis for the independence of police and that he supported the submission of the DPP to that committee, which at some length went through the DPP's reasoning for the DPP's assertion that there is no statutory independence for Tasmania Police under the act.

I wanted to ask whether you are familiar with the two different formulations of police services in the Commonwealth. One is the English police, which is effectively a community policing service with constables given special powers to enforce the law, and the Irish model, which is a para-military model. Are you are familiar with that and know that in both Tasmania and New South Wales we have a para-military model of police, in Sir Max Bingham's opinion, which is directly under the control of the minister.

Dr GOODWIN - Unfortunately I have not gone back and refreshed my memory of the police submission that I helped to prepare for the joint select committee on ethical conduct. I think some of those matters were in fact canvassed in that submission. No, we may not have a statutory base clearly delineating between operational and policy matters. I accept there may well be a need to amend the legislation to make that abundantly clear. As I said, this is a matter the previous government could have upon but didn't. It was a recommendation of the Joint Select Committee on Ethical Conduct. There are different formulations of that distinction between policy and operational matters in legislation around Australia. I think, from memory, the one that is regarded as one of the better models might be the Australian Federal Police but I can't be absolutely positive about that because it's a bit of a dim memory. Certainly I accept your suggestion that if there's a need or concern around the distinction between operation and policy matters, one way to resolve that is to legislate to make that abundantly clear.

Something I was involved in the preparation of that submission was drafting some guidelines that I believe the police have implemented around that distinction between operational and policy matters, particularly in those sorts of investigations involving members of parliament. One of the concerns when you have that sort of investigation is that if the police commissioner was required to keep the minister updated there is potentially a risk that you could be briefing the chief suspect or in fact briefing someone who might have some peripheral involvement in whatever that investigation is. Yes, of course there needs to be clear guidelines around that and certainly the Police minister should not be having an influence on operational matters. I think that is perfectly clear and appropriate.

PUBLIC

Mr McKIM - Yes, but it's not clear, Attorney, in the current Police Service Act where section 7(1) explicitly states that the commissioner is under the direction of the minister and does not in any way delineate between policy and operational matters. That is the case, isn't it?

Dr GOODWIN - Mr McKim, I've just accepted your point. I've said it is a matter for this committee to make a recommendation along those lines. I've said I will talk to my colleague about that. I have also indicated this is something the previous government could have addressed and didn't, so I don't think I can add anything further. I have answered your question and acknowledged it may well be a problem.

Mr McKIM - I will ask you one further question in that case. It's true, isn't it, that you have submitted to this committee that the Integrity Commission have all its investigative powers removed, but you haven't submitted to this committee that the matter of whether or not the Police Service is under the direction of the minister be addressed in any way? In the existence of current legislation, the Police Service Act 2003, in the full knowledge of what is contained in that act, you have submitted to this committee that we should recommend removing the investigative powers currently held by the Integrity Commission. Doesn't that leave a massive vacuum in Tasmania in terms of -

Dr GOODWIN - If it does, it was there before we came into government.

Mr McKIM - Excuse me, Attorney, please don't interrupt me when I'm asking questions. Let me finish and then I will allow you an opportunity -

CHAIR - Order. I ask members to try to be reasonably succinct in their questioning because I can see the time is going to move by very quickly. I will give the opportunity to ask this question and then I will move around other members to bring them into it as well, so if you could keep it to the point, Nick, thanks.

Mr McKIM - Attorney, doesn't your submission leave a massive gap in Tasmania around independent investigations of allegations of criminality against, for example, ministers, their staff and/or senior police officers in Tasmania, given the fact the Police Service Act very explicitly says that the commissioner is under the direction of the minister?

Dr GOODWIN - If you're concerned about the provisions of the Police Service Act as a committee I suggest you make a recommendation that it be amended to clarify the distinction between policy and operational matters. As I said, it was recommendation of the Joint Select Committee on Ethical Conduct. I would certainly discuss it with the Minister for Police. My view is that it would be an appropriate amendment to make, and that's not in any way conceding that I have concerns about the way Tasmania Police currently operates or have any concern at all that they are under the operational direction of the Minister for Police because I certainly don't believe that to be the case. If you are concerned that that is a gap in the current legislative provisions in this area then by all means recommend it and I would certainly support it and advocate for it with the Minister for Police.

Mr McKIM - Chair, I need to follow that up because, with respect, the Attorney is answering a different question to the one she was asked.

PUBLIC

CHAIR - I am going to ask the Attorney to address the question as asked and that may well satisfy and simplify the process we are going through.

Mr McKIM - To reiterate, it's a whole-of-government submission, so it's not just from you. Aren't you concerned that the effect of your submission to this committee, which is to remove all the investigative powers from the Integrity Commission, would leave a massive gap in terms of independent investigations of allegations of criminal behaviour against, for example, ministers, because currently the Police Service Act explicitly makes it clear that the commissioner is under the direction of the minister?

Dr GOODWIN - With respect, I thought I had answered that question in the context of the concern you have around the current provision of the Police Service Act. Do I think the police are capable of investigating serious criminal allegations against members of parliament and senior police -

Mr McKIM - That wasn't the question.

Dr GOODWIN - I think it was, with respect.

CHAIR - The question is on the whole-of-government submission that has been provided to the committee as to whether the removal of the functions and powers of the Integrity Commission, as identified within that submission, would leave a vacuum in the process.

Mr McKIM - That is exactly the question, Chair.

Dr GOODWIN - You mentioned criminal conduct, though. You have to make the distinction between criminal conduct, misconduct and serious misconduct. With respect, you talked about criminal matters. Do I have a concern about the police investigating criminal matters, regardless of who is -

Mr McKIM - No, is there a gap? That is the question, Attorney.

CHAIR - Would it leave a gap?

Dr GOODWIN - Not in relation to criminal matters, no.

Mr BARNETT - Point of order, Chair. The Attorney is attempting to answer the question as she has heard it. She is entitled to answer it in the way she sees fit and not in accordance with how other members may wish her to answer it. She needs the opportunity to answer it as she sees fit.

CHAIR - It was a matter of simply clarifying the question to get the question clear, which has now been made clear. Is the Attorney now able to answer with some clarity the question raised by Mr McKim?

Dr GOODWIN - Let me put it this way. What is important going forward is to make sure we have the most appropriate bodies conducting investigations. In this submission we have flagged our concerns with the current process. One of the concerns we have is around the investigative role the Integrity Commission has undertaken to date. They have only

PUBLIC

conducted a small number of investigations and a few more assessments, but in the scheme of the total number of complaints their investigation and assessment work is comparatively low in number. A number of stakeholders, not just us, have raised concerns about the way investigations are conducted, particularly with state servants and the need to duplicate effort with some sort of code of conduct investigation.

There are three types of issues: criminal offences; misconduct, which is the lower level misconduct; and serious misconduct. Where we need to get to as a government and with this committee moving forward is to make sure we have appropriate bodies investigating each level of misconduct. So misconduct is the first level, then serious misconduct and then misconduct that amounts to a criminal offence. The Integrity Commission has put in a submission suggesting there should be a change to the Criminal Code to add another criminal offence. The concern is to address those three levels of misconduct and make sure we have the appropriate body investigating those matters and not have duplication of effort. What we have done in there is to raise our concerns with the current process. I don't think we have all the answers but we need to flag those concerns, which is what we've done. It is really up to this committee because you will have the benefit of hearing from a whole range of stakeholders, including the Integrity Commission itself, as to the best way forward. We are expressing our concerns with the current process and saying that this body is funded by taxpayers, it has to be effective, it has to be fair and transparent in its operations and this is great opportunity to make sure we have the best model possible going forward and that is what we have suggested.

Ms GIDDINGS - In your opening statement, Attorney-General, you said that this is not about gutting or abolishing the Integrity Commission, but in your submission you are effectively abolishing the Integrity Commission and replacing it with a new office called the Office of Inspector-General and you are abolishing the board and potentially looking at different role. How can you justify your statement that this is not abolishing or gutting the Integrity Commission?

Dr GOODWIN - It has never been our intention to gut or abolish the Integrity Commission. Our intention is to make sure taxpayers are getting value for money and when it comes to investigations that we have the most appropriate body to investigate those matters in an efficient and effective way that doesn't involve duplication of effort. It is important I make that clarification.

When it comes to the board, I have had longstanding concerns with the composition of the board and I raised this in the second reading debate on the bill. My concerns were around having the Auditor-General, the Ombudsman and, at that stage, the State Service Commissioner on the board of the Integrity Commission because I felt you should keep your integrity entities separate and there are concerns around these Chinese walls that have to be constructed. If there is a matter that comes before the Integrity Commission that the Ombudsman has dealt with previously, the Ombudsman can't be on the board when that matter comes to the board for consideration.

My longstanding concerns about the structure of the board remain and I'm not sure that we have the right structure there or whether we even need a board structure and just have a chief commissioner as it is in other jurisdictions. It is a good opportunity to have a look at the structure of the board and I remain concerned about its current composition.

PUBLIC

In terms of the Inspector-General, I have been a member of the joint standing committee. I have been the chair of the committee and I have been concerned about what happens when someone makes a complaint about the Integrity Commission or the Ombudsman, those complaints are often made to this committee which has limited capacity to address those complaints. The usual process is to send them back to the Integrity Commission or the relevant body and say we have had this complaint but there is no external oversight of these bodies to the extent that someone can deal with complaints made against them. I think that is a gap in our current structure. It is this question of who watches the watchdog, and there are different structures to deal with that issue in other jurisdictions. This is a suggestion we have made. We're not saying it is the best or only suggestion necessarily, but we're flagging it as an issue in our submission as what we see as a gap in the current structure.

Ms GIDDINGS - I put it to you, though, that you are putting forward an abolishment of the Integrity Commission and replacing it with a new body with a new name, which is very different to the existing structure in place.

Dr GOODWIN - I don't accept that at all.

Ms GIDDINGS - I'm not sure how you can't accept that as a basic truth, that that is exactly what is happening here.

Dr GOODWIN - That is not our intention at all.

Ms GIDDINGS - Are you going to change the legislation? Will you rewrite the whole legislation for the Office of Inspector-General and the role it will play and the powers it would have?

Dr GOODWIN - Let me go back to the point about abolishing the Integrity Commission. I have said it twice already and I will say it a third time. We have no intention of abolishing the Integrity Commission.

Ms GIDDINGS - But words are one thing and actions are another, Attorney. You can say it, but the action -

CHAIR - Order.

Ms GIDDINGS - The submission is very different to that.

CHAIR - Order. The question has been asked, let the Attorney-General answer.

Dr GOODWIN - To be clear on what our submission is about, it is about flagging issues with the current -

Mr McKIM - It makes recommendations.

Dr GOODWIN - It has recommendations but it is essentially about flagging concerns we have with the current structure and suggesting some potential alternatives. As I said, we don't believe that this is necessarily the only or indeed the best option. There may be better options to make sure there is some oversight of these bodies, but fundamentally, I think

PUBLIC

there needs to be external oversight of the Ombudsman, the Auditor-General, the Integrity Commission and our integrity entities, because people make complaints about these bodies and I don't think they're able to be satisfactorily dealt with. Yes, I think there is a need for some sort of oversight, but am I talking about abolishing the Integrity Commission? No.

Ms GIDDINGS - Are you going down another layer, then? You will keep the Integrity Commission and then have the Office of Inspector-General to be the watchdog over the top of the Integrity Commission? But it is an Integrity Commission that has no investigative powers, an Integrity Commission, under your submission, which is only about education, so you are abolishing.

Dr GOODWIN - No, we are not abolishing the Integrity Commission, it is about changing its structure.

Ms GIDDINGS - You're gutting it.

CHAIR - Order. We have gone down the path and I think the Attorney has answered on three or four occasions that it is not their intention to abolish, or their recommendation that it be abolished or 'guttled', to use the member's words -

Ms GIDDINGS - Mr Chairman, when you take away the powers of investigation, you are changing the role of the Integrity Commission. You can keep the name and call it an education body, but if it no longer investigating anything, it is gutted.

CHAIR - I suggest that the question be asked as to how it is intended to change the role of the Integrity Commission in the circumstances, along that line. That might elicit the answer you are wishing to get.

Ms GIDDINGS - I am happy for you to answer the Chair's question.

Dr GOODWIN - We don't believe the current model is serving Tasmania well, and I have talked about the issue of duplication, particularly in relation to State Service investigations. That is a concern the Government has and I know it is a concern shared by other stakeholders, so we have to address that issue.

