

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON PUBLIC SECTOR EXECUTIVE APPOINTMENTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON WEDNESDAY 17 SEPTEMBER 2008.**

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**Mr HOWARD MICHAEL BLAKE**, AUDITOR-GENERAL, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Harriss) - Mike, thank you for making the time to appear before the committee and help in our deliberations. You are familiar with the terms of reference and the matters we seek to investigate and report upon with some recommendations. You are familiar with our processes here and the protection of privilege. If you want to give evidence in camera the committee will consider that. We were keen to talk with you not only in your current role as Auditor-General but you have had a career in other places as an auditor of government processes. We felt that you would have some experience to lend to this committee with compliance auditing which you may have undertaken, either in this jurisdiction or other jurisdictions, and matters which have been of concern to you as an auditor of government processes. You are clearly aware that with this committee we are inquiring into the best practice for the appointment of senior executive positions in the Tasmanian public service. We have a particular reference to the matter relating to the appointment of a magistrate last year and matters which brought about the resignation of Steve Kons as Deputy Premier. It is a broad-ranging inquiry.

With that, we invite you to make observations about those matters related to our terms of reference and your experience as an auditor and particularly as a compliance auditor with regard government processes.

**Mr BLAKE** - Thanks for the chance to come along. I have not done any audits of this sort, looking at the executive recruitment process. I did do a search around Australia to see if any of my colleagues in other jurisdictions have done so and the answer was no. I am doing an audit right now, looking at termination payments, but that is at the other end of the spectrum. I have, however, done some research based on what other jurisdictions are doing and I am happy to leave these papers with you. I suppose the most relevant one that I found was a review done by the Commissioner of Public Sector Standards in Western Australia as late as last year where comparative assessment was made between what happens in the different jurisdictions and what happens specifically in that State. From my reading of that report it looks like pretty good practice to me.

I've also found some information and material that the Auditor-General in South Australia tabled back in 1996-97 on similar matters but not specifically related to this particular topic. I am happy to hand those to you and talk about them if you'd like.

**CHAIR** - We'd be more than happy to take those documents, Mike. We have undertaken our own research, obviously, as to what processes are undertaken, not only around this nation but elsewhere, because we do need to determine best practice.

**Mr BLAKE** - One of the things I liked about the Western Australian report was that it includes a summary at the back which compares the different jurisdictions. You may well already have it but I found that useful.

**CHAIR** - Anything in particular from your research of those documents or your perusal of those documents which you'd like to put on the public record for now?

**Mr BLAKE** - I like the Western Australian approach and that is, again, not because I come from that State. This was material that was developed well after I had gone, but it was developed as part of the royal commission in 1993, I think, and that resulted in the process that they now follow. What I liked about it is that it is very independent and transparent; the process is managed by the Commissioner of Public Sector Standards. There is a role to play for the minister that maybe a head of agency is going to be working for. I think that's appropriate but there is a very clear arm's length approach that is followed here. It includes transparent open processes for recruiting such as advertising every time there's a vacancy at that level. Different practices apply for the SES with its executive service below the head of agency level and I again think those are appropriate.

I can answer specific questions if you like but I just like the very clear transparent process this follows where there is a role for the minister, for the Standards Commissioner, for the public sector standards minister whomever that might be - in most cases it's the Premier and so on. Those roles are very well spelt out and very difficult to fall foul of because the process is so clear, which I don't think happens here.

**Mr HALL** - It's an independent process in Western Australia, as you said, managed by Standards Commissioner?

**Mr BLAKE** - Yes, that's right; the Commissioner for Public Sector Standards is the right title.

**Mr HALL** - Could you expand a little bit on his role?

**Mr BLAKE** - I'm not familiar with the role; it wasn't one that I worked under, so I'm not sure what the broader role is. The only role I can comment on here is in relation to this particular issue.

**Mr HALL** - How long has that process been in place in Western Australia?

**Mr BLAKE** - I would suggest since the early 1990s. The royal commission happened in 1993, from memory -

**Mr HALL** - Yes, so it flowed from that.

**Mr BLAKE** - Yes, it flowed from then. I am not sure when the actual process was put in place. This report refers to a 10-year review and a summary of what happened over that period, so I suspect that it was in the mid nineties that it was put in place.

**CHAIR** - Further to that, Mike, are you aware that, since the introduction of that process, whether there has been any complaint or allegation about variance from that process?

**Mr BLAKE** - I don't know the answer to that. I notice one of the processes that they follow is that if the minister is unhappy with the proposed candidates nominated to the position in an agency under his or her particular portfolio, the minister is entitled to reject those

recommendations and make his or her an appointment. If that happens the minister is required to make that clear in the public gazette so that becomes a clear process. However, this says in here that this hasn't happened.

**CHAIR** - Again, from your perusal of the document, is there a requirement if that occurs that the minister taking control advance reasons in the gazettal notice?

**Mr BLAKE** - I do not know the answer to that.

**CHAIR** - Okay.

**Mr MARTIN** - Mike, you mentioned when you were singing the praises of the West Australian model that it is unlike what happens here. With your knowledge of what happens here with these appointments, have you any comments to make about the pluses and minuses?

**Mr BLAKE** - I like the process here whereby for somebody to be appointed in the first instance as a head of agency, whether it be for agency *x* or agency *y*, there is a public advertisement. There is a testing of the market to see who the best people are out there that may put forward for this particular role. This process also envisages the possibility of a transfer arrangement whereby the head of agency may be appointed to a particular department but then can be moved within the sector that the person is working in. It is not a formal process that they have so far followed but they acknowledge that it is a process that they perhaps should look into.

**Mr MARTIN** - This is in the WA model?

**Mr BLAKE** - That is right. In this State if a person is appointed through a public process to the head of an agency and there is a need for that person to be moved for good reason, I do not see anything wrong with that. I would be worried though, for example, if the move was to a position that is unique, in my words. I would suggest that not everybody could fulfil the role of head of Treasury or head of Health because of the unique requirements of those roles but that does not apply to all departments.

**Mr MARTIN** - Do you believe the process should involve every position being advertised?

**Mr BLAKE** - I believe when a person gets appointed as a head of agency for the first time that should be an open and transparent process and should involve as wide a field as you can arrange. If somebody is already a head of an agency and you wish to move that person to another agency, I think that can be done, depending on the circumstances and on the agency that the person is going to. But I think the first time the person is appointed as a head of an agency it should be an open process.

**Mr MARTIN** - What about someone who is in, say, the second line of management and was promoted to the top job without the job being advertised?

**Mr BLAKE** - I do not believe that should happen. It should be advertised.

**CHAIR** - Can I expand on that, Mike? You have indicated head of agency and most often we think of the strict type public service I suppose, a head of department. Would you

include in your analysis these matters adjacent like a Commissioner of Police or a magistrate or a judge?

**Mr BLAKE** - I would rather not comment on the magistrate/judge process. I am not very familiar with it. The Commissioner of Police I would put into that category where a head of an agency would not be automatically suitable to be head of a Department of Police and Emergency Management, or whatever it might be called. My view is that in a Police situation the decision to appoint a Commissioner of Police should always test the full field.

**CHAIR** - You will have heard, I presume, of commentary last week in another committee by people like Sir Max Bingham and others who contend that with the historical process in Tasmania of senior appointments, particularly those attached to ministerial offices - it does not go down to backbenchers - the commentators last week were suggesting that because those are contract appointments, people successful in being so appointed, most often without a publicly advertised process, would feel more beholden to deliver a message to the relevant minister that the minister wants to hear which is favourable to government considerations than a strict, tough public service position of impartiality. Do you have a view on that?