In terms of going forward, what we think the Integrity Commission does very well is the triaging of complaints, and that is the bulk of its work. Let us be honest, the bulk of complaints that come to the Integrity Commission are triaged out, but they do retain a role in oversighting whatever investigation is conducted by the relevant body, and I think that is appropriate. That is where the quality assurance comes in. It doesn't just become under our suggested model an education body or a misconduct prevention body, it still has that triage role and oversight of complaints to make sure that they are being dealt with appropriately by the relevant agency.

I think there is still a lot of work to be done on the model of the Integrity Commission going forward. What we have done in our submission is flag our concerns to this committee so you can have a serious look at it in the context of concerns expressed by other stakeholders. You are in the best position to see the problems with the Integrity Commission and how best to resolve them because you will have the benefit of a whole range of stakeholders providing you with feedback, including the Integrity Commission

PUBLIC

itself, but it is appropriate for us, as the Government, to name our concerns and come up with some suggestions. You may or may not agree with our suggestions and you may come up with some better ones. As I said, you are probably in a much better position because you are having the benefit of hearing from a whole range of stakeholders about this, but I think it is entirely appropriate for the Government, spending taxpayers' money, to flag our concerns with the current model. I repeat this very clearly - we are in no way suggesting that the Integrity Commission should be abolished or gutted. What we want is an effective model going forward.

CHAIR - Are there any other questions in relation to the issue currently being discussed?

Mr McKIM - Yes.

Mr BARNETT - On the issue of duplication?

CHAIR - We will go back to Mr McKim on this point, but we are labouring it.

Mr McKIM - Thank you, Chair. Attorney, we will make sure there is an opportunity to talk about things like duplication because I do think there are some issues there.

Dr GOODWIN - I think it is important you hear from Simon.

Mr McKIM - I am very happy to hear from someone in Mr Overland's position and as far as I am able I will ensure that that opportunity exists. I do want to take you back to a couple of things. Firstly, you are clearly trying to gut the Integrity Commission here.

Mr MULDER - Point of Mr Chair. This question has been asked three times. You might not like the answer, but that is the answer.

Mr McKIM - The question, with respect, has not been answered.

CHAIR - If you can please get to your question as succinctly as you can without going back through what was previously discussed.

Mr McKIM - Isn't it the case, Attorney, that you are intending to gut the Integrity Commission, because you have recommended to this committee to abolish effectively half of the functions that it is statutorily required to conduct under the act as it exists now? Isn't it the case that you are recommending to this committee that the powers of the Integrity Commission and the commission itself be completely gutted?

Dr GOODWIN - No. It is not the case.

Mr McKIM - How can you sustain that comment?

CHAIR - Order. The Attorney-General has answered that question on a number of occasions. I am ruling that is the answer that has been provided. Whether we like it or not, that is the answer.

Mr McKIM - Attorney, I am going to ask you a question that I have asked before but I truly believe you have not answered. It goes to this gap.

PUBLIC

Dr GOODWIN - Maybe I can't give you the answer you want.

Mr McKIM - It is not about the answer I want, Attorney. This is about whether or not, if the Government submission was taken on board by this committee and formed part of our recommendations as it stands, there would be a massive gap in the investigative structures in Tasmania because Tasmania Police are not independent of -

Dr GOODWIN - I am not going to go down this path.

CHAIR - Order. That specific question has already been answered by the Attorney-General, so unless the Attorney wanted to change that answer I am ruling that we move on.

Mr McKIM - Attorney, are you suggesting that there would be no gap?

Dr GOODWIN - I am suggesting you should go back and read the transcript because I have answered this to the best of my ability.

Mr McKIM - It is not answering the question.

CHAIR - The question has been answered so I am moving on.

Mr BARNETT - I want to ask some questions of the Attorney, or perhaps Mr Overland, in terms of the issue of duplication. We have received advice this morning, with serious criticisms of the Integrity Commission, from Professor Malpas and, indeed, the former Commonwealth DPP, Damien Bugg, in a range of areas including and specifically on the issue of duplication. You have mentioned recommendations regarding triaging so that there is no duplication. I presume that is part of your thinking behind that recommendation. In terms of the role going forward and your recommendation can you outline, based on your assessment, your research, how much duplication is there? How serious is it? Clearly we have recommendations to streamline and provide a less costly Integrity Commission going forward from Professor Malpas. The issue of duplication has been raised by Damien Bugg. Can you outline the concerns you have regarding duplication?

Mr OVERLAND - The Government looked at the Integrity Commission's own data of each year about the matters that are reported to it and how those matters are dealt with. When you look at that data the vast majority of matters that are reported are referred on to other agencies - the Ombudsman, Tasmania Police, and in some occasions back to heads of agency if it relates to a matter with a state servant and issues around potential breaches of code of conduct. There is a very small number of investigations that the Integrity Commission itself runs. Broadly, the experience would seem to be that at the end of that process there is an investigation and there is a report. If it relates to a state servant and there is a suggestion there has been a breach of the State Service code, the matter is remitted to the head of agency. At that point there have been very real difficulties about the extent to which the Integrity Commission report can be relied on as part of a subsequent investigation under employment direction 5. I am happy to go into more detail around a couple of cases but I would seek to do that part of it in camera. In general the experience seems to be that you have to redo the investigation. You can make almost no use of the Integrity Commission investigation and you then have to completely redo an investigation under employment direction 5. You then have the delay, a long period of time, where the

PUBLIC

Integrity Commission is apprised of a matter and investigating it. It is remitted to a head of agency and you then have to run a fresh investigation in order to come to a view about whether there has been a breach of the State Service code of conduct and matters that may flow from that.

Mr BARNETT - Damien Bugg expressed concern about that and a number of other views about the investigation as opposed to an assessment - sections 48 and 37. We have had Professor Malpas's recommendation of a very small commission of two or three people who would get people by secondment to support investigations if they were to take place and, secondly, educational and awareness activities if they were to take place. I am wondering if you have put your mind to a smaller, tighter-knit type commission along the lines of Professor Malpas's recommendations? That would provide a more streamlined and less costly commission.

Dr GOODWIN - I have not heard Professor Malpas's evidence this morning so I don't know too much about the model he is proposing. I have read his submission and he has expressed some concerns about the way the Integrity Commission is currently operating. It is important to look at all suggestions. I don't think we know all the answers as a government, so stakeholder suggestions should be tested by this committee. We are one stakeholder and Professor Malpas and others have their own models in mind. It is worth having a look at it.

The Integrity Commission, as I understand it, at the moment can second officers if it needs them, not just from Tasmania Police but from elsewhere, and probably has seconded investigators to assist with matters. The burning question is to make that differentiation between criminal matters, misconduct and serious misconduct, and have a think about who should be investigating what to ensure we do not have duplication, to address any gaps you might think there are currently or, if things were to change, to make sure we do come up with the best model. This is the best opportunity we have now, to make sure that we have an effective and fair Integrity Commission. As a committee, I would imagine, you will look at the different models that are suggested and see which you think might be the most appropriate for Tasmania.

Mr BARNETT - That is exactly where I think some of us are focusing our minds on the serious misconduct and then the crime. The evidence we have had from the Integrity Commission, and I think others, was that of all the investigations they have undertaken, it has not led to any charges or conviction of a crime. We have now received this submission, which is a public document, Prosecuting Serious Misconduct in Tasmania, from the Integrity Commission, and if that proceeds it would then become a crime. Have you got a response to that document as yet?

Dr GOODWIN - I have read the document and I understand what is being proposed. My question about this is, if we end up with an offence of misconduct in a public office which is in the Criminal Code, who should be investigating that offence? Normally, Criminal Code matters are investigated by the police. If we are to go down that path, and it seems that other jurisdictions do provide for an offence of that nature, who is supposed to investigate that? I would have thought the police; it is a criminal matter. I would be interested in other stakeholders' views on that. That is the question I have. It raises another question for me. I am not saying I do not think it is something we should have; it is certainly something to be considered, but it raises that question for me: who investigates

PUBLIC

those matters and how does it fit in the scheme of things? It is something the committee does need to address, those three different sorts of misconduct which go from misconduct right up to it being a criminal matter. At what point, if the Integrity Commission was to continue investigating these sorts of things, does it go to the police if it becomes a criminal matter?

Again, we have the issue of duplication. Does the Integrity Commission start investigating something, then the police, for whatever reason, do not think they can use whatever work the Integrity Commission has done which then contaminates the police investigation or taints it or makes it less likely to result in successful prosecution? I do not know but they are all matters that need to be taken into consideration.

CHAIR - On that point, the report relates to serious misconduct in Tasmania, the missing link. The question coming from that is: what is your view or position on what is serious misconduct and what is criminal misconduct?

Dr GOODWIN - If I go back to the Joint Select Committee on Ethical Conduct, this is something I have raised with Mr Overland, in that committee report I think it suggested or recommended there was a need to review the Criminal Code offences because they are outdated, not contemporary and they were difficult to prosecute. I do not disagree with that proposition and perhaps it is also something that the committee should be considering, whether the Criminal Code provisions we have currently are adequate or do need to be reviewed, as was suggested by the Joint Select Committee on Ethical Conduct.

Mr GAFFNEY - You mentioned earlier on, Attorney-General, the Tasmanian people are not getting good outcomes and part of the response to that was that the Government is to take \$2.9 million down to \$2.2 million so it is \$700 000 a year. If they are not getting good outcomes for the \$2.9 million, by taking \$700 000, is it good outcomes relative to the money that is being outlaid? Could you explain what you meant by 'good outcomes' if you are taking away \$700 000?

Dr GOODWIN - It is about value for money and avoiding duplication. What we have seen with some of the investigations that have been held to date is that quite some time has been spent investigating a matter. In the Health case it was over 12 months and then we have seen the need to go down the code of conduct investigation path. It has taken a long time to deal with a matter of misconduct.

My hope would be that it would be possible to deal with those issues in a much more timely way rather than it taking such a long time because there are lots of implications when something takes a long time like that to resolve. Apart from the duplication, there are impacts on all the parties who are involved in that process, whether they be as witnesses or as individuals who are the subject of the complaint or the complainants wanting to know about the progress of an investigation. Timely investigations into these matters are very important and so are timely resolutions. My concerns is around the time taken and then the duplication of effort, and the fact that we do not have a speedy resolution of these matters.

In terms of the budget, we believed that \$3 million for the Integrity Commission was too difficult to justify in challenging budget conditions and that it could operate more effectively and efficiently. That is the case, that the Integrity Commission is able to

PUBLIC

operate more effectively and efficiently. They have been able to achieve some savings themselves within their original budget allocation. In these challenging budget times we have to be realistic and have a budget that meets expectations.

Mr GAFFNEY - That is good because when you used the term 'getting good outcomes', I was not sure whether the outcomes the Integrity Commission was getting were appropriate or whether you were reflecting that to the time and the cost. If it is time-effective and cost-efficient, I understand that.

You said that although it is a recommendation, an inspector-general may not be the best option but it is an option. If that process is put in place and you retain the integrity because you are not gutting that, does the \$2.2 million cover the Integrity Commission and the office of the inspector-general or will that just be because otherwise there will not be any savings? Have you gone down that track far enough to understand the relationship between the finances there?

Dr GOODWIN - It needs to be considered as a package because I have also said that I have some concerns about the way the board currently operates and whether we need to have a board or we could just have a chief commissioner, whether we need that structure. That is the context in which we need to have a look at this, having a look at the board structure, the Integrity Commission and an oversight mechanism of some description that does not just have oversight of the Integrity Commission, I might add. I think there is an issue with the need for oversight of the Ombudsman as well because complaints are made about the Ombudsman and also potentially the Auditor-General, although I do not know because I have not been involved in the committee relevant to that to know whether that is an issue. But I think, as a general rule, there should be oversight or someone watching the watchdogs because it is an important transparency mechanism.

Mr GAFFNEY - The Government is envisaging the \$2.2 million would be purely for the Integrity Commission?

Dr GOODWIN - It really depends on what the structure will look like. If you are talking about this model that Professor Malpas has suggested, then that is obviously going to cost significantly less, I would have thought, than the \$2.2 million. We are open to suggestions as to what the best model is going to be for the future. I have been clear about what our concerns are.

Mr GAFFNEY - To clarify a point made by Mr McKim earlier, and it is nothing to do with Mr McKim's line of questioning but a response that you made that Mr McKim could suggest an amendment to the act. My question is, to help clarify: if the Government removes the investigative powers of the Integrity Commission, and as Mr McKim pointed out, there is an anomaly in the statutory matters through the Police Service Act of who the police force is responsible to, to the minister, if there is a flaw identified there and through the Government's line that may need to be investigated, surely it would be up to the Government of the day to do that and come back to the Parliament with a suggested amendment if that needed to be the case, not up to a private member.

Dr GOODWIN - I was suggesting the committee could make that recommendation, as the previous committee made. The Joint Select Committee on Ethical Conduct made a recommendation, as I understand it, around clarifying that distinction between policy and

PUBLIC

operational matters. I am suggesting that perhaps the committee, if the committee has a concern about the Police Service Act provisions, it could say it agrees with the previous recommendation and suggest this should occur.

Mr GAFFNEY - We know this has teething issues, it has only been around for three years. Everyone understands that and accepts it but it is heading in the right direction. If, through this discussion, there is an issue with who will or may have the right or the capacity to investigate the Minister of Police, say, I would have thought that within this package of recommendations the Government, through whatever, if we make a recommendation, they would be the ones responsible to have a look at that 2003 act and say we need to make some amendments to that act so that it is covered or whatever because this is a course that you are taking.

Dr GOODWIN - As I understood it, Mr McKim was suggesting that regardless of whether we make any changes to the Integrity Commission, this is a gap in the current legislative provision which needs to be addressed.

Mr McKIM - No.

Dr GOODWIN - That was my understanding of it. Either you think there is a problem with -

Mr McKIM - I think if you removed the investigative powers of the Integrity Commission that would create -

Mr GAFFNEY - I agree with that. There may be a problem there. If the Government goes down this investigative path, which I think is fine, I do not have an issue with it - well, I do but that is fine - then if that is created by a course of action the Government wants to take and it is then aware that, hang on, according to this act over here we may have to have a look at that and we may have to suggest amendments or changes or whatever to cover in case that occurs -

Dr GOODWIN - I have a different view of that. If it is considered that there is a lack of clarity in the Police Service Act about the distinction between policy and operational matters, that is an issue today regardless of whether we make any changes to the Integrity Commission. You either think it is an issue, you either think that at this point in time potentially the Police minister could direct the Commissioner of Police on operational matters or you don't.

Mr McKIM - It is the Premier under the administrative arrangements.

Dr GOODWIN - Or the Premier. If that needs to be clarified, it should be clarified regardless of any outcome of this.

CHAIR - As long as the committee stands by our reviewing the functions and operations of the Integrity Commission, the committee could flag that.

I have an issue on the educational role and I think, Attorney-General, you said that there was a greater role for education for the Integrity Commission. Can you expand on that more and what you mean by that, and how could that greater role eventuate?

PUBLIC

Dr GOODWIN - I think right from the outset most people were clear that they thought that the misconduct prevention role of the Integrity Commission was its paramount role, and that that should be the strong emphasis of the Integrity Commission. I agree with that. It is a very important focus and role of the Integrity Commission. The Integrity Commission has experienced some frustration in doing that misconduct prevention work to the fullest extent that it would like to. I am not quite sure why that is but I know there has been some frustration about that. I believe there needs to be a bit of clarity around the misconduct prevention role as well. Originally I thought it would be building capacity within agencies to conduct their own misconduct prevention work. It is almost like a 'train the trainer', but they continue to have a watching brief that you would need to build the capacity within whichever body it was to do a lot of that misconduct prevention work itself. It should become an ethical culture within an agency. It is a strong role for the Integrity Commission to play and they have been doing a very good job of misconduct prevention, but perhaps this is an opportunity to make sure they are doing what was always intended and that we are getting the best value for money from the Integrity Commission's misconduct prevention work, and that it is valued by other agencies.

CHAIR - Are there any other questions on the educational side?

Mr MULDER - We have heard from Professor Malpas that the original submission made with Sir Max Bingham was that they envisaged most of the work would go around this educative function. The commission, because it has been called an integrity commission rather than an ethics commission, has ended up doing the codes and compliance model which has resulted in a heap of investigations. How do you see your revamped commission focusing on those sorts of things and leaving the investigative roles to triage and overview? How do you envisage we are going to turn this commission around to focus on the main issue it is supposed to be focused on?

Dr GOODWIN - They already do a lot of work in the misconduct prevention space. The query I have is whether they are able to do as much of that work as they would like to, and whether the work they are doing is valued by the agencies they are endeavouring to work with, and that it is relevant to the agency's needs. There is a bit of work that needs to be done around that. The other issue is wanting to avoid duplication, making sure there isn't duplication of effort around ethics training. For example, the police have their own structures around ethics training, as does the prison. It is working out where the Integrity Commission fits in with the already existing structures and how it can best build capacity within organisations to develop their own ethical culture and provide their own ethics training, but the Integrity Commission maintains its watching brief over that.

Mr MULDER - Professor Malpas and Sir Max were of the view that it was a function that should be contracted in, especially given its investigative function. He was making the distinction that ethics is a different issue to integrity because integrity has now come to mean codes and compliance whereas ethics is more about exercising appropriate judgement about openness and honesty. The word 'integrity' has changed its meaning over the course. He thought a commission that had both an investigative and an ethics function should be buying in both lots of expertise. Is that how you are thinking?

Dr GOODWIN - It's not really something I have considered in depth. I have not had the benefit of hearing Professor Malpas and what his model would look like, but he has significant expertise in this area so I would be guided by his thoughts and suggestions on

PUBLIC

how we can get a better model. It is important to make sure we get a clear focus for the Integrity Commission.

In terms of the ethical training the Integrity Commission endeavours to provide, I do think they have been doing some good work in that area. They have produced a number of DVDs, for example, on cases which try to illustrate what is meant by ethical conduct, practical examples that are easily understood for people working across a whole range of agencies. I see that as something productive that the Integrity Commission has been doing with ethical training. I have not had the benefit of having feedback from agencies as to how valuable they find that and whether it is in fact relevant to their needs in trying to develop their own ethical culture. It is important, whatever work in that space the Integrity Commission does, to make sure it is relevant, does not duplicate effort and that it meets the needs of agencies.

Mr BARNETT - You have expressed concern about duplication in terms of investigation, but with the issue of education surely we have a similar concern of possible duplication in that space? We have had Professor Malpas talk about having a tightly knit focussed commission outsourcing or insourcing education and ethical training. Surely the police and other agencies of government have their own education and awareness training, do they not, and therefore would that not also be a possible duplication?

Dr GOODWIN - I know the police provide ethics training and obviously they will be able to elaborate on that. The prison I know provides some training. Duplication could potentially be an issue around ethics training and we do need a clear way for the Integrity Commission to make sure that whatever training or misconduct prevention work it is value-adding what is already being done.

Mr OVERLAND - From the department's point of view this has been a real strength of the Integrity Commission and the training materials they have developed and provided. I am aware the police do have their own material but it is police-specific. I think the material that is being generated by the Integrity Commission is broadly focussed across the State Service and it has been very good. I do not have the capacity to generate a lot of that in-house within the department so it has been a great advantage to take an almost off-the-shelf product that has been produced by the Integrity Commission and use it within the department. That is a very appropriate use because to me ethical conduct is best achieved by having people understand what the required standards of conduct are, embrace them, internalise them and behave accordingly. I think a focus on ethics and making agencies responsible for their own ethical health and their own ethical conduct is really important but there is a lot of use in having a body that can provide support around that. I think the issues across the State Service are so similar the message is the same. It does not need to be different from my department as opposed to the Department of Premier and Cabinet. I acknowledge this has been a real strength of the Integrity Commission to date.

Mr BARNETT - You do not think that could be outsourced or insourced from the university ethics centre or some other ethical centre of education?

Mr OVERLAND - There are number of different ways it could be provided. From my point of view the important thing is that it is provided, and there are advantages in having it centrally provided.

PUBLIC

CHAIR - On that point, with the ethical and misconduct training that has been occurring through the Integrity Commission, is there any evidence to show that has had an impact? Is there any evidence to show, across the Department of Justice for instance, that there has been a drop-off in misconduct complaints and misconduct issues? Is there any evidence to support that it has had an impact?

Mr OVERLAND - That is a very good question in terms of hard empirical evidence. No, I am not aware of any but I would say that in this area there is no one thing. It is always a combination of things. Education and training is a very important component. We have also been active in trying to enforce standards and uphold the appropriate standards. In combination I would like to think that is starting to make a difference. Our main area of concern has been in a particular area of the department, and I would like to speak more about that when we are in camera. The combination of things has made a difference in that area in terms of improving ethical standards.

Dr GOODWIN - It is a difficult thing to measure because, when you do work to create an ethical culture, it may result in more complaints rather than less. The Integrity Commission may well be able to provide some feedback around its effectiveness, but it is hard to measure.

Mr McKIM - Attorney-General, you do not have mandate for your position to remove all the investigative powers from the Integrity Commission, do you?

Dr GOODWIN - What we went to the election with was a commitment around a more effective and efficient Integrity Commission, hence our budget saving measure of reducing its funding by \$600 000 a year. In board terms we made it clear that is what we were aiming for - an efficient and effective Integrity Commission.

This review has been on the table for a while now. Everyone knew it was coming and as a Government we have a responsibility to make sure the Integrity Commission does provide value for money and that it is an effective and fair model. All we are doing in this context is providing you, as a committee, with our concerns around the current model, flagging some suggestions to be considered. We do not necessarily think we have all the answers and we also appreciate the feedback you are getting from stakeholders. We think this committee is in a really good position to work out what is going to be an effective and fair model.

Mr McKIM - Again, because it was not answered, you do not have a mandate, do you?

Mr BARNETT - In the way you wanted.

CHAIR - Order. You asked the question.

Mr McKIM - Point of order, Chair. Mr Barnett has been manifestly wrong twice now. The Attorney-General is not entitled to answer as she wishes. She is sworn to tell the truth, the whole truth and nothing but the truth. That is the fact of the matter.

CHAIR - I am not upholding the point of order. Continue asking your question.

PUBLIC

Mr McKIM - Thank you. Attorney-General, why didn't you put the Liberal Party's position to abolish the investigative functions of the Integrity Commission, effectively to gut it, to the people before the election? Why have you snuck it up and dumped it on them after the election?

Dr GOODWIN - With respect, McKim, this is a process of reviewing the operation of the Integrity Commission Act. What we took to the election was a policy around a more effective and efficient Integrity Commission, and that is what we are trying to achieve through this process. This idea that we had to seek a mandate from the Tasmanian people on this specific issue, when this is a review process. This is part of a legislative mechanism to review the Integrity Commission Act. We have a responsibility to make sure this Integrity Commission delivers value for money. It is taxpayer's money that we are spending on it, that is fair, operates appropriately and that we address to the greatest extent possible any current or possible gaps in investigation. There are those three key areas that need to be addressed. There is a concern around the oversight of these integrity bodies and we want to make sure we get the best value for money out of our taxpayer-funded investment. Did we seek a specific mandate on this submission? No, we didn't. Did we seek a mandate on our long-term plan for Tasmania's future that made reference of an efficient and effective Integrity Commission? Yes, we did.

Mr McKIM - So there was no mandate for the specific position that the Government now has that the investigative functions of the commission should be abolished. Can I therefore ask you -

CHAIR - Order. In fairness to the witnesses, they never said they were going to abolish it, so I think we need to be very careful.

Mr McKIM - I said abolish the investigative functions; they have said that.

Mr BARNETT - He's attempting to verbal the witness.

Mr McKIM - The *Hansard* will show very clearly that I said abolish the investigative functions. Regardless of that, Attorney, will you rule out introducing legislation to abolish the investigative functions of the Integrity Commission in the absence of a recommendation from this committee that you do so?

Dr GOODWIN - Mr McKim, I am not going to rule anything in or out until this committee concludes its process and makes recommendations, because it is not appropriate for me to do that at this point. I have said to you that in our submission we raised our concerns about the way the Integrity Commission is currently operating. I have said that I value the work that this committee is doing. I value the fact that you are hearing from a range of stakeholders who are coming up with a range of suggestions and I look forward to reading your report and recommendations, but I do not think it is appropriate for me at this time to be saying what the Government is going to do. One, I have not had a chance to canvass any of these suggestions you have just been making with my colleagues but second, I think it is important to let this committee do its work and I will consider the report when it is finalised.