**Mr BLAKE** - I do not. The process for selecting ministerial advisers and the work that they do is not something that I have looked at and I really do not have a view about it. I would have thought though that the minister is going to appoint somebody that is perhaps going to want to tell him what he wants to hear or she wants to hear. That is a process I have not looked at and I do not know too much about it. In the case of a head of agency there is a need for impartiality from that person. I recognise that the minister may need to have a say in who the person is who is going to be appointed to that role because there is a very close relationship between the head of agency and the minister that that person is working for. In my view, the head of agency has to be impartial, has to give fair and frank advice, the sort of words we keep on rolling out but I believe in those words. The decision, however, is the minister's ultimately because the minister is the person who is going to be held to account for the performance of that agency and if the minister does not take the advice of the head of agency, the head of agency has to put up with that and move on because they may well be working for a different minister under a different government. I am pretty clear in my own mind about what a head of agency does but I am less clear about a ministerial adviser.

**CHAIR** - Could I make an observation and probably seek your response to it. With regard to your comments about head of agency advice without fear or favour and the minister can choose to take that or not, there is nothing particularly wrong with that of course because the minister has a policy position which the minister might wish to apply and that is fine. There is nothing particularly wrong with a minister not taking the advice of a head of agency or a senior public servant, is there?

**Mr BLAKE** - No, I am sure that could happen often. The head of agency in that situation provides his or her advice, recognising the policy direction that the Government wishes to take, provides the advice and if the advice is not taken, as I say, they have to then administer the wishes of the minister because that is the policy of the Government of the day.

**CHAIR** - Have you in your current position considered, for want of a better term, a compliance audit with regard to the allegations surrounding the appointment of a magistrate last year and the matters related to Simon Cooper and the acknowledged destruction of a document by Mr Kons?

**Mr BLAKE** - I have sort of stayed away from the judicial process. I did an audit last year that looked at the performance of the Magistrates Court which was, if you like, putting my toe in the water in that space. Again, having a look around at what auditors-general have done generally around Australia, they have tended to stay away from this area. Yes, I had considered an audit of that sort but in view of the other actions that other people were taking, such as committees such as this one, I did not see the point of me also getting involved.

**CHAIR** - And the DPP?

**Mr BLAKE** - Yes, the DPP as well. He has a role to play and he is doing something about it so I do not want to interfere with police process or DPP processes. If those are not happening and are not going to be happening, perhaps it is something that I should think about doing. Again, I have to make sure that my mandate covers it. I am looking at efficiency defectiveness and also expenditure of public moneys. Was there any expenditure of public moneys in those processes? I do not know. I would have to consider that before I do it.

**CHAIR** - Going back to matters last week before the ethics committee, there was again some commentary about - and I think it was from the DPP - the need to investigate and report upon conduct even though there may be no criminality to have been found against conduct. Is that a matter you would consider taking on as Auditor-General in the event that the DPP or anybody else finds no charges could be sustained so therefore does not proceed with any charges, or in the event that charges are laid and no criminality is found? Clearly there is no use beating around the bush; for Bryan Green there was a hung jury in both trials. Should there be a process to investigate and report upon conduct, not just for that issue but any other like issue, in the event that no criminality is found?

**Mr BLAKE** - That is a very good question. I would probably want to take that on notice. I have recently sought advice from the Solicitor-General on my role as it relates to ministers and I have done that deliberately not because of this matter but because I have read references in the *Hansard* to the Auditor-General not having the power to investigate actions of ministers. My powers are pretty broad and I just want to make sure I have or have not that advice or have those powers. If I do have those powers that may influence what projects I may want to take on board. I just want to make sure that I am clear about that first.

I have my own views about those powers but I just want to have them confirmed.

**Mr MARTIN** - Is it possible to say what your views are at the moment?

**Mr BLAKE** - On that issue?

**Mr MARTIN** - Yes.

**Mr BLAKE** - I have received advice from the Solicitor-General on this matter which is consistent with my own advice; it is just not a thing I can table publicly without his authority to do so. My view is that if there is no expenditure of public moneys involved it might be difficult for me to go investigating the activities of a minister. A minister is not responsible for the efficiency and effectiveness of a government department, which is an area that I can investigate, so I would struggle to review the conduct of a minister unless there was public expenditure involved. I would have to find a way around that problem, if that was the case.

**Mr MARTIN** - So you have never carried out an investigation into expenditure by a minister?

**Mr BLAKE** - No, I have not, but I believe I could if there was expenditure by a minister. As part of my review of the Tasmanian Compliance Corporation, a matter which Workplace Standards was looking into, I did interview a minister, but that was really to understand the process by which appointments were made and the TCC, for example. At that point I was not looking at the conduct of the minister.

**Mr HALL** - You mentioned that you had not really taken any account of magisterial or judicial appointments, Mike. Is that something that you might consider in the future, depending on the recommendations or the outcomes of this committee? We have had evidence to say that the Federal Government in particular has moved considerably in this area, whereas the States have not. Is it something that would be of interest to you?

**Mr BLAKE** - Anything is of interest to me. I suppose that is a flippant answer, but I have tended to stay away from looking at activities of other independent officers - for example, in this State, the DPP, judges and so on. But that does not mean that I cannot. My mandate allows me to, but I have tended not to.

**CHAIR** - Mike, I want to wind back a little in regard to your earlier comments about heads of agency and so on and your indication that the document you are going table for us provides some good benchmarks. Do you have a view about some KPIs that ought to be in place or would you refer back to that document, because you indicated that is a strong document in setting out procedure?

**Mr BLAKE** - There are two things there. The first is that there are KPIs in terms of how to assess the performance of an appointed head of agency, and then there are KPIs in terms of the process that is followed to make those appointments. If I do any audit, the first things I look at are the objective of that audit and the criteria against which I can assess performance or compliance. I generally try to find criteria that are in the public domain so, for example, very often Standards Australia provide me with good criteria because there is a standard that people should be following. If I was to do an audit around process to appoint heads of agencies or chief executives of State-owned companies or those things, then I would probably use the criteria drawn from this document because they would appear to be good practice. They are not the only criteria I would find. I would also try to find criteria that was generically best practice. There may not be such a thing but I would probably go to this sort of document to find it.

One of the things that this document also talks about is the need for performance contracts with heads of agencies, which is a different KPI measure that I have. If I was looking at how well we assess the performance of heads of agencies - or boards of management, for that matter - that would also provide me some guidance. Other States have those contracts with heads of agencies, for example, which include KPIs. I think we are moving towards that but I am not sure where that is at.

**CHAIR** - You just mentioned State-owned companies. Would you see the appointment of members of boards to State-owned companies and chairmen of State-owned companies and GBEs fitting into this gamut of scrutiny and transparency?

**Mr BLAKE** - Certainly the appointment of chief executives of boards should be a similar open and transparent process.

**CHAIR** - The chief executive of the company?

**Mr BLAKE** - That is right, and whether it be a government business or State-owned company, the process should be the same. There this debate about whether the minister, the shareholders or the board should make the appointment. I suppose my preference would be that the board make the appointment and when it came to the appointment of the members of the board, I think the shareholders or relevant owners should be involved in that process, which I think is what happens here.

**CHAIR** - In this case, of course, that is only two ministers; there'd be a portfolio minister and the shareholder minister is always the Treasurer, so there are only two shareholders of State-owned companies or GBEs. Is it reasonable that two ministers alone should make appointments to boards?

**Mr BLAKE** - Again, a good question. I think they have to have a role in the process; there is no doubt that that is an important role. I always regard State-owned companies as being owned by the public of Tasmania and that their shareholder ministers are just there for the time they happen to be government of the day. Ultimately I keep saying in my reports to Parliament that these entities are owned by the Crown; they are owned by all of us. However, that doesn't mean we all have to have a say in making those sorts of appointments.

My view would be that it probably needs to be up to those two people to make that decision so long as the decision is based on the skills required to fulfil that function. Therefore if a person is going to be on a board of a company that is a utility, I would expect them to be appointing people who have some knowledge of that industry, and that they are people who are appointed independently and at arm's-length basis so they are not necessarily representing the view of the government of the day.