Ms GIDDINGS - You raise the issue of who watches the watchdog. I take it on face value that this is just an idea you are putting to us to consider and think about. In terms of that, isn't

PUBLIC

the idea of the Office of Inspector-General overseeing these independent statutory bodies of the Ombudsman, Auditor-General and others almost a vote of no confidence in their independence? Essentially the Ombudsman is an independent investigatory body in itself, but by establishing a new level of bureaucracy you are essentially saying you do not have confidence that there will not be an issue and you are going to have to investigate them. If that is the case, where does this stop? Who will be watching the Office of Inspector-General?

Dr GOODWIN - I understand what you're saying about who watches the watchdog watching the watchdog - it could go on forever - but it is quite common in other jurisdictions for there to be a body overseeing bodies like the Integrity Commission, such as ICACs, crime and misconduct commissions and those sorts of bodies. The concern is that they can be very powerful bodies. We have seen the sorts of work they do and the sorts of reports that can be published about people who are the subject of investigations, and there needs to be some sort of oversight mechanism for them, in my view. That is why other jurisdictions have gone down that path.

We raised this in the context of the original debate on the bill. I don't think I'm unusual in suggesting this as a concern. I think it is a concern that has been expressed in other jurisdictions and addressed through a range of different mechanisms. This is one that we have flagged but there are other options and I encourage you to consider them. This is in no way a reflection on the Integrity Commission, the Auditor-General or the Ombudsman in terms of their integrity or the way they operate.

I am purely raising a concern that I have had as a previous member of this committee when complaints have come in and we have been relatively powerless to do anything about them. I'm not sure it builds confidence in these bodies in that if they make a complaint, they are effectively dealt with by the body that has been complained about, which in this case is an integrity entity that often has quite strong legislative powers to do all manner of things, particularly in the Integrity Commission's case. I think there is a need to give consideration to a watchdog for those integrity entities.

Ms GIDDINGS - Isn't there a bit of a danger of setting up just another body for perpetual complainants to use as another avenue?

Dr GOODWIN - It is certainly a risk. That was always going to be a risk setting up the Integrity Commission, to be frank. People will forum shop, we know that, but I still have this lingering concern about a need to have someone watching the watchdog because there are those quite wide-ranging powers.

Ms GIDDINGS - What sort of evidence do you have of the level of need for having this independent statutory body to oversee these other bodies? Is it a regular thing that there are complaints against the various bodies such as the Ombudsman, Auditor-General, Commissioner for Children, Antidiscrimination Commissioner?

Dr GOODWIN - I can only comment on my experience on this committee when there were a number of complaints made about the Integrity Commission. I can't comment on other areas because often those complaints come to the relevant committee and are not a matter of public knowledge necessarily. The very fact there are complaints made about integrity entities -

PUBLIC

Ms GIDDINGS - Sufficient for a full-time Office of Inspector-General?

Dr GOODWIN - That is open for discussion. It depends on what the role of that oversight body is. That is not the only model that could be considered, there are other models. There is a need for some oversight as to what the best model might be for Tasmania. I remain convinced there is a need for some oversight.

Ms GIDDINGS - Would you agree the reason the Integrity Commission was established in the first place was because there was at least a perceived gap in the system that what was then the current model was insufficient?

Dr GOODWIN - Yes, certainly there was a concern about a number of high-profile cases in Tasmania and a view that we needed some sort of body to investigate those matters, or at least to take the complaints and make sure they were appropriately dealt with, and I believe that need remains. We are not suggesting the Integrity Commission be abolished or that it shouldn't continue to do its triage function or quality assure investigations. I am raising concerns about the current way it investigates complaints, whether we are getting value for money, whether we are avoiding duplication because clearly we are not, and making sure we address those three key levels of misconduct in an appropriate way. I'm not convinced we've got that right yet.

Ms GIDDINGS - Most matters are triaged back, in fact that has been held as a reason you don't need the Integrity Commission, because figures of 90 per cent have been mentioned around pushing matters back. If we take it as 90 per cent, that leaves 10 per cent of matters that don't have anywhere adequately to be triaged to. Under the model put forward here, where does that 10 per cent go? I put it to you that the Integrity Commission is being gutted by having its investigative or law-enforcement functions removed - it is very clear in the recommendation that that should no longer occur - and the new Office of Inspector-General doesn't undertake those levels of investigations, they're an oversight body, so for the 10 per cent or so of investigations that the Integrity Commission is undertaking, who will do that work?

Dr GOODWIN - It depends on the nature of the matter complained about. For example, the health case came into the Integrity Commission and they did an assessment on it and then a full-blown investigation. It then came back to the relevant agency to be dealt with. Is there a streamlined process around that where it could have been dealt with sooner in the process by the relevant agency concerned? I do not know the full details of that investigation. I do not know what it involved. I do not know at what point potentially it could have been referred back to the agency to be dealt with, but my gut feeling is that there was probably a point in time where it could have gone back to the agency and we could have got faster resolution of that matter.

I think they are things that need to be considered in our deliberations on this current model we have. There could be matters that could be dealt with by the police if they are obviously of a criminal matter. It might be that something could be referred back to the agency much faster than is currently the case.

Again, it gets back to this point of what do we really need the Integrity Commission for? If you think there are gaps, what are they? Is it at the serious misconduct end of the

PUBLIC

equation? Do they need to be operating all the time and have a permanent investigative function to it or do they, as I think Mr Barnett was suggesting that Mr Malpas has suggested, have the capacity to draw in resources if they need to for a particular type of investigation? Or are these matters most appropriately dealt with by Tasmania Police if they are criminal in nature? At the moment we are saying that we have not got the model right. The current model of investigations is not working because of this duplication issue. They are not doing many investigations. They are not doing many assessments and yet we are funding a full-blown Integrity Commission with a full-blown investigative function. I do not think that can continue because it does not seem to be working.

We are open to suggestions but our view is that what we have at the moment is not working and we need to do much better.

Mr BARNETT - On the health inquiry - which we referred to and I think you expressed some concern in regard to the timing of that inquiry - into nepotism and conflict of interest, at the end of the day it was not relating to a crime or an allegation of a crime, it was relating to a code of conduct, do you have any concerns regarding the identification of those two people concerned and whether they had a right to natural justice? Did they have a right to express their views in that report, noting that it was not included in that report?

Dr GOODWIN - I think a number of people around this table have expressed their concern about the naming of the individuals in that report and the perceived fairness of that.

It is very difficult to unravel that sort of occurrence once it occurs. There is not much you can do really to unravel it once it has happened. It is out there and consequences flow from the naming of someone in a report.

Mr BARNETT - My specific concerns are that those named were not entitled to put their defence as it were in that report which became public.

I am wondering if you had a response to that or whether it is something you have thought about.

Dr GOODWIN - I have two concerns. One of them is the one that you have articulated around whether or not the person named needs to be given the opportunity to make a response. I do not know how that should, or could, occur in a better way.

I fundamentally have a concern at the first point, which is the naming of someone in a report. I do not know whether we want to be in that space. I would be interested in the committee's views on that.

Mr McKIM - Attorney-General, in the submission that the Government has made to the committee, you have recommended removing all investigative powers from the committee. In that situation, who would the Government suggest investigate allegations of serious misconduct or criminality against Tasmania Police?

Dr GOODWIN - Are you talking about the Commissioner? Already, if there is criminal misconduct by a police officer or they are the subject of some internal investigations of complaints, the police are conducting that sort of work.

PUBLIC

Mr McKIM - The Government will suggest the police service investigate itself?

Dr GOODWIN - They already do that.

Mr McKIM - That is your suggestion though?

Dr GOODWIN - They already do it in their internal investigation space.

Mr McKIM - Are you comfortable with an organisation investigating itself?

Dr GOODWIN - I am comfortable with the police service and what the ethical standards area within the police service does. They have been conducting internal investigations for a very long time. There is oversight of their internal investigations, as I understand it, at least to some extent, by the Ombudsman and the DPP. I am comfortable with Tasmania Police being able to conduct investigations.

CHAIR - I ask that we clear the room for the consideration of further evidence being provided in camera.

Evidence taken in camera.

Mr MULDER - In your proposals I gathered that your intention is to retain the tribunal and to activate it as required as part of your legislation, as part of the Government's proposal?

Dr GOODWIN - I am not sure we have addressed our minds to that, but I think that probably it could still remain. It would really depend on what the model ends up looking like and how it would fit. I think probably there would be a gap between a full-blown commission of inquiry and whatever comes in between an investigation.

Mr MULDER - That is the context of my question. Is the need for government officials or senior people involved in serious misconduct that needs to be investigated, preferably by brought in investigative capacity, but there needs to be a body that coordinates that. I am wondering whether an integrity tribunal would fill that middle range gap just short of a full-blown commission of inquiry.

Dr GOODWIN - Yes, and integrity tribunal could be an option.

CHAIR - We thank you both very much.

THE WITNESSES WITHDREW.

PUBLIC

Mr SCOTT TILYARD, DEPUTY COMMISSIONER; **Mr MARK MILLER**, PRINCIPAL LEGAL OFFICER; AND **Mr ROBERT BONDE**, COMMANDER PROFESSIONAL STANDARDS, TASMANIA POLICE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Dean) - Welcome, gentlemen. I believe all of you have given evidence before a committee before. Parliamentary privilege applies whilst you are here but once you leave this room it no longer applies. I also remind you that if there is any evidence you believe ought to be taken in camera, please ask for that to occur. The committee will make a determination on that. This is a public hearing and is being recorded by Hansard. Members of the public and the press will be in here from time to time. We have a submission from the Police department so we will leave it open to you at this stage to make any additional statements or emphasise any points within the submission. We will direct questions to you, Deputy Commissioner, and then you can palm them off to where they should go.

Mr TILYARD - Thank you to the committee for the opportunity to appear before you this afternoon. As the Chair said, we have provided a written submission to your review. From the outset I should say we have had a close and positive working relationship with the Integrity Commission since it commenced. They do have a focus on police misconduct. There is a division within part 8 of their legislation specifically on police misconduct and they have a mandate in relation to misconduct by designated public officers - all commissioned police officers, that is, all police officers of inspector rank and above, as well as state executive employees, designated public officers. They also have a mandate in relation to serious misconduct by all police officers. In addition to that, whilst they have a particular mandate in those areas, for the last two years the Integrity Commission has also conducted a complete audit - that is, a 100 per cent review of all our complaints, regardless of whether they fall into those categories. They are all complaints - for example, the first year they did it was last year, reviewing all complaints that were finalised in the 2012 calendar year. They are in the process of completing an audit of all our complaints that were finalised in the 2013 calendar year. The report on that is still in draft form at this stage. They have indicated an intention to continue doing that 100 per cent audit of all our complaints every year. Whilst they have a particular mandate in relation to serious misconduct or misconduct by senior officers, they have quite a degree of visibility of how we handle all complaints, even the most minor matters.

CHAIR - That is outside the terms of the legislation, is it? Is it an agreed position between you and the Integrity Commission?

Mr TILYARD - No, the Integrity Commission maintains it falls within their audit powers under the legislation. We certainly have not objected to that audit. We cooperate fully with the commission as to what they want to audit. I have personally expressed a view - and it is a matter for the commission how it utilises its time and resources - that I don't think it is necessary to conduct a 100 per cent audit every year, particularly when there have been no systemic cultural or organisational issues identified. Any criticism that has flowed from the process has been more around administrative matters - for example, the time limits to resolve complaints and those sorts of things. In that environment my personal view is that perhaps a full audit could be done once every two or three years and

PUBLIC

then a bit of a random audit in the alternate years, but that is a matter for them. We have cooperated fully with that audit function and we will continue to do so.

Getting back to our submission, we have made some comments in relation to the functions, operations and powers of the commission. We have also commented in our submission in relation to some of the issues the Integrity Commission raised in its submission. I only became aware today that the Integrity Commission may have made a second submission to the committee which we have not seen at this stage, so we are not in a position to comment.

CHAIR - I believe that is on their website.

Mr TILYARD - I was not aware of it until today, so the content of our submission does not take into account any of the issues they may have raised in their second submission. We are happy to answer any questions committee members may have and perhaps take an opportunity to clarify or correct a couple of issues that came up during previous evidence that we noted from some of the transcripts we have reviewed, so we can do that while we are here as well.

CHAIR - If you would like to raise those issues now, Deputy Commissioner, and then we can take questions from there.

Mr TILYARD - The first one I will mention - and then I will hand over to Mark to talk about access to police systems, which is one of the issues the commission has - there was some evidence given when the Police Association appeared before the committee about some form of national database. We have our own internal complaint database but some form of national database does not exist, to our knowledge. I think it was the president of the Police Association who talked about that. I am not sure whether he misunderstood the arrangements but there is no national database as such. I just wanted to clarify that.

CHAIR - That was in relation to the capturing of information against people - was that it, the national database?

Mr BONDE - I understood it to be a national database for complaints against police with linkages across jurisdictions. That is the way I interpreted the transcript.

CHAIR - There was a matter, reflecting on the evidence, of a national database of criminal records. It could have been that as well but it certainly was in relation to capturing criminal evidence against individuals.

Mr TILYARD - There certainly are national databases around criminal histories and things like that.

Mr BARNETT - CrimTrac.

CHAIR - Yes, CrimTrac.

Mr TILYARD - I think there was evidence given by the commission on the extent and the manner in which they access information on our electronic systems, and I might hand over to Mark to speak to that briefly.

PUBLIC

Mr MILLER - The reference is on page 24 of the evidence of Ms Johnston and Ms Merryfull. Ms Johnston said that they had access to our database but she was corrected by Ms Merryfull, 'We don't have access'. They in fact do have access. What they want is carte blanche access to our systems. It was included in our MOU which was settled with our legal advice and which in any event cannot confer powers on them. I gave advice - just to generally confirm - that it was correct, that they could not just run through the databases and access for an inquiry; they needed a specific complaint, a specific investigation and a specific request. We have given them access so they give us information that they have a job and that they want access to our systems. They are sat down - usually in Internal Investigations - given an office with a machine, they log on with a specific number so that we can trace the trail if we need to.

CHAIR - On that, that same situation applies to police themselves, doesn't it? They must have a specific reason to go into the database and identify that.

Mr MILLER - Yes, a specific work-related issue, and if they don't they could face dismissal for it. But they access it and are given free rein. There are occasions when they request printouts and they get those, but they can come in and access that at any time.

Mr BARNETT - And do they?

Mr MILLER - Yes. Not regularly, but the numbers of access might reflect the need as well and the type of investigation that they do. On that note, I noted that the Chair asked on how many occasions she had had good reason to access the database - on page 27 of Ms Merryfull's evidence - and with respect to her, she did not answer the question.

CHAIR - I must have missed that.

Mr MILLER - She said it would certainly help her, particularly in relation to their audits. Then she was asked by Mr Mulder about situations where an access was denied or examples of where she wanted to access but was reluctant to ask, and she confirmed that she had never be denied access to the database, which they never have. Over the page she referred to one example where they would have liked to have accessed systems but didn't ask. She was asked why and she said it was a serious complaint about a police officer, the nature of the allegations and wrongdoing alleged and what it might mean, who might be involved and if it was substantiated. She went on to say, 'I'd prefer to keep it within the walls of the commission'.

I have no idea what that was about but it surprises me because I have personally dealt with a number of complaints that have been referred to us by the commission that involved very serious misconduct, indeed criminal conduct, by senior officers in the organisation and they have been referred, so I can't understand why this particular one wasn't. I have my own views that the nature of the complaint or the nature of the informer might have been such that she might have been embarrassed by us taking it seriously, but you have to act on these things.

CHAIR - Just on that, what is the process that has to be gone through by the Integrity Commission for them to access your database? What is necessary?

PUBLIC

Mr TILYARD - It is often just a direct request to the Commander of Professional Standards. We have an MOU where a lot of that sort of operational level stuff has been delegated down to the Commander of Professional Standards. Normally they just send me an email or make a phone call and it is facilitated straight away. We've never said no and I couldn't envisage a circumstance where we would decline a request.

Mr BARNETT - But it is in accordance with certain terms and conditions in the MOU. There is a reason for it. Do they tell you the reason?

Mr TILYARD - No, I don't require them to tell me the reason. All I require them to tell me is that they are acting in accordance with their authority under the act. I do not need to know the details and I don't want to know, just an assurance that what they intend to do is in accordance with their powers. Once they make those statements -

Mr BARNETT - That is all set out in the MOU?

Mr MILLER - No, the MOU envisaged that direct access would be supplied.

Mr MULDER - Would be?

Mr TILYARD - Yes, at the time. That is a 2010 document which has been under almost constant review.

Mr MULDER - Clarification would be required upon request.

Mr MILLER - No. The MOU envisaged that direct access would be provided and so was entered into before legal advice was sought.

Mr MULDER - But not carte blanche?

Mr MILLER - No, I think it envisaged carte blanche; that is my understanding.

Ms GIDDINGS - Just to tease it out a bit in that respect, what would be the problem with the Integrity Commission having access, understanding that they do need a complaint so they can't just go on a fishing exercise and, secondly, that the police can see who has been where anyway, so there is an accountability mechanism in place should there be any concerns raised that the Integrity Commission have misused that access to the database?

Mr MILLER - My main concern with it is that the security with the system is as strong as the weakest link, and once we give direct online access to any other law enforcement body or any other body, we lose control of our security. Police jurisdictions around the country take a similar attitude with their own systems and do not allow other agencies they work very closely with access because of that situation. I might need to ask to go into camera, but we have had examples of where an inspection agency very seriously compromised the security of some of our telephone intercept information. Whilst we do not have any concerns with the staff or the processes of the commission -

CHAIR - Mark, I might ask you to speak up a little bit because people up the back and down the end are having difficulty.

PUBLIC

Mr MILLER - Whilst we obviously do not have any concerns with the staff of the commission, how they vet their staff or what process they have in place, we don't have any control over them. There is some highly sensitive material on our system, including the TI material. They couldn't access that lawfully as things stand.

Ms GIDDINGS - I guess they would say if they did access it they have broken the law and there would be accountability measures in place. The evidence we received was that, for example, the Commonwealth Ombudsman's office has access to the Federal Police complaint database system.

Mr MILLER - There is a distinction between the complaints database and the systems at large.

Ms GIDDINGS - Again, they also said to us that it would be desirable to have access but not absolutely critical. I don't think it's a do-or-die issue but it's interesting to work that out. They don't have access to the complaint database either, do they?

Mr MILLER - No.

Ms GIDDINGS - Would police be willing to consider that as a minimum?

Mr TILYARD - The police complaint database we use is called IAPro. We have discussed the feasibility of the Integrity Commission just having access to that particular database but if access was granted it could only be used for specific matters that they have a mandate to investigate. It couldn't be used as a general fishing expedition - 'Let's see what's in there and see if we can find anything that looks like something that might be interesting'. We have specific legal advice that says that would not be permitted. Going forward there is a possibility they could have access to that, and certainly some level of online access was envisaged four years ago when the MOU was originally signed, but since then there have been several legal issues and, as Mark said, we have taken advice from the Solicitor-General we're bound to follow and that has been not to provide the online access.

CHAIR - Can I touch on the MOU? That MOU was done between the police and the Integrity Commission, I take it, entered into about four years ago, and it envisaged there would be open access to the police system for the Integrity Commission, is that right?

Mr TILYARD - It actually went further than the IAPro complaints system and envisaged access to other operational systems, some which contain highly protected information, including the telephone intercept product. It was envisaged in the very early days of the commission that there would be some online electronic access to make things more convenient in a lot of ways for the commission, so they could log into our systems from their office. The thinking at that time was that there were a number of other integrity bodies around the country, some of which were specific police integrity bodies, or were at that time, that had some of that access, so the discussions were now we had the Integrity Commission that maybe we needed to look at similar arrangements here, but it has not eventuated. Our systems are accessible any time the commission wants to access them and they just come in and access our terminals.

CHAIR - Why is it retained? I guess this is why the Integrity Commission are a little frustrated inasmuch as MOU would identify with that position, but yet they are restricted and it must be done case by case. Why hasn't the MOU been revisited and amended?

PUBLIC

Mr TILYARD - It has been revisited and there has been work done to review certain clauses of it but it has never got to the point where it has been signed off. It is not the commission's or our fault. There has been a bit of bouncing around for a couple of years and it has not been resolved.

Mr MILLER - But the MOU cannot confer access. To enable access would require an amendment to the act. It infringes the privacy legislation.

Mr MULDER - On this issue, a point of clarification. You have talked about your concerns over access to highly protected information. By 'highly protected', do you mean something you think is particularly sensitive or is that in accordance with the national security risk assessment protocols, objective standards that lead to a classification? Is that what you are talking about when you talk about highly protected?

Mr TILYARD - The majority of it would be information we classify as highly protected. I am talking about information within our IDM system, which you would be familiar with, which is in itself a highly protected system because of some of the information it contains. It is information that is intelligence -

Mr MULDER - You get the highest classification to any particular piece of information concerned. My point was that it is not that you don't want people trolling through systems because it might be embarrassing, it is because it meets national standards to achieve that classification of highly protected.

Mr TILYARD - Some of the information involves other agencies and law enforcement security agencies if we are doing joint operations and things.

Mr BONDE - In relation to the police complaints database, all of the material held on that database in relation to complaints is provided to the Integrity Commission during the course of the audit. All the complaints we have received go to them. They mainly receive them in hard copies but we also provide material electronically if they identify they might want to receive electronically. There is some material within that which falls within the range of the categories we spoke about today that are removed from that before it is provided, but at any time the Integrity Commission can access the data, with the exception of things we talked about, at any given point in time by request or by asking for the hard-copy files.

CHAIR - On that, is there a requirement of police when they are engaged in what is seen as a fairly serious case of misconduct within police of them having to pass that information back to the Integrity Commission? Are you required or obliged to let them know?

Mr TILYARD - We certainly are obliged if it involves misconduct by a designated public officer, so inspector and above or a State Executive Service employee, or serious misconduct by any police officer. That is something where there is an allegation of a crime or a serious offence, or if their employment might be terminated. We are obliged to notify them that a complaint has been received. We notify them of the outcome of the investigation as well.

PUBLIC

Mr MILLER - There is deficiency in the act because it envisages the commission will investigate any serious misconduct by a police officer. We are not compelled to notify them but we do it in recognition of the fact that there is deficiency.

CHAIR - Why do that if it is just a point of you letting let know?

Mr TILYARD - As Mark said, we have had some arrangements with the commission since day one that are in addition to the legislative requirements, so there is one example. Another is that basically their mandate is around misconduct or suspected misconduct, but as a matter of practise I have always contacted the chief executive officer of the Integrity Commission myself whenever we get an instance where somebody is killed or receives life-threatening injuries in any sort of contact with police. It might be a police pursuit, or some sort of death in custody situation. We are not mandated to unless we suspect there might be misconduct. In many of those cases there is no suspicion of misconduct but I let them know anyway. In some of those cases they get updates from us about the progress of the investigation even though there is no suggestion of misconduct. Again, strictly under the legislation we do not have to do it. It is a relationship we have had with the commission since its inception.

CHAIR - You are saying there is an anomaly -

Mr MILLER - A deficiency.

CHAIR - A deficiency rather. Are you saying there could be an amendment made in this area to clarify that?

Mr MILLER - Yes, certainly if the jurisdiction of the commission is to remain as it is or is enlarged so that they have responsibility to investigate any serious misconduct by any police officer or any misconduct at all by a senior police officer, then certainly there should be a notification. I think that extends to other agencies too. At the moment I think that for any public officer misconduct it is implicit that they will investigate it but there is not a specific obligation to notify.

Mr MULDER - Regarding the audit, I think at page 8 of the department's report it expresses some concern about a misconception that arose.

The view of Tasmania Police is that the final version of the report contains information that is incorrect. For example, the audit report on page 9 states that 'and the most commonly sustained class 2 allegation was crime (four allegations from four complaints)'. Tasmania Police's view is that the statement conveys that four criminal allegations were sustained against officers from Tasmania Police in the period covered by the review. The Tasmania Police position is [inaudible] ordered by the commission indicated that no criminal allegations were sustained against Tasmania Police officers.

Would you like to explain to the committee how we can have that position from the police department, yet the commission saying it relied on the very data that you challenged?

Mr TILYARD - I wish I could explain that. In fact this is something that to this day has never actually been reconciled between us and the commission. They made that claim about

PUBLIC

four sustained class 2 allegations of crime. We said, 'What are you talking about?', and they have never been able to come back and say they are referring to these ones. So it is still out there and unresolved.