**CHAIR** - How could that be achieved without an advertising process and a transparent application process? Any shareholder - two people in this case - can contend that they have made the assessment that the person has the relevant skills you have just spoken about. How can people be assured that that is the case in the absence of a transparent process such as you explained earlier?

**Mr BLAKE** - It's a tricky one. I think that the other processes we have in Tasmania can perhaps compensate for that, so those interviews are required to come to GBE scrutiny committees where the performance of that board can be assessed. I'm not sure whether they are or not but I think there should be processes such as the ASX governance principles which should apply. One of those principles is that the board should assess its own performance from time to time and should make that process public through the annual report, for example. The board should say, 'We've assessed our performance as a board collectively and our performance as members of the board individually and this is the outcome of that'. Again, whilst they are established under the Corporations Act and there are particular roles and responsibilities that those board members have under that legislation, they are still owned by the taxpayers of this State and therefore their performance should be assessed.

**CHAIR** - This is unconnected but there is a nexus. I just raise a point about scrutiny of government businesses and that the boards can be scrutinised through that process. Can that truly happen while a minister is in attendance to run the political line?

**Mr BLAKE** - A hard one. I can perhaps give you an analogy with that. I go to audit committees frequently. I have tried to make sure we do that more and more and that audit committees are in place more so than perhaps it was in the past, both at departmental agency level and a corporate level. I think one of the processes that is really good as part of that is to have the audit committee say to me, 'Auditor, we'd like to talk to you on your own'. Management leaves the room. 'We want you, Auditor, to tell us what you think about the performance of management without anybody in the room to clutter your thinking'. I think that is a really good process. It is happening now although it hasn't happened a lot in the past. Is that a similar analogy, whether you could assess the performance of the board without the minister in the room? It's a tricky one. It's difficult to see how it could happen in practice.

**Mr HALL** - Mike, the Chair drew your attention to the fact that many heads of agencies are appointed on contract and therefore may deliver to the minister - the stakeholder minister or the minister of the day - the answers that they want to hear. There has been a general perception right throughout the State in the last two or three years perhaps that there has been a general politicisation of the public sector. Would you agree with that and, if so, how can it be combated?

**Mr BLAKE** - I have read the speculation. I suppose my dealings with heads of agencies say to me that that's not the case. I don't know them all personally that well but I know them pretty well and I would be surprised if they're not giving frank and fearless advice. This report I have referred to talks about that matter. There was a move in Western Australia towards five-year contracts and that became the norm. It questions whether that was a good idea or not - this is the view of the author of this report. I think contracts are not a bad thing. I am on a contract. I suppose in my own case that contract is coming to an end; does that mean I suddenly start to produce reports that I want the Government to favour and therefore that's going to get me re-appointed? I don't behave that way; I would give a report as I would do normally. If that means I am going to lose my job, that's life, but I suppose the risk is there.

**Mr HALL** - I am probably not just referring to the top echelons of the public sector; I am talking about layers down below having been politicised, if you like. Is it an opinion you



might share? That's something that a lot of people talk about. They have difficulty dealing with public departments and they have issues with the public sector dealing with them in this respect.

**Mr BLAKE** - If I could separate my response from ministerial advisers again - this doesn't comment on what their roles might be - but I have not come across instances where a member of the special executive service, be they a departmental deputy head or somebody at that level, where they haven't provided the right sort of advice.

**Mr HALL** - Do you think that some of the ministerial advisers are really au fait with the processes of government and parliament?

**Mr BLAKE** - I can't comment on that. I don't know.

**Mr HALL** - The royal commission was approximately a decade ago, Mike?

**Mr BLAKE** - The royal commission was, I think, in 1993 but that report was last year.

**Mr HALL** - So it is current.

**Mr BLAKE** - The information that I've given you from the South Australian Auditor-General is 1997.

**CHAIR** - You said earlier that you've taken advice from the Solicitor-General as to your jurisdiction. Are you compelled to take your advice from only the Solicitor-General or do you have flexibility to go outside that domain?

**Mr BLAKE** - I am required to comply with the Treasurer's instructions, which is fair that I should, and have some rules about whom I can get legal advice from. I normally go to the Solicitor-General. I don't believe I have to go to the Solicitor-General; however, if I do go to the Solicitor-General then I am obliged to accept his advice. So in the event that I choose to seek his advice, and my act says I can, whatever advice he gives me I am obliged to accept as being correct.

**CHAIR** - Mike, as usual we really appreciate the frankness of your contribution. Thanks for doing the research and providing that for us.

**THE WITNESS WITHDREW.**

**Dr PETER JAMES PATMORE AND Dr RICHARD ALAN HERR WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.**

**CHAIR** - Richard and Peter, welcome and thank you both for being prepared to appear before the committee. You are both familiar with the processes of select committees and the protection of privilege. We understand, Dr Herr, that at a later time you will make a submission to the committee that we resolve into camera so we will leave it to that time and then you can -

**Dr HERR** - If it is inclined to be helpful.

**CHAIR** - Yes - advance the reason for us to consider whether we should go into camera. Then we will deliberate on that and let you know whether it is the wish of the committee to resolve into camera.

**Dr HERR** - The reason Dr Patmore is with me, besides being a good friend and occasional coffee partner, is that in discussing elements of my submission with him I realised that it would be much easier for him to speak to issues that I was asking him about. He was happy to do it, but he is not associated with the remarks I am about to make.

**CHAIR** - But he might be.

**Dr HERR** - But he might be.

I believe first of all that this committee is an essential aspect of the process of good governance because good governance depends on controlling, overseeing and monitoring the executive power. That is the role of the Parliament and your committee, in doing the work that you are doing, is in fact contributing significantly to that process. I think we were all reminded of this yesterday when the executive branch attempted to rewrite the Constitution by fiat almost rather than by a proper process of consultation. I do not believe that was necessarily done out of malice but it shows what happens when the executive branch believes it is in control of parliament and can make decisions about the way parliament should operate, the way the constitutional conventions of Westminster and so forth should be engaged, without full consideration of the implications of what it is doing.

It seems to me that one of the important parts of the work of this committee, independently overseeing the executive, is a very good contributor to good governance. I spoke last week to the joint committee on the need to secure public confidence in the integrity of the State system of democratic governance. I think the work that you are doing today is much the same issue in a slightly different perspective but it is certainly dealing with the general issue by which public confidence is maintained in the executive. The lack of transparency and the perception that senior public sector appointments can be used to secure partisan advantage has caused angst in the community. Whether this is fair or not obviously is what you are going to be investigating. It is certain that angst exists and with it flows the degradation, I guess, of public confidence that the State is being governed in the way that the committee wants. Royal commissions in Queensland and WA have identified the lack of adequate procedural controls over the senior public sector appointments as a core factor in the abuse of executive power that led to systematic corruption in those States.

In the submission I have given you I have tried to focus on two particular concerns that I have with regard to senior public sector appointments. One is the influence of the senior executive service system, the SES system, and the way in which that can be used to politicise the public sector. The second issue was the growth and influence of non-State service minders, advisers and spin doctors in terms of influencing the public sector.

I have concentrated my own attention in these areas on the need for the appointments process to meet the democratic objectives of good governance through a professional, non-partisan, competent and merit-based public sector. I think that the community's unease in recent years has been the belief that there have not been sufficient in-built integrity checks and controls over the appointment process. The lack of these checks as well as the lack of adequate transparency imposes serious risk to good governance values and I think someone described it as the slippery slope, the thin edge of the wedge, whatever you like, but as we looked at the royal commissions in these other States they all began with this notion that the executive misused its power in terms of appointing senior officers in the public sector to enable the Government of the day to do what it thought it wanted to do. There is nothing wrong with that at one level. Public servants are obliged to implement government policy. That is not the issue. The issue is when they implement government policy in ways that over time become corrupt. I hope no-one starts off to be corrupt but the system becomes corrupted by small degrees and there is a critical role, as those two royal commissions found, in the appointment of senior public sector officials in terms of making that happen.