Mr MULDER - At what stage in your internal database does a case get classified as sustained? If it says 'sustained' what does it mean in your database because I think this is where the problem lies.

Mr TILYARD - It means that the allegation has been upheld.

Mr MULDER - Upheld that a prima face case has been established or that we have enough to go to -

Mr TILYARD - Usually it is an alleged breach of the code of conduct. On the balance of probabilities the alleged breach of the code of conduct is found to have been substantiated or upheld. It has been found there has been a breach.

Mr MULDER - You are saying there were no such cases in that period classified as being under the period of review -

Mr TILYARD - That's right.

Mr MULDER - and then that in summary, 'Tasmania Police disagrees with the commission's view of this matter'. That is about the sum total of satisfaction you received for what you reckon is erroneous in fact. I won't ask you what you think that means of their investigative capacities.

Mr TILYARD - After that first audit they sent the draft report to us for comment. We sent back quite a comprehensive response outlining what we took issue with, didn't agree with, or corrected certain information, some of which the commission took on board in finalising their report. Basically they felt we provided too much information in response and therefore they wouldn't publish our response as part of their report.

Mr MULDER - So now you give too much information?

Mr TILYARD - They changed a few words in some things but the only statement was that we didn't agree with their conclusion. We explained the rationale for why we didn't agree and that was never incorporated, but that is a matter for the commission. We can respond but what they publish is a matter for them. The most recent review, the 2013 calendar year review, is in draft form at the moment and we are going through that same process of commenting on their report. We have raised a few issues but it is probably not appropriate to talk about the details of that because we don't know at this stage the extent to which they will change it as a result of our response. One of the issues we have had has been that in quite a number of reports the commission has produced relating to our department, be it audit reports or their annual report, there have been comments made that could easily be misconstrued or the casual reader could misinterpret. There was an example from the 2012 review. It is not a big issue but it is potentially damaging to the reputation of the department in the way it is presented.

PUBLIC

Mr BONDE - In this particular example - and in the audit it is case study 8 - I reiterate it is a draft audit at this point in time. Case study 8 related to the commission's assertion that officers of a higher rank are dealt with more leniently than others. The case study related to two officers of the same rank, albeit they were different designations of constable and first class constable. That is a different designation in qualifying process or time in the job, but not a difference in rank. In our opinion the case study failed to take into account mitigating circumstances, particularly regarding the medical condition of the primary subject officer's son which was pivotal to the case study. The son had a medical condition. He was the subject of an alleged assault at school and the officer went round to the parents' place - and we accept it was inappropriate - with a view of speaking to the parents about it. Our assertion is that the case study didn't take into account the mitigating circumstances of the medical condition of the officer's son and the emotion that was attached to that. The case study, in our opinion, wasn't correct in the difference in ranks. It wasn't illustrated in the commission's assertions that officers at a higher rank are dealt with more leniently than others. In our opinion it was, for the casual reader, misleading and not illustrative of the point that was being made.

Mr MULDER - This is the draft report you're commenting on?

Mr BONDE - That is exactly right.

Mr MULDER - And you don't have the commission's view yet on what changes it will make?

Mr BONDE - No, not on that one, but there have been other annual reports and a previous audit report where the way some things are expressed can give a wrong impression. Often the response we have provided is not adequately articulated in the report. That has probably one of the major issues we have had in dealing with the association. Even though we have a very positive relationship and work closely with them, that has been one of the sticking points we've had.

Mr McKIM - I raise an issue I raised with the Attorney-General this morning, and it goes to the independence of Tasmania Police and whether Tasmania Police believes it operates under the direction of the minister.

Mr TILYARD - Certainly in terms of broad policy direction, yes, for sure, but there is a very clear delineation on operational matters and the minister doesn't seek to involve himself or herself in those, and never really has.

Mr McKIM - I would like to move away from what any particular minister does and move to what the Tasmania Police Service Act 2003 actually says. Section 7(1) says that the commissioner operates under the direction of the minister and makes no mention at all of policy or operations in that section. The reason I raise this is because the Government submitted that the investigative powers of the Integrity Commission should be entirely removed and I would like your response as to whether that creates a gap, if you like, in the investigative structures in Tasmania in terms of whether, for example, a government minister can be truly independently investigated in Tasmania.

Mr MILLER - In respect to the legal position, this was the subject of some debate in early 2008 when there was an exchange between the then commissioner and the DPP. I think the position advanced by Tasmania Police at that point was that as a matter of law, there

PUBLIC

was a limitation upon the power of direction and it couldn't extend to operational matters. I think that position was based on some English authorities -

Mr McKIM - Denning.

Mr MILLER - I was going to say, some of which are principally attributable to Lord Denning, who has been subjected to considerable criticism, not only in relation to that line of authority but others. There was a problem within the justice system generally during the troubles and some of their ideas about evidence and rights. As to the position of Tasmania Police, I am not sure what the position of the previous Solicitor-General is or was or is on it, but the power is unfettered and not subject to restriction.

Mr McKIM - The power to direct it?

Mr MILLER - Yes. So as a matter of law, the minister can direct -

Mr McKIM - Operational.

Mr MILLER - Yes, on anything, but as a matter of fact and reality, under this commissioner, he will not accept a direction about operational matters. On occasions things might have strayed to a fringe because obviously there is always scope for argument around borders, and the commissioner will just not [inaudible] directional or operational matters.

Mr McKIM - Even though it is a lawful direction, on your evidence.

Mr MILLER - Yes. I think on occasions - not with this minister, necessarily - there might have been a suggestion that if a direction was going to be pursued it should be put in writing. You are probably familiar with the fact that New South Wales has a system where there is a requirement to put things in writing and table them in Parliament.

I think with not just this subject but so many subjects - and I think Ms Giddings touched on it in one of her questions - it is who is holding office in certain positions. There might be complete confidence in who holds certain offices now but that confidence might not be there in the future. There is a gap there and I think an amendment is being proposed to the Police Service Act which perhaps has not been advanced because there has not been a perceived need to advance it. At the end of the day, if a government does not have confidence in the integrity of a commissioner, the individual should not be the commissioner.

Mr McKIM - Mr Miller, I wouldn't have said that at all. As a parliamentarian and as a parliamentary committee, in my view we are tasked with creating legislation that will survive the passage of numerous commissioners or ministers in this context.

Mr MILLER - I have seen politicians, when there has been a debate in Committee about the scope of a particular provision of empowering police, making the comment, 'We can rely on the good judgement of police'. That is a dangerous situation. It is better to define powers.

Mr MULDER - It seems that in Tasmania we have questioned the fact that the wording of the law says 'subject to the direction'. In other pieces of legislation, including the previous

PUBLIC

Police Regulation Act, the words were 'subject to the policy direction of the minister'. In fact from my recollection when I looked at this when I was talking to the previous minister, there were a number of jurisdictions that had that word in there and the fact that the New South Wales one didn't was why it had another process about how policy direction would be made.

Mr MILLER - You need to be careful about your definitions, too. In fact, I gave some advice at one stage when there was a draft being considered and I suggested an inclusive definition so that there were certain no-go areas and you would enumerate some of them which would not define the definition but make it clear that the investigation of crime or certain areas -

Mr MULDER - Which suspect to investigate and which one not.

Mr MILLER - The organisation, as is a matter of historical record, has used all its investigative powers to investigate politicians, including members of government in the past, and indeed has investigated its own commissioner. If you have a need for an internal body with investigative powers, whether they are required to investigate alleged corruption at the top of the police, the top of an agency or within government, does it need to be a standing investigative function? In the provisions at the moment, the commission has a set number of investigators -

Mr McKIM - Are you talking about capacity here or function?

Mr MILLER - Capacity, because the commission at the moment has a set budget which has been reduced, various divisions and a set number of investigators. In practice the commission could enlarge its investigators by dozens overnight with a request or requirement to the Commissioner of Police if there was a particular issue. Whether it be the commissioner or the model proposed by the Government, if there is the ability there to say to the Commissioner of Police under this act, 'I want these investigators, they're not subject to your direction, they're subject to mine and they're bound by confidentiality so they can't report back to you', the commissioner may well assign some of his best investigators to investigate himself without knowing it. In the past there have been occasions where allegations against senior police officers have been investigated by police under the direction of the DPP. I don't think that is a particularly satisfactory model by virtue of the division of powers and functions -

Mr McKIM - Neither do I.

Mr MILLER - but there is certainly an issue there.

CHAIR - Have there been any examples of where the Integrity Commission have gone to the commissioner and asked for an investigator of ability and experience, and if it has, how long would that take to put in to place? Also, does the commission identify the numbers that they want or is that a matter for the commissioner to determine?

Mr TILYARD - As Mark said, in practice it is a request but under the legislation it is a requirement. Mark will correct me if I am wrong, but if the Integrity Commission asks, the commissioner can't decline, he has to provide the resources. We have a separate MOU from the one we have been discussing in relation to secondments to the commission and we have certainly done it. I can think of one example where we had two investigators over

PUBLIC

there for six or more months on a matter. We may have done it more than that, but at least once we have done it. If they come to us at any time and say they need some assistance we are obliged to assist them; I think probably within a week or two we have people there. In theory, if they said they needed someone there tomorrow they will have someone there tomorrow.

CHAIR - Right, and they retain all their powers as police officers except that they don't report back to the commissioner?

Mr TILYARD - They certainly don't and we actually pay their salaries as part of the agreement. If there are additional expenses such as overtime and travel, the commission picks up those costs, but we fund the salaries of the people we send over.

Mr MULDER - My next question goes back to something we have had a bit of a dance around, and that is the question of operational versus policy direction. I believe the name was Blackburn vs. the Metropolitan Police Commissioner in which a member of the public had sought a writ to the commissioner to enforce certain laws. I believe the finding in that case was that the commissioner had operational independence and he could direct constables as to where to patrol but he couldn't direct them as to which laws to enforce. Under their constable's oath they had a duty to exercise their powers in accordance with their consciences. I would like your view on how that affects the operational independence of the police commissioner versus the policy areas.

Mr TILYARD - It has always been the situation that the commissioner cannot direct somebody be prosecuted per se by a constable.

Mr MILLER - Or arrested.

Mr TILYARD - That's right. Constables have what they call an 'original authority'. It is not delegated by the commissioner and they are under the constable's oath. That is a long-held situation harking back to Sir Robert Peel. That has always been the case. We have numerous policies that influence the way the laws are enforced in this state. Drink-driving is probably the classic example. People aren't warned if they have gone over the limit; basically everyone is prosecuted. That is an exception to the general rule, there are policies that influence who gets charged and under what situation. Generally speaking, as a concept, the constables can't be directed to charge or prosecute anybody by the commissioner.

Mr MILLER - Section 21(4) of the act obliges the commissioner to provide any officers that are requested. Indeed, the same section, subsection (9) of section 21, obliges him to appoint as special constables any officers they might bring in from the mainland or other policing jurisdictions. So the mechanism is there.

At a broad level, a direction can be given to not investigate matters, to cease an investigation as distinct to a particular exercise of powers. I gave advice recently about a purported direction from a senior officer to a general officer to grant bail, which was clearly misconceived because that is a discretionary power invested in the officer.

PUBLIC

Mr MULDER - If a sergeant can't instruct a constable to exercise his powers, if the commissioner can't instruct a constable to exercise his powers, where on earth would you get the principle that a minister can direct a commissioner to exercise power?

Mr McKIM - From the act.

Mr MULDER - Yes, but I am saying there is the case law interpretation of it.

Mr MILLER - Yes, there is obviously that tension there.

Mr TILYARD - The legislation in some of the other jurisdictions is more specific on this point than ours is.

Mr MULDER - I know this from first hand, both the current and previous minister are of the view that we should align ourselves with other jurisdictions to remove this grey area by inserting the word 'policy' in the concept of the direction from the minister. That is not necessarily something you need to comment on, but that is the point that is coming forward here, that policy is an omission. Whether it was intended or not, that is the debate here.

Mr TILYARD - In the Police Service Act 2003 there are several areas that require some fairly urgent amendment. We are looking at doing that now but we want to do a broad review of the act. I believe a decade is long enough to let a piece of legislation run before you have a good look at the whole thing. That will be one of the areas that will be reviewed.

Mr MULDER - I know that you, as did I, had something to do with the drafting of that piece of legislation and some of these debates we had at the time.

Ms GIDDINGS - That is a point. Here we are, only three years into the Integrity Commission and whether or not that is a long enough time to be making major changes, certainly long enough to tinker around the edges and try to fix some obvious elements that should be fixed. Do you think it has had long enough for us to understand its value or for it to sort out its own role in the sense of understanding what issues you should pursue and what you can let go to the keeper or you can triage appropriately elsewhere? At the moment, arguably, the Integrity Commission is still working through that side of it. Do you think three years is too short to be looking at major changes?

Mr TILYARD - Given that the primary purpose of the commission when it was established was educative in improving the way that government agencies deal with complaints of misconduct. It has primarily an educative type of support role, more so than an investigative one. That is what was envisaged. That is the way the legislation was drafted and they have done some really good work in that regard. We involve the commission in a lot of our training around integrity. They recently produced some online learning material that we have on our e-learning system now. We are in the process at the moment of filming some police-specific video scenarios around conflict of interest and such things. They have done some really good work in that space.

I cannot comment so much on what they have done with other agencies. The issue of integrity, professionalism and complaint management in police has always been fairly high profile anyway. I cannot speak about the other agencies. It may well be they have done even more with the other agencies than they have had to with us.

PUBLIC

They say in their report, they speak publicly about the fact that most of the complaints they deal with, or a good percentage of them, relate to alleged police misconduct. The nature of police work, unfortunately, and the nature of the contacts we have with people through police work, to some extent tends to lend itself to complaints being raised for one reason or another.

They spend a reasonable amount of their time looking at police conduct. Since it began, under the previous CEO and certainly under the current one, they have constantly pushed for more power, particularly more investigative type of power with no evidence base, largely, to justify why they need it. There are powers under the legislation now that are rarely used - own-motion investigations, they can acquire search warrants. They are deemed, for all intents and purposes, to be a law enforcement agency for the purposes of surveillance devices legislation which gives access to listening devices and those types of technologies that support investigations. These are powers that are rarely exercised by the commission. I am not sure why they feel they need the additional powers other than the fact they cite examples of similar bodies - not the same body - in other jurisdictions that have these powers and they feel they should have the same powers here. I do not know what they are thinking they might uncover because it is publicly stated that certainly they have not found it and they do not believe there is the level of systemic-type of corruption here that is experienced in other jurisdictions.

For a long time they have had concerns about not being able to access telecommunications interception material, and I can understand that. The reason we do not provide it is not that we are not happy for them to receive it, it is because legislation does not allow us to share it with them. That is the way it is.

Whether three years is long enough, I am not sure. I do not know if that situation will change in five years or 10 years. It is really a case, from the Government's perspective, of what they want them to be and what they want them to do.

CHAIR - You mentioned before, Deputy Commissioner, the situation of the ethics training that the department provides to your own people. Can you explain that a bit more? In the same concept, what does the Integrity Commission provide to the police service in relation to ethics training and misconduct training as well?

Mr TILYARD - I guess the starting point is here a few years we unitised all of our recruit training with the University of Tasmania. Part of that is delivery of an ethics unit as part of the police recruit training. It is delivered by the university coming into the academy, supplemented by other instructors, but is a university-accredited training module on ethics and integrity. We also have the Integrity Commission come in to our professional development and promotion courses, present and talk through scenarios with those people. There is other training as well. Our professional standards command provides training to our recruit training, development courses and promotion courses. I provide training to all of the promotion development courses myself on professionalism, ethics, organisational values and those things. There is quite a lot of training delivery that happens in addition to the online material that the Integrity Commission has produced as well that we incorporate into our e-learning system so our staff can access it. We have people working 24/7 every day of the year. It is often more conducive to do the online learning. If they get a spare 10 minutes at 3 o'clock in the morning they can get on and do a learning

PUBLIC

package. We can monitor what they have done, they do a little exam as part of it. We do that sort of thing now with a lot of our police training as well.

They also go around to our district management group meetings and do presentations in their districts as well.

CHAIR - On the courses conducted by the police, you were saying the Integrity Commission comes in and make presentations to some of those or most of those. The police department did that themselves at one stage as well. Is all that has changed is they now provide that and you do not?

Mr TILYARD - No, we do it as well. The professional standards commands go in and do separate presentations but they also do some in conjunction with the Integrity Commission. In fact the chairman of the board goes down, usually with the commander of professional standards, and, for examples, runs sessions on sergeants courses and things like that. So it is hands-on and practical scenarios that they talk through.

CHAIR - My question next question from that is one I asked this morning of the Justice Department. From that additional training or sessions that are provided from the Integrity Commission in relation to ethics, misconduct and so on, have you seen any improvements, any evidence that has been beneficial within the police service? In other words, have misconduct complaints dropped right off or is there an increase?

Mr TILYARD - Complaints in Tasmania have reduced probably over the last seven or eight years, whereas in some other jurisdictions they are still increasing. It is hard to quantify what the direct impact of the commission has been on that. They started reducing before the commission existed. Given the thousands of contacts we have with community members every day around the state at one time or another, we get very few complaints. As you are probably aware we are rigorous in terms of the requirement for people to record and submit complaints. They are under our protocols. If you are a constable who gets a telephone call from someone who says I am not happy because a police officer was rude to me, if you do not document that and put it into our complaint system then you can be subject to disciplinary action yourself.

I cannot speak for other agencies but we are very rigorous in enforcing that compliance with our protocols around taking complaints and investigating matters. Robert has some statistics. At the moment with our graduated management model, which is the complaint system that we use, we have two classes of complaint. Class 1 misconduct and class 2 misconduct. Class one is generally your lower level, someone complaining about the sort of customer service they received - formerly known as customer service complaints. Quite low level stuff. Class 2 is more serious matters - alleged breaches of the law and those sorts of things, where someone might be demoted or dismissed from the service.

Mr BONDE - From 2010-11 the numbers have reduced. It would be expected that when the graduated management model was introduced there was a spike in complaints but thereafter they have reduced. They are now averaging somewhere around 100 complaints for each financial year. This time year we were roughly around the same amount. It is a bit difficult to be able to say, to be honest, Chair, in relation to the introduction of integrity and ethics training and education because it started to occur around the same time as the

PUBLIC

GMM. I would say that, as an indicator, the number of complaints have reduced a little, but it is a bit difficult to say that it is specifically the result of education and training.

Mr MILLER - In that time the numbers of police officers have reduced as well so there aren't the same number of contact hours. It should be appreciated too that a proportion of our complaints are internally generated.

Mr MULDER - The whistleblower-type thing.

Mr TILYARD - Yes. We have identified an issue and felt we're going to investigate it. There is no complaint from a member of the public, for example. Usually 30 to 40 per cent of the complaints we investigate each year are internally generated matters that we inquire into.

Mr BARNETT - How are they internally generated?

Mr TILYARD - We have identified issues. There might a report internally that a police officer has done the wrong thing, so we then investigate it as if it were a complaint from a member of the public. There is no complaint from outside the organisation; we are investigating because we have become aware of it.

A piece of work we have just finalised with the Integrity Commission was a joint review of the GMM system which we have had in place now for four years. We always intended to review it. In our regular meetings with the commissioner we mentioned we were going to do a review and they said, 'Can we be involved?'. We said, 'Fine, let's do a joint review of the way that we manage complaints'. That report has just been completed and there are about 40 recommendations. One of the key findings from the report from the Integrity Commission's perspective is that we actually over-investigate a lot of our complaints, which has already been a bit of an issue. The reason we implemented the GMM was because our approach to investigation of wrongdoing by police officers, and a lot of it is pretty minor, was that there was a one size fits all investigation to the nth degree. Sometimes we would take months to sort it out and the end result is that someone gets counselled, 'Don't do it again'. So we have tried to streamline it and delegate some of the decision-making lower down the organisation, depending on the severity of the matter. But we are still working through those cultural issues of empowering managers to make decisions without the fear of being criticised that they have done the wrong thing. It is all part of the cultural change.

Mr McKIM - In relation to the higher level complaints, the more serious complaints - class 2 - do you agree that there is a reputation issue for Tasmania Police and a perception issue? If the Integrity Commission's investigative powers were removed entirely, which is the Government's position, then it would presumably fall back on Tasmania Police to conduct investigations of its own officers in relation to serious allegations which may include allegations of criminal behaviour. Do you think it would be fair to say that there is a potential reputational issue there and that the public do not necessarily have confidence that the investigation will be done appropriately because it is effectively one organisation investigating itself?

Mr TILYARD - That is always the issue that is raised, that police shouldn't investigate the police, and who investigates the police, probably on the back of some pretty nasty

PUBLIC

examples in other jurisdictions which have in turn led to the establishment of some of these bodies and commissions. That has never been the case here. Even now, while the commission has been in existence, we still investigate the most serious matters against police involving criminal allegations.

Mr McKIM - You would inform the commission?

Mr TILYARD - They know about it. They monitor, but we do it. We are the experts in terms of criminal investigation, in particular. The most serious allegations are generally criminal investigations and need to be done properly. The general approach we have is that if they are investigations of a criminal nature then we focus on the criminal investigation first and foremost. Then once we resolve that issue we look at the disciplinary side of it. Even now we do the most serious investigations ourselves. We notify the commission of it. They have the authority to direct the commissioner to cease an investigation and they can take over. They have never done that, to my knowledge. They have never exercised that power.

I cannot speak for the commission but they certainly appear to have confidence in us to investigate our own people in the appropriate way. We have done it and there has never been an issue in relation to that. Certainly we were recently audited by the Auditor-General, as you probably know, in relation to our capacity to investigate serious crime and he was quite complimentary in terms of our capacity in that area. Obviously I am biased but there is nobody better qualified to investigate serious criminal allegations in police officers than us.

Mr McKIM - Yes. Please do not think that I was casting any aspersions. That is why I asked about perception and reputation, because when these matters have arisen, both in Tasmania and in other jurisdictions, there has been a level of criticism that it is the fox in charge of the chook house, for want of a better term. I just wondered whether you had views, not in relation to what has happened, but what the community's perception is.

Mr TILYARD - What I omitted to mention is that whenever there is an allegation that a police officer may have committed an offence, and if the investigation indicates that may have even been the case, the file is referred to the Office of the Director of Public Prosecutions for independent review. The DPP provides advice as to whether or not the police officer should be prosecuted.

Mr McKIM - But based on a police investigation.

Mr TILYARD - If the DPP comes back, and he rarely has to, and says there needs to be some further investigation of this aspect or this issue then we do it, but in fact the DPP, and this again was part of the Auditor-General's review, is almost without exception extremely satisfied with the standard and quality of our investigations. We are very thorough with our investigations, particularly in relation to a serious matter. The public perception has always been there that police should not investigate police. That is fine. We don't fear oversight at all. We get a lot of oversight through the courts. We get a lot of oversight through the DPP, the Ombudsman, Children's Commissioner, you name it. We have nothing to hide. Quite happy for anyone to oversight us. It is really a case of the necessity and justification, and that is obviously is not our call.

PUBLIC

Mr GAFFNEY - If you had a certain case where you thought, no, we need to outsource this to, say, Victoria Police, would you have that capacity?

Mr TILYARD - We could certainly approach another jurisdiction for assistance to do something, and we do. We sometimes get another jurisdiction to review an investigation that we have done to see if there are any other avenues of inquiry that perhaps we could consider. All of the police commissioners have very close and well practised arrangements to assist each other. All it would take would be a phone call and I am sure that we could access resources interstate or likewise help them out with a particular investigation. Probably all it would require would be the officers to be sworn in as a special constable here, which is easily done.

Mr MILLER - On occasions we utilised interstate police to conduct surveillance activities on serving Tasmanian police, because obviously our surveillance officers would be known to their colleagues.

Mr GAFFNEY - That is a degree of comfort for those potentially tricky or perceived by the public.

Mr MILLER - Yes. I think probably one indication of the robustness of the internal investigation unit is the reputation among their colleagues. They are not the most popular officers.

Mr MULDER - Their reputation would be more in terms of over-zealous rather than under-zealous investigations, I would suggest.

Mr TILYARD - They certainly have a reputation of doing their job properly. There has never been any suggestion that the internal investigation people, or professional standards as we call them these days, are not completely objective. They do their job properly and thoroughly.

I often say when I talk to our staff that it is best for them that we have the best possible people in professional standards because the last thing we want is an incompetent investigating you. You need somebody who knows their stuff and does their job properly, and these guys do that. Not everybody is invited to go into professional standards; you want good investigators in there.

CHAIR - Without mentioning names, the investigation in relation to the search of the young person, the police undertook that investigation, didn't they?