I think I have been especially troubled in my own experience by the increasing role of political minders who have been drawn from outside the State service and who simply do not have enough knowledge of the rules, regulations and procedures of State administration to give the kind of advice they give. Indeed I think if we look at some of the difficulties that have made the headlines in recent years, a lot of the advisers clearly were not fully aware of what their range of capacities were and there were a few ministers, perhaps, who were not as well aware of theirs as well. I will leave that for the moment.

I think that open advertisement, selection committees made up of a range of senior public sector and where appropriate private sector participants, interviews and statutorily defined standards for eligibility are devices that have been adopted by other States to address some of these issues. I think in Tasmania the incorporation of measures such as these and making them obligatory would do much to restore public confidence in the appointment of public sector CEOs. I am concerned, as I said, about the size of the SES because that really determines the reach of partisanship into the public sector. The more elements of the public sector that become subject to contractual appointments and then the policies that go into how you decide who is eligible for these appointments and indeed how many controls and checks there are on the process of making these appointments determines to a certain extent how much the appointment becomes a kind of 'gift of government'. That is not to say that there are political appointees in a classic spoils system kind of way, but they do become the spoils of victory for the Government. To the extent that they become seen as the gift of government, they undermine the non-partisanship of the public sector and its professional and technical competence by making it secondary to other considerations. I see that as a problem that we need to address. I don't believe that any senior member of the appointed Executive, whether it is

State Service or any other, should be beholden to the Government of the day for their appointment in a way that asks them to balance their commitment to the Government against their professional integrity. I don't think that new governments should have to consider the contract appointments of previous appointees before deciding what to do with them, how long to keep them or whatever.

I think all senior decision makers - and I am changing lines here - or those who are advising decision makers need to have a sound understanding of proper administrative law and process and a sound understanding of law generally. This doesn't mean that they all have to be lawyers by any means, but they certainly have to have that background. It was interesting to me that a few years ago at a study of parliament group meeting that we had in Wellington, New Zealand, looking at this, the New Zealanders had made the point themselves that they preferred their ministerial advisers to come out of the public service because when they were no longer needed they went back into the public service, resumed their jobs in the normal way and it had that integrity check, that their continuing employment was through the public service and a non-partisan professional approach.

I think that this creates difficulties. I think there is a problem with negligent advice. I am sure you've heard it, I certainly have, in listening to some of the issues that have been before us in recent years, that the advice hasn't been well founded. It should be well founded; negligent advice also known as 'negligent misstatements' are in fact culpable. There are court cases to deal with this to show that people who give wrongful advice can be held liable for it. Minders who come in from outside of the public service and who aren't imbued with these sorts of background forget that. They think they're playing politics and I don't believe that it is part of the rough and tumble of politics. I think when you give advice that is going to affect the lives, livelihoods and wellbeing of Tasmanians it needs to be professional and effective advice and it has to be well grounded. In a highly-politicised public sector, the line between convenient advice and negligent advice becomes blurred and this is an impairment to good governance, again something that needs to be always borne in mind.

Finally, I think the obligations on honesty and accuracy don't merely apply to those who hold senior public sector appointments or who are seeking those. I think there's an obligation for appropriate due diligence in making appointments and that needs to involve an effective process of undertaking that due diligence. That process itself is fraught with some significant perils. Securing accurate references can be difficult. At times people simply want to give a good reference for fear that freedom of information will reveal their names and query the relationship they have with the applicant. Sometimes it is used to get rid of someone - if we give them a good reference we can offload this person to somebody else and they will be out of our hands. Then you get the poison pen references, people who, out of malice, vindictiveness, jealousy or whatever write references designed to damage a good applicant. Those need to be dealt with. I am not proposing to you how this can be dealt with, other than it is part of the whole package and process of making appropriate appointments to senior public sector levels.

That is a brief summary of the points I have tried to put before you this morning. I did not consult with Peter on any of these. I am not obliging him in any way to be associated with them because he has come here to speak on a different matter altogether.

**Mr HALL** - Richard, you talked about the royal commission in Western Australia and I think you also mentioned there was one in Queensland. Does the Western Australian model, in your view, have merit for this committee to look at?

**Dr HERR** - To my mind it had merit from the point of view of identifying the issue you are dealing with, that the appointment process is the start of the corruption process. The politicisation of certain elements of the public sector made it possible for more systematic corruption to entrench itself, a small disease that spread like a cancer throughout the body politic. I think that is an important part of why this is an issue that should concern you. The review that was undertaken last year, as I have said in my submission, points out also a significant issue. What they found was that you cannot fix it with one go; you have to keep monitoring, keep oversighting and so forth. That is why the small size of Parliament concerns me. We have already seen today, with the Premier's response to your first day of hearing, a willingness to embrace the agenda that you have before you and to deal with it. I suppose that is a good thing. Perhaps he should wait until you report in order to find out fully.

**CHAIR** - I was about to say that the Premier does not even know whether we are going to report favourably with regard to judicial appointments, but he has made an announcement today.

**Dr HERR** - It shows the value of having a parliament large enough to have a committee system that can undertake this kind of work. I also note that the membership of this committee, three out of the four of you, were on the other committee and I recognise the amount of time and energy it takes to do this work. In looking at the Western Australian report last year, one of the points it made is that you need to be constantly vigilant. You cannot just change one act or set up one public service commissioner or whatever and say the job is done. It is a continuing, ongoing process. It is important to have that constant supervision and monitoring available.

**Mr HALL** - Richard, you also talk about political appointees who come into the SES or as senior ministerial advisers without a State Service background and who often appear to lack a basic understanding of the ministry, law and practice. Last week we talked about MPs and others having some sort of ongoing training and ethics, if you like. In the case of people coming from outside the public service - obviously some of them come from private enterprise, media, all sorts of fields - do you think it would be advisable for those people to have some sort of indoctrination, if you like, into how the whole system works and how they should behave in a responsible manner?

**Dr HERR** - I really think that should be set in part by the eligibility for the position. You ought to be able, already, to do that. You shouldn't have to be trained on the job to give that advice to a Minister.

**Mr HALL** - In a small State like Tasmania, though, it might be difficult to get those people.

**Dr HERR** - That's true. If someone is broadly eligible but they need to have these skills refurbished or upgraded or whatever, then of course there ought to be a process available to help do that. I just find it difficult to imagine how someone is going to say, 'Gee boss I'm glad I got the job, I'm glad I'm here but I'm really incompetent until you send me off for training'. Making sure eligibility criteria are clear and explicit and appropriate to the

level of appointment is a fundamental part of making sure that the process of appointment is adequate. It shouldn't depend on the other.

I have to separate this from those outside the State Service who are simply minders, political appointees to assist in constituency work or other things. Too often these people assume more influence than they're entitled to. I've had circumstances where former students and so forth have approached me or made clear that they were able to get information which actually they shouldn't have got because it was privileged to those that come under the State Service Act and who are responsible for keeping the integrity of that information. They use the excuse - 'Well, the minister wanted the information so I just went out and got it'. Wait a minute; you weren't entitled to it. They should have told you no, sent you away with a flea in your ear and said to come back with an authorisation or to go through the appropriate channels.

That's what I talk about concerning a blurring of the lines here. It compromises not just the integrity of the information but also the accountability mechanisms because it's very hard to identify who actually was responsible for what was done. Supposedly good advice was used to make a decision but nobody knows where it came from.

**Mr MARTIN** - Richard, my dealings go back to the Gray and Field governments and I've been trying to think whether the situation today is different from back then. Most of the public service appointments I can think of were from the public service, so it was different. You've been watching this, so when do you think it started to change? At what stage in the last 20 years has this changed?