Mr TILYARD - This is the strip search of the young girl?

CHAIR - Yes, and then the Integrity Commission became involved. Did you ask that they become involved?

Mr TILYARD - No. I am going from memory here. I became aware the search had been conducted. I straightaway called for a report and spoke to some of the key people so I could review what had occurred. Within a couple of days I was satisfied they had acted in accordance with legislation and had not breached any of our policies, and I advised the commission of that. The commission subsequent to that received a complaint, not from

PUBLIC

the family of the girl but from another source. Without going into too much detail, in my view it wasn't specifically a complaint about that particular incident. It was more generally about the fact that the police shouldn't be allowed to strip search children, which is fine. We immediately implemented some new protocols around strip searching of children. That was an unusual situation. It is not often we strip search a child.

So people understand a strip search, whether it is a child or an adult, people don't take off all their clothes. It is done in a particular way and there is someone facing away from the searchers, who are always of the same sex, who might have to briefly pull down their underwear and pull it back up. It is not pleasant and it is unusual to strip search a child. It is even more unusual to strip search anyone, let alone a child, twice, which happened in that instance. When you look at the circumstances there was justification in relation to why it happened. Police found drugs and cash associated with drugs in the house. It was an unusual situation. We did our inquiries and then the commission wanted us to do more, so we did more, but the outcome was still that the police officers had not acted inappropriately. We implemented some new protocols around it, which is a good thing anyway. Across the country there is no prohibition on the strip searching of children in those circumstances. The only jurisdiction that has legislation that bans it is, from memory, New South Wales, which has a blanket ban on strip searching children under 10. Even if that had been in place here, the 12-year-old could have still been legally searched. It was an unfortunate situation but very much a rare occurrence.

Mr MULDER - Have there been any cases where the commission has received a complaint about a police officer and they have done some initial investigations, as they are want to do, and then handed it over to you to continue?

Mr TILYARD - Yes. There is a particular case where they had an informant whose identity was known to them but they wouldn't disclose to us. They referred the investigation to us at a point. We requested to know to identity of the informant to help assist us in terms of progressing it but they were never prepared to disclose it. We investigated -

Mr MULDER - They are a true law enforcement agency, then.

Mr TILYARD - We had the unusual situation and to some extent unfortunate in that we had information from an informant and we tried to do an investigation but we were never able to the go back to the informant. In fact, we did not even know. We almost certainly would have investigated the informant as a suspect as part of our inquiries, without knowing who it was. They had commenced an investigation themselves. They took it to a certain point and then handed it over to us but would not disclose the informant.

Mr MULDER - Had they interviewed witnesses and people like that?

Mr TILYARD - They had spoken to people.

Mr MULDER - Did you feel the need to go back and speak to those same witnesses?

Mr TILYARD - We did speak to witnesses. I don't recall how many they had spoken to compared to how many we spoke to.

PUBLIC

Mr MULDER - To what extent do you feel that your investigation was hampered by the fact that one had been started and then stopped?

Mr TILYARD - I think it was hampered by the fact they would not disclose the identity of their informant. That is something they felt they were not prepared to do, but it would have made it easier for us, from an investigative perspective, had we known who the source of the information was.

Mr MULDER - In that investigation, was there any use by the commission of its coercive powers, like demanding documents and things like that?

Mr TILYARD - Not that I am aware of.

Mr MULDER - Does that give them a better investigative tool than you had at your disposal?

Mr TILYARD - Not in that case.

Mr MILLER - There was one referred to us for consideration of prosecution.

Mr TILYARD - We would have to go into camera for that.

Mr MULDER - We would probably be bouncing around the edge of it and it is not that significant. I am trying to get your feelings about this duplication, its need and whether it hampers the outcome.

Mr TILYARD - There is an example in our submission which relates to strip search of the 12-year-old girl. We had a couple of concerns about the manner in which the Integrity Commission did their investigation of that. One of the concerns was that, when they interviewed the girl, they interviewed her in the presence of her mother who was a material witness to the whole situation. That is not an approach that we would take. We would have an independent person present, but we probably would not have interviewed the two of them at the same time.

Mr MILLER - I think that arose in the situation of the 12-year-old girl being prostituted by her parents as well.

Mr TILYARD - It did but that was a different situation.

Mr MILLER - She was interviewed with her mother.

Mr MULDER - I do not want to go that far. My overall concept was to get a feel for this doubling up of investigations handed over as to whether you think that is a good thing or not.

Mr TILYARD - Some of the investigative practices we had some issues with have the potential to jeopardise a subsequent investigation - nothing too significant.

Mr GAFFNEY - On that one, there has been a case put forward by the commission about increasing their investigative personnel. Why wouldn't they just have a relationship where they were outsourced to the police so they would not have a different procedure, say for

PUBLIC

the strip search, and there was the mother in there? Why wouldn't they consider having a relationship with the police and say, 'We have to do an investigation. We do not have enough staff. We want one of yours to come and help us out and we will pay', so there is some consistent approach, in case we assess it and we do not have it going anywhere and we kick to you guys. Then there would not have to be a duplication because the right processes would have been undertaken in the first place.

Mr TILYARD - Except one of the issues with the nature of the investigations that the commission does is, essentially, there is no sanction or outcome as such, other than to refer it on for further investigation. This has been one of the issues that has come up. They can do a very lengthy investigation in relation to a matter and then have to hand it over for a complete reinvestigation for there to be a resolution. But at any time they can call on our resources to assist with something they are doing.

Mr MILLER - A couple of the major investigations they have conducted have been police investigations from the outset. One involved the prison and one involved a government board. There is a risk of compromising a police investigation by virtue of the fact that the offender or suspect has had a heads up. As we discussed earlier there may be a legitimate need for an investigative arm in relation to particular conduct or conduct by particular people, but misconduct in the public service that involves criminal conduct ought properly be investigated by police for a variety of reasons.

We have had some issues where an agency in regard to the most serious criminal allegations affectively gave the employee a heads up with a view that any evidence on their computers and mobile phones was eliminated. It is best practice in any agency that where they suspect criminal conduct they should refer it to the police immediately and disciplinary outcomes and misconduct outcomes should take second seat. There is that risk as well.

Your question, Mr McKim, that perhaps all police investigations might be outsourced, or all serious ones at least, there would be a huge economic cost there as well in terms of the numbers. Police not only investigate well in terms of the investigation to ascertain facts, but they do so in an efficient manner, time-wise and cost-wise, so there is that aspect as well.

CHAIR - Has the Integrity Commission at any stage come to the police and sought your advice on the way they should go about an inquiry they are undertaking? You referred to the prison one. Have they ever said, can you give us some advice? Have you spoken to their investigators for instance?

Mr MILLER - I think that may have resulted from a misunderstanding. They came with an issue they had identified - Justice - and it was suggested they go to a forensic accountant to look at it, then we would run an investigation from that. Somehow it ended up with the Integrity Commission having a look at it and conducting what was essentially, in part at least, a police investigation. I think that might have resulted from a misunderstanding.

Mr TILYARD - That was the case where two police officers were seconded over to assist with that investigation, so there was police involvement in it.

PUBLIC

Mr MILLER - The other fear, of course, with secrecy is the situation you have in American movies where you end up, and it happens in fact, that we have had investigations underway in Tasmania not knowing federal colleagues have had investigations underway. There is always the potential for that as well.

CHAIR - That is a good point you raise there, and it has been raised through this committee, of a department being engaged in an investigation of misconduct and so on not knowing that the Integrity Commission was going down the same path. Is there any evidence of that having happened within the police service, for instance?

Mr TILYARD - No, I cannot think of a specific example. Certainly we as a matter of practice advise the commission if we have a serious misconduct investigation involving a police or a misconduct of a senior officer. As it comes in they will told that this is the allegation and we are investigating it. There is no reciprocal-type advice.

Mr MILLER - We do not tell them matters we are investigating involving public servants.

Mr TILYARD - No, because there is no legislation for that.

CHAIR - There is no requirement at all of the Integrity Commission to advise you if they are undertaking an investigation at any level in the police service? They do not go to the commissioner or to Robert's area?

Mr TILYARD - I do not think there is any obligation for them to do that.

Mr MILLER - No, not until it gets to a certain point - I think adverse findings.

CHAIR - Do you see that as an issue?

Mr TILYARD - Potentially it could be. There could be even unnecessary duplication. There is ongoing dialogue. The chief executive officer will ring the commissioner or me. I have had quite a close liaison with the deputy CEO and we talk about things generally. I cannot recall an occasion where they have specifically come to us for some advice per se on how to investigate a particular matter, but we have quite an open communication around these sorts of things. We certainly would be happy to provide some advice should that be required.

Mr MULDER - Do you do any joint investigations? We have talked ones of oversight. The first question is, what does oversight mean? A desk audit after you have done it or is there active involvement in the investigation that goes down through? I refer particularly of course to the South Australian situation recently where in fact I think it was a police operation oversighted by the integrity commission rather than the [inaudible].

Mr MILLER - We have not done joint investigations as such. There have been some fairly significant matters where the Integrity Commission has sought, and the term they used at the time was, 'active oversight' of things that we are doing. That term does not appear in the legislation. It was used in a media release because it sounds very proactive. We have had several matters where we are investigating and we have been happy for them to come in from time to time and have a bit of a briefing on where we are at and what is happening.

PUBLIC

I think there was a matter where they were seeking to be a bit more hands on in terms of the investigation, but that did not eventuate.

Mr MULDER - So there is not a question of the two principal investigators sitting down there talking about today's tactics.

Mr MILLER - No.

Mr MULDER - Which is what I would call a joint operation.

Mr MILLER - That one was a matter that they had no jurisdiction in. I should note that it was the former CEO and not the present that went to the media with the active oversight. Some investigators at the time did want to get involved in the internal investigation of a fatal police shooting, and basically didn't. There was no complaint and no evidence of misconduct. That was a situation that obviously went to a coroner.

CHAIR - I do not think the serious misconduct report has been raised. There has been a paper put out by the Integrity Commission headed, 'Prosecuting serious misconduct in Tasmania: The missing link'. In essence what the Commission is asking for there in that report, or they are putting forward, is that there should be included in the Criminal Code legislation to cover serious misconduct as a criminal matter. Was that raised with you, deputy?

Mr TILYARD - It hasn't been raised but I am certainly aware of it.

CHAIR - It has been raised here today with us that if that did occur it may well raise some issues in relation to who should investigate and who should not investigate, because the Criminal Code is covered by the police.

Mr MILLER - I think it is probably a subject that it might pay to seek the views of the acting DPP on. Coincidentally, we had a conversation with him just before entering Parliament this afternoon. I think the only gap in the legislative provisions is the one that was identified in the case involving the former commissioner, involving confidential information and the release of confidential information. There is a gap there that applies not just to police officers but state servants across the board in that there should be a specific provision around confidentiality. The fraud provisions and the existing provisions of the code are extensive in relation to any form of criminal conduct in my view. I have not read the paper and it may be that we should not only examine that but the second submission that we have not seen and put something in writing if we have any further -

CHAIR - The document has been provided to this committee for our position in coming to our conclusions in relation to the review we are undertaking. It is a public document so it might well be that if you were able to you may well have a position on it. It is an interesting document.

In relation to the act, it has been suggested there should be some amendments to the Integrity Commission Act to clarify certain issues and to remove 'and' and 'or' et cetera. Have you had any opportunity to look at the act?

Mr MILLER - I don't think we have an issue with some of the mechanical matters and some of the clarifications. We have expressed some concern about the need for an expansion of

PUBLIC

powers, the TI powers in particular. The TI issue raises some other side issues because you have to jump through a lot of hoops. You need a certificate from the federal minister that, for example, you have an oversight regime in place similar to the Commonwealth. That involves oversight by the Ombudsman, so there are some practical issues there is you were to grant TI powers. On a needs basis, there is a lot of general discussion about the sorts of serious corruption that we can potentially have, and thankfully don't have here, but that is not to say we might not have a one-off in the future or a series of incidents. The general work the commission does - and the CEO referred to it in her evidence - about misuse of property and confidential information doesn't require these extensive powers. We can only use them for the most serious of crimes, punishable for more than seven years. We use them essentially for murderers and drug runners. I doubt they would be able to utilise them on many occasions even if they had them available.

CHAIR - Thank you very much for your attendance today, gentlemen. We appreciate your willingness to be here.

THE WITNESSES WITHDREW.