**Dr HERR** - I think it has been incremental. Public administration isn't my academic field, so I've sort of heard it anecdotally. The Study of Parliament workshop I attended in New Zealand a couple of years ago was instrumental in focusing the mind on how much it had changed and the fact that the New Zealanders had noticed how much the Australian system had gone towards the SES approach and the effect that had on the public service and the development of a parallel stream of private or political bureaucracy that interacts and intersects with the State Service sector in ways which are unhelpful, I think, in terms of both integrity and accountability systems.

**Mr MARTIN** - Given the situation as we know it has incrementally changed (??? 10:55:56), how do we fix it now? As a committee, what recommendations do we need to make to take it back to the way it was?

**Dr HERR** - I am not sure that you can take it back to the way it was. As I said in my submission, I believe the scope of the SES can be contracted. I would like to see fewer appointments made from outside of the career State Service approach because I think it has important elements of corporate knowledge and training and learning how to deal with things over the years as one progresses up the State Service ladder. However I do not think it is necessarily the complete solution. I think there are reasons why an SES appointment can be useful, like lateral recruitment into the public service to bring in special skills or to assist the Government with special areas of policy that it may want to develop.

I think we have all seen *Yes, Minister* and we know that the public service itself can become a beast if it is not adequately controlled, but I think we need a more transparent

appointment system, one that the public can have confidence in, and one that is oversighted. I like the idea of a public service commissioner who has an oversight responsibility for making sure that all aspects of the public service are behaving appropriately, and I can see how that can even build into what we were talking about last week with the integrity process in terms of reporting problems before they become major problems. These are some of the ones that obviously I would like to see.

I would like to see selection panels that actually go through the eligibility requirements and are able to do so with a focus more on the professionalism of the candidate than their suitable qualities for the Government of the day. I think the Government of the day should expect all public servants, regardless of whether they are SES or under the State Service Act, to carry out their jobs professionally, so I do not see any problem with a proper selection committee that vets these things and gives guidance on appointments and authenticates that the candidate who goes to Cabinet looks like the one that any reasonable selection process would turn out.

**Mr MARTIN** - I want to go into a specific issue but you just mentioned *Yes, Minister* and I might make the observation that today's version of that is *The Hollowmen*, and moving from *Yes, Minister* to *The Hollowmen* might be something like what we are talking about.

*Laughter.*

**Dr HERR** - We find them funny because they actually strike a responsive chord in us. If it was totally fictitious we wouldn't laugh.

**Mr MARTIN** - I don't see any fiction at all!

*Laughter.*

**Dr HERR** - Okay. All right, perhaps we laugh because it hurts - I don't know.

**Mr MARTIN** - That's right. Regarding the specific issues, I am not sure which one we might be going in camera with.

**CHAIR** - It is a matter that Richard wants to raise in camera. Do you have a specific issue?

**Mr MARTIN** - The terms of references specifically about the appointment of a magistrate. Have you any comments to make about that?

**Dr HERR** - No. As I said in my submission, I really do not. Indeed, that was what I was talking to Peter about to get some advice from him and I am very content with the advice that he would like to offer you on that.

**Mr HALL** - Richard, aside from Queensland and Western Australia, within the Westminster system are there any other overseas jurisdictions that you have had a chance to have a look at that you consider to be good models in regard to what we're looking at here?

**Dr HERR** - I'd have to say no because I haven't done it as part of my professional duties. The reason I picked on WA and Queensland rather more was because, unlike the NSW

ICAC, these focused on the issues of the politicisation of bureaucracy and the corrupting effects that had on bureaucracy, which I thought was relevant to this committee, so that's why I chose those two.

**Mr HALL** - It's probably fair to say that almost every Westminster system has similar issues and some deal with them better than others.

**Dr HERR** - Yes. Terry asked about when it started. We know when it started with regard to the SES and so forth, and that was with the Whitlam Government's profound distrust of the bureaucracy after 23 years of Liberal rule. It took the view that it didn't trust the bureaucracy to respond as quickly or as appropriately as it wanted to its agenda of reform, and so it looked to a way of guaranteeing that its electoral mandate would be carried out in the way it thought.

To go back further, it is interesting to me that the spoils system, which Andrew Jackson set up in the United States to reform the public service, was greeted by *The Times* of London as a democratic development. It contrasted the idea of the president appointing to senior levels of the public service members or supporters of his party as a democratic development as opposed to the class-based bureaucracy in Britain, where it was the control of the whole bureaucracy that made it unresponsive to the general public. Of course later on, when a president was shot by someone who didn't get a job that he thought he should get, they looked at it again and went for the professional, merit-based public service that the civil service in America is supposed to today.

There is always going to be this tension. My belief is that the public service should be trusted to do this job professionally and it should have the professional integrity oversight within it that ensures that this is so, so that a government of any stripe can trust it and that therefore the need for these contract appointments should be more limited. The use of them is basically to make sure that people who support your vision are in the senior positions to do it and that always raises this integrity question: are they more supportive of the government of the day than of the professionalism, competence and non-partisanship that is supposed to be the critical characteristic of any honest public service today?

**Mr MARTIN** - Richard, do you believe every senior position should be advertised, and if not, what are the exceptions?

**Dr HERR** - I guess my response to that is I can't see a reason why they shouldn't be advertised. I don't claim omniscience; I don't know for sure. There may be someone who has a good case for why they should not be advertised. It seems to me that, broadly speaking, an open advertisement is prudent to make sure that you get as broad a field of candidates as you can, because people are selecting themselves to come forward and say, 'I think I have the qualities for the job'. It does give that confidence that it isn't jobs for one's mates and that it is something that has been subject to at least some kind of open process of oversight that allows the candidate to enjoy the confidence of the process as guaranteeing their integrity.

**Mr MARTIN** - So even in a situation - a recent example is the police commissioner - where you have someone who has been a number two, there is no excuse for that person just being appointed without going through an open process?



**Dr HERR** - I guess the issue there is whether or not it is simply a promotion within the service. I would not like to comment on that, Terry, because I am aware of both sides of the coin. If you simply say to people that you cannot be promoted to the secretary of your department or CEO of your department, you certainly have a deadening effect on the promotion as a reward for doing a good job. But as we have seen, it also can be controversial. I think there is a difference between promotion as an expected reward for good service and appointment as a reward for good political service. That I would not want to comment on.

**CHAIR** - Any more questions to Richard? Peter, your presentation, please.

**Dr PATMORE** - Thank you for giving me the opportunity. This arose as the result of discussions with Richard. Essentially what I wanted to do was talk about how the process I had developed occurred because if we are going to talk about what is happening now it always helps to say what we have done in the past. I am someone who has been criticised since I have left Parliament for taking positions so I am on both sides of the coin here.

Over the period of time I was in Parliament I have appointed judges, senior executive appointments, DPP, Discrimination Commissioner. Essentially, the first couple of appointments were made very much in the traditional way judicial appointments were made - that is, it was very much in-house. There were no advertisements, the legal profession was very much relied upon to know who was the person who should be given the job. It was then a process of discussing that with the Chief Justice, the Chief Magistrate, the Law Society and the Bar Association. That was how the first couple of appointments I made were carried out. I then became concerned over a period of time that in fact that process was open to criticism because the process was not transparent. Although there may have been broad consultation, it was still open to criticism that it was a favour or it was the club.

I had discussions in the office and with my head of department about this and we then moved towards another process where we started advertising positions. The next position, if I can give you an example, is the DPP where we advertised the position broadly, we set down a list of criteria, we then went through all the applicants, then we took who appeared to be the best and I then had discussions with the judiciary. I had discussions with the Law Society, Bar Association and the previous DPP and the support was overwhelming. So we broadened the process to an open process where you had to apply, we still consulted very broadly and once there was overwhelming obvious support for one candidate we took that person to Cabinet. That was how the process worked out so we broadened it a bit more.

The next process we came upon was the next time a judge was appointed. I took a position that was criticised by some for actually advertising the job as a vacant position in the newspapers. That upset a few who thought they were going to be tapped on the shoulder and be quietly asked to have the job. I have to say that that was part of the process of broadening it and making it more transparent but I would have to say that the people I had in my mind for the judge would be obvious candidates. In fact I had not considered the applicant, and the applicant who applied because of the advertisement in the paper was the person who was appointed. But, again, it was a process and that was

the position. I then thought that that process still lacked that little bit of transparency. That added transparency but it was still open to criticism.

So I then worked out a process of appointment in the office, which I have tabled as a copy, where I felt that the appointment should be one step removed again. We had an open tendering process as it was. We had criteria. We had a broad way in which we could consult but there was still an element of criticism able to be given. Therefore, I looked towards the idea of a committee to be formed that would be removed from the Attorney-General, and that would then consider all the applicants. Then it would make a recommendation to the Attorney-General. The Attorney-General would then go to Cabinet. That was the process I advertised and had it in place and that was the position it was in when I resigned from Parliament.

So that was the evolution of the process that I felt was an appropriate way where you had an independent body, set criteria and it took away any consideration that the process was somehow closed or it was in the club.

**Mr MARTIN** - Did this change straight after you left or did Minister Jackson follow this?

**Dr PATMORE** - I can only comment on the process I had in place.

**Mr MARTIN** - But you must have observed. Do you know whether it has changed?

**Dr PATMORE** - I am not aware that this process was followed.

**Mr MARTIN** - After you left?

**Dr PATMORE** - Yes.

**Mr MARTIN** - Did you put the status of this process through Cabinet?

**Dr PATMORE** - No, I did not feel a need to put it through Cabinet because it is the Attorney's responsibility to put forward recommendations to Cabinet. But I believe you have to make sure the process you use is a proper one so that you cannot be criticised and Cabinet can be assured, when you put an applicant forward, that there cannot be criticism, it is transparent.

**Mr MARTIN** - Sounds like a lot of wisdom there.

**Dr PATMORE** - I have been out of it for a long time now. But there is a bit of looking after yourself in this because you do not want to be subject to criticism yourself. Being subject to criticism yourself, by association, taints the appointment. That is not something I feel is good, particularly when you are dealing with the independence of the judiciary and judicial appointment. You need to make sure that the process is clear and precise and that the person appointing has a process and that you have to have confidence that when Cabinet makes a decision they know the process has been put in place.

**Mr HALL** - Peter, can you explain the composition of that committee that you propose?

**Dr PATMORE** - Yes I can. The committee we determine would be the best would be a judge's representative, or, in the case of a magisterial appointment, a magistrate's representative. We would have the Secretary of the Department of Justice, a senior lawyer with significant litigious experience, a senior lawyer with considerable experience in commercial law and two lay members with experience in selection and appraisal of staff.

The way in which we would have looked towards the lawyers is, we would have asked both the Bar Association and the Law Society to ask senior practitioners, who were not interested in judicial appointments but who would be willing to act on that panel, to come forward. So, once again, by going on the panel as a senior lawyer, you would be saying, I am not interested in this for any other future job, hence any process I make is an objective one. So we worked it through on each part.

I am not a believer in conspiracies or corruption. I go for the cock-up every time and process stops that occurring. It is a fall-back position that you should always have.

**Mr MARTIN** - Peter, this committee, in this process of yours, still makes the recommendation that, at the end of the day, it is your decision.

**Dr PATMORE** - Yes, that is correct.

**Mr MARTIN** - Would you ever have envisaged any possibility of going against the recommendation of the committee?

**Dr PATMORE** - Well it never got to that. No, but I think ultimate responsibility lies with the Attorney-General and through him, Cabinet. Let's just say it would be a brave decision, minister, to have done so. The point I make is that ultimately it has to be the Government's responsibility and a Government decision. You could have all the good advice in the world but I don't think you can negate your ultimate responsibility by saying that the committee did it. Ultimately someone has to be at the end of the chain who bears responsibility for it, and it's got to be you.

**Mr MARTIN** - Peter, with your knowledge of the appointment of the magistrate in 2007, what is your view on the way that was done?

**Dr PATMORE** - I'm not fully aware of all the circumstances so I'm not going to comment too much. It appears to me that there was a lack of process - that's the bleeding obvious. Perhaps if there had been an established process this whole issue would not have occurred. That's the best I can say, looking from the outside. I've been out of this process for close on six years now and you lose contact and insight, so my insight is guided very much by newspaper reports. So a process is a good idea to have. For better or worse, perhaps we may not be here if we had a better process. That's why I'm pleased with the committee and that's why I'm pleased with the Premier's comments. He appears to have recognised that things have to be sorted out.

**CHAIR** - Peter, I come to a comment you made a while ago where you were explaining the process which you had put in place. You indicated that the Attorney-General has significant authority and jurisdiction, without interference by Cabinet. Do you think that's a reasonable position or should there be more opportunity for Cabinet?

**Dr PATMORE** - Well, ultimately Cabinet makes the decision and if the Attorney-General doesn't like it he either accepts it or resigns. His role is no different to any other Cabinet minister once you get into Cabinet. The responsibility for these appointments, to bring them to Cabinet, are the Attorney's. It is open to Cabinet to say, 'No, we disagree with you'. Then the Attorney has to determine whether he genuinely believes that the appointment he has put forward is the best one and Cabinet's view is wrong. Then you have to make that decision; you either accept it or you resign.

**Mr MARTIN** - Have you ever know that situation to happen in your time in politics and Government?

**Dr PATMORE** - Oh, I've been rolled hundreds of times in Cabinet. Every Cabinet Minister has. You just grin and bear it.

**Mr MARTIN** - But in the case of an appointment of a person to a senior position within your portfolio, it would be a pretty rare situation for it to be -

**Dr PATMORE** - Oh yes. There have, quite correctly, been questions raised in Cabinet concerning recommendations I have put forward. You don't want a rubber stamp. But as for the recommendations I've put forward I can't recall one that had been refused. If you're going to put something to Cabinet you've got to do your homework. You've got to make sure that any questions raised are ones you have answers for and that it is the most appropriate recommendation. If you don't do that then you're not approaching your duties the right way.

**Mr MARTIN** - Was there ever a situation where, in your role as Attorney-General, there was interference from the Premier's office or from Premier and Cabinet?

**Dr PATMORE** - No. I think it became very obvious very quickly to other officers that the best way to have something not done was to try and pressure my office to do it. That lesson was learnt very quickly. I was given a lot of autonomy and I can say with all truth that I never ever had pressure put on me for anything. Some suggestions might have been made but they didn't get very far.

**CHAIR** - Can I take you both to some comments last week by the DPP in front of the ethics committee. He said something to the effect that it is appropriate, in his view, for a thorough investigation and reporting upon actions of senior public servants or MPs in the event that there has been an investigation but no criminality found but that the actions ought to be reasonably investigated in other spheres - like a parliamentary inquiry. Do either of you have a view about that, in the event there is no criminality?

**Dr PATMORE** - I don't necessarily agree with the DPP. I think there is a danger that it can be politicised. I understand what he is saying; he is saying that there is no degree of criminality but there may be a degree of culpability -

**Dr HERR** - Or misuse of power.

**Dr PATMORE** - Yes, or misunderstanding. How far do you go? I really don't have an answer. I have concerns about that but I don't have an answer.

**Dr HERR** - My view is that it very much depends on the circumstances. It should not be up to the Parliament to second-guess the executive on every appointment it makes. That wouldn't be an appropriate or standard way of going about doing these things because if you do that you are spending all your time being an appeals tribunal for these appointments. I don't think you can do it, but what if the circumstances suggest that there may have been some malfeasance in office, abuse of power or simply, as Peter suggested, a stuff-up that you need to investigate in order to find out where it occurred and what you can do to make sure that the process itself is corrected, as you're doing in this committee? It is appropriate but not as a standard mechanism.

**Dr PATMORE** - That may be something that may more appropriately flow from the other committee's recommendations. It's not my area to comment on.

**Mr MARTIN** - Peter, given the scandals that we have seen in the last couple of years and the comments made by Richard about the politicisation of the public service, do you think it's different now from the 1980s?

**Dr PATMORE** - I seem to recall a royal commission about people trying to bribe members of parliament. Perhaps if we were to look at that we can say that things are better. We all have this view that, 'Gosh, it was good in the old days', but the question we have to ask is, 'What were the old days all about?'. I came into Parliament right in the middle of all that and it was very unpleasant. I felt that democracy was being really attacked, not through mismanagement or an understanding of the way ethics should be run but from an understanding of what the ethics were, what democracy was and ignoring it. I thought that was the lowest point in our democracy.

**Mr MARTIN** - That was basically a single issue created by a single individual.

**Dr PATMORE** - Well, you have your view; I don't necessarily think it was a single individual.

**Mr MARTIN** - So you think it has been widespread ever since then?

**Dr PATMORE** - No, I think that was a terrible aberration.

**Mr MARTIN** - So it wouldn't be fair to say that it has been like that through your entire time in government?

**Dr PATMORE** - I think it's very much a case of 'this is how it's done', and the process usually works okay until a mistake is made and all of a sudden you find that the process is pretty dodgy; you realise things are not working properly when a mistake is made. I think there has always been a level of politicisation in some sectors of the public sector. Whether it has grown or not, I cannot say; I tend to think it may not have but I really do not have the statistics to give an informed decision. It is very much an uninformed opinion, if I could put it that way, which may not help you.

**Dr HERR** - If I can correct something, Terry, I did not necessarily say that there was evidence that it had been politicised, I was saying that the expanding scope of it offered the opportunity. It is a bit like the bullfrog and the boiling water: if you try to put it into

a pot of boiling water it will jump out, but if you put it in a pot of cold water and put it on the stove it sits there until it realises too late that it should have moved. To a certain extent that is what we were saying about the other royal commissions. They did not set out with a corrupt system, it was simply the case that by small degrees things changed and people did not even notice the changes necessarily until, as Peter was just suggesting, you got the *Four Corners* exposé on prostitution in Brisbane or something like that and people were saying, 'Gee, how did this happen?'

**Dr PATMORE** - I can give the same example in relation to Risdon Prison, which was held together by the dedication of the public service and the prison staff but was gradually being strangled of funds until it got to such a level that it just fell apart and there was death after death after death. We then initiated an inquiry and realised that the system was dysfunctional. It is only when the crisis hits that you realise that, as Richard said, it has been a gradual process that you realise the problems are there. Now whether that process gets worse or whether it has always been there and is highlighted by individual aspects, I really cannot say.

**Mr MARTIN** - I have plenty more questions but I am mindful of the time.

**CHAIR** - If we feel a need at some later time to have both Peter and/or Richard back then we can do that.

**Dr PATMORE** - We are more than happy to come back. Sorry, I will not speak for Richard.

**CHAIR** - Richard, can you make that submission to the committee now as to why we should go into camera?

**Dr HERR** - I am not sure that I want to at this stage. It was more a case that I was asked if I had any individual examples and there was a case of an untruth being told by a senior officer to other elements of government. It was a documented case but I would not mention names or anything and I do not know that it elevates things except for the fact that it showed me that although this involved senior officers of the Parliament as well as other levels of government, there was no way that it was ever going to really be picked up, and I do not know how you control that. It was really more this problem of perhaps public servants not being sufficiently oversights and, indeed, having due regard for integrity in truthfulness, even when put on public display. I found it extraordinary but I think that is probably all you would need to know, in any case.

**CHAIR** - As Peter said in his submission to us, to understand where to get in the future and chart a better path we need to understand where we have been in the past. So that I can understand that in a little more detail - and there is no necessity, of course, to mention names - you are saying that the process which unfolded with the example to which you refer would never have been picked up, so what were the steps, the chronology?

**Dr HERR** - Ah, well, that's where I couldn't tell you without actually identifying the individual because it comes out of the performance of his particular job.

**Mr MARTIN** - Mr Chairman, I would certainly be interested in hearing this.

**Dr HERR** - It's more of an anecdote, as I said; it's not going to bring the -

**CHAIR** - You said it was a documented matter?

**Dr HERR** - Well, the documentation exists is what I said, yes. As I say, to me it came back to this question of honesty and integrity, who overlooks it and how does it get corrected, but it is not directly relevant to an appointment per se other than that when you appoint somebody there is an obligation to make sure they perform their job with the appropriate level of honesty, truthfulness and professionalism. As I said, I was challenged to have some cases of that and it was the only one that I could actually document well enough to be able to say to you that I honestly believe this is what occurred.

**Mr MARTIN** - So you would require us to go into camera to tell us more details.

**Dr HERR** - Perhaps you can take it on notice and if you want to find out when you get further down the track if you need an example, then I would be quite happy to do that.

**CHAIR** - Particularly if it is a documented case we can get that.

**Dr HERR** - Documentable case.

**CHAIR** - Yes, we will take that on notice if committee members are happy with that, because it is certainly a matter which we can revisit. The committee can discuss that. We have heard your submission and we will discuss the further deliberation of that and we may yet be in touch. Thank you both very much for your time.

**THE WITNESSES WITHDREW.**

**Mr RICK DOUGLAS SNELL** WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Rick, thanks very much for making the time to appear before the committee. You are clearly familiar with the processes of select committees and the protection of privilege and submissions to proceed into camera, if that is what you wish, so we will not go down all those paths. Thank you for your indication that you had some matters you wanted to raise with the committee. We appreciate your being proactive in that matter so over to you and then questions will follow.

**Mr SNELL** - I will briefly outline the key points that I want to touch on. In the main, my comments have been shaped and motivated by the reforms in government appointments made in the UK after the Nolan report in the mid-1990s, in Canada after a series of scandals in 2005 and also in New Zealand. Building on what Richard Herr had to say about the experience with anticorruption activities in WA and Queensland, I would endorse his sentiments that we can learn a lot from the lessons that were gained from those experiences.

In recent times, with the appointment of the last police commissioner, the aborted Simon Cooper appointment, Mr Estcourt's observations yesterday about the selection process - or lack of process - for the Solicitor-General in that he was involved with, what concerns me is the potential for both abuse and inconsistency in the appointment requirements for most key statutory positions in Tasmania, and the absence of best-practice guidelines for making those appointments, especially to boards and other authorities. To my mind, my major concern is that it seems to be a mixture of practices, ranging from a systemic process of merit-based selection at one end to effectively just cronyism at the other, and the great difficulty in Tasmania is actually identifying where we fall in between those extremes.

So that is probably my number-one concern, that I do not think we have a clear picture of where we fall, and I think there is great potential for major problems to occur because we lack a set of good procedures and practices, both at the statutory level and at the administrative practice level, and again, referring back to the last testimony, I think Peter Patmore's example is a good one. You put into place a really good system at the time, they advertised it, there were discussions papers leading up to it, they put it onto the web, they went through the process, and to all intents and purposes I thought that was the way that judicial selection processes were now being made in Tasmania. What you end up with is that you suddenly discover that somewhere along the line it has drifted off, it has become a little bit warped or misused in the process, and you are back almost to square one where you were previously in that particular process.

I do not think Tasmania is in many ways any different from most other States. If you have a look at the statutory provisions for the appointment of office-holders like Ombudsmen, Auditors-General, DPPs or Solicitors-General through most of the States, they are fairly inconsistent - and fairly woeful - in terms of the necessary prerequisites for the appointment process. You find that in most of the appointment processes it is just left to the executive, the minister in charge of that particular agency, to make the recommendation to Cabinet and they may or may not endorse or adopt good selection processes to do that. An example is, just say, the appointment of police commissioners; in only one jurisdiction is there any requirement for that position to be advertised. So in



New South Wales you are required by statute to advertise for a police commissioner as long as it's not a reappointment of an existing police commissioner. In Queensland the police minister has to get the endorsement of a chair of a crime and misconduct commission for the appointment of the commissioner but, apart from that, in no other jurisdiction are there any actual requirements about how you go through the process of selecting a police commissioner. You could run through the other statutory positions and there are different practices in different States but, overall, there is not a neat set of requirements or minimum requirement in that process.

I think we need to upgrade and improve the appointment processes for a series of officers ranging from senior statutory office holders. I made a submission to the joint committee last week that I think there ought to be a joint committee on government accountability and one of its functions ought to be the appointment of senior statutory officials, especially people like the Auditor-General, the Ombudsman, the Commissioner of Police, the DPP and the Solicitor-General. I think it gives them a degree of independence; I think it proves their reputation and standing and I think it takes away, again a point that Richard Herr made, that these are really spoils of office; if you just happen to win power and you just happen to be in power at the time when you get the chance to appoint a solicitor-general or a judge or whatever else, well that's a benefit of your office. I think that really should be seen as gone, something to be dispensed with. I think the position is far too important to allow that to take place.

So I think there needs to be oversight for at least some of these appointments or at least the involvement of a parliamentary committee in some way. I think there should be, at minimum, a national advertisement for those statutory officers. Often they are advertised but there's actually no requirement for them to be so. I remember the last time that the Tasmanian Ombudsman was advertised it was put out with all the other government advertisements in the *Mercury* newspaper and it was listed with the Department of Justice appointment processes and above it was the position for a, I think, low-level clerical position in the Justice department and it came just before part-time cook at the Port Arthur Authority. In terms of status for an Ombudsman, it deserved, at the very least, its own separate advertisement in the process. So it kind of demonstrated the department had the attitude that this was just another appointment in that particular process. As an example of the Ombudsman's process, to have the Ombudsman chosen by a selection panel that consists of the Secretary of the Department of Justice and the Secretary of the Department of Premier and Cabinet, among others, seems to me to be putting people who are going to be possibly investigated by this officer in the future in charge of determining who should be the potential person involved in that particular process.

**Mr MARTIN** - There's no independent person involved in that?

**Mr SNELL** - It depends, and it varies each time. The process seems to be made up on the spot. The time before last there were only two people on the selection panel, there was only the Secretary of the Department of Justice and the Secretary of the Department of Premier and Cabinet and that was it. They went through the short list of candidates, they made the recommendations to the minister who made the recommendations to Cabinet. Last time I think the selection panel was slightly wider but only because it included more heads of department, but they still had heads of department; they weren't independent of Government.

**Mr HALL** - So there has been a total inconsistency in the way it has been approached that needs formalising so -

**Mr SNELL** - Yes, and I think some thought given to it as well. We seem to reinvent the wheel each time in that process. As Peter Patmore points out, you get a good process going and it seems to run okay and then drops out of the system for a bit and it's inconsistent between the appointments for those various processes. I have gone back in Tassie to look at how our Auditor-General has been appointed in previous times but I would say it has been inconsistent compared to those other appointments and processes.

**Mr HALL** - Rick, I was surprised when you talked about New South Wales being the only jurisdiction that needed to have an open advertisement for the Police Commissioner. That really did surprise me. What about in the Federal jurisdiction? Have you looked at the way that they do their business? I presume you were only referring to the States?

**Mr SNELL** - The Federal is in the process of changing. I think the Rudd Government has brought in a number of very important reforms, especially in the appointment of judicial officers. I think they are state of the art now in terms of the latest appointment process for Federal Court judges and magistrates. You have open advertisements, selection criteria, the type of panel that Peter Patmore was talking about involved in that process, and recommendations going forward. The Federal Government has made steps to move in that way as well. One of the things that we could draw on is learning from the experience of the Commissioner of Public Appointments in the United Kingdom, which was appointed after the Nolan Report in the mid 1990s. It has set down clear guidelines for public service appointments, which all departments have to follow. If they want to deviate they have to get permission for their particular procedures to be endorsed by the Public Appointments Commissioner. That would be useful here, having some organisational body that sets down clear criteria that ought to be applied across the board unless there is good reason for particular portfolios or particular areas for specialised appointment processes to be adopted. If so, they ought to have go through some type of endorsement, either by that commissioner or by a parliamentary committee to say that this exception is acceptable.

**CHAIR** - Rick, you referred to proper scrutiny and oversight of appointment to board positions. Would you include appointment to board positions in government businesses and State-owned companies?

**Mr SNELL** - Yes, I would. I think it is even more important given the nature of those appointments, the amount of money that goes with being members of those boards as well as their responsibilities, I think it is important, going through training as a company director. In terms of private sector governance, you do not appoint people to boards without the training and background and the skill sets necessary and it should be the same for public authorities and bodies as well. Again, it is largely unknown because it varies from body to body. I would say that there is probably no general induction program for members of new boards around this State in terms of their responsibilities, there is no consistency in the appointment process and very little monitoring takes place. As an example, many years ago in the mid-1990s I put in a FOI request when I heard that the Department of Premier and Cabinet had a register of all members of boards and public authorities in Tasmania. I asked to get a copy of it and eventually received one

under FOI. It listed the board members, when they were appointed, when the appointment process would expire and how much they were getting - the sitting allowance for each member. A number of years later I had to put in another FOI request to get an updated version of that document. It took a long while to get access because the department had not updated their register. So, no particular department was responsible for the overall monitoring of what was taking place with appointment processes. So it was left to each individual department, but they would all feed their information into the Department of Premier and Cabinet, who put it all together. I eventually received that document in a spreadsheet format so I could do searches and all the rest in terms of who was a member of which board. I subsequently put in another request, only a few months ago, for an updated version, and low and behold they had not bothered to update the previous version. They had to start from scratch to provide me with a whole new system. I now have a list of all the board members in Tasmania, which boards they are appointed to, their sitting fees et cetera.

**Mr MARTIN** - Does it tell you the process of appointment?

**Mr SNELL** - No, just the bare details of who is on the boards and so on. It does not tell how each of the board processes works et cetera. In other jurisdictions a lot of that is now on the web, so people who have an interest in a particular field can say, 'I would like to become a member of that board. I know these are the vacancies and when they will be coming up and this is the requirement for being a member of that organisation'.

**Mr MARTIN** - Rick, do you have any information about what has happened in various departments over the last four or five years with various appointments, whether there was any consistency of approach or whether there is in fact a process at all for any of them?

**Mr SNELL** - I do not know and I think that is a sad testimony in itself. In fact I think I would struggle to find where I could even start looking for that information. Certainly I do not think there is any whole-of-government approach to this, so it would be surprising, in the absence of any overall supervision, if there is any real consistency in the process. There may be spots or pockets of very good practice, whereas in other agencies there may be almost none. It has always been a concern that boards and authorities do lend themselves to being a nice area for political parties, when they are in power, to dispense favours and reward supporters or other people who have been involved in the process - not necessarily financially. A lot of these boards do not pay any sitting fees at all. On some boards, however, you get paid substantial amounts of money.

**CHAIR** - Rick, in your folder you have lists of all of those appointments. Is that a document which you would be prepared to table for the committee?

**Mr SNELL** - Yes, and I am happy to give you the electronic version by e-mail.

**Mr SNELL** - This is just an example of something that ought to be in the public domain and available to members of parliament so they can carry out their scrutiny and accountability process. Who is on the Abalone Fishery Council, other boards and bodies et cetera? Are there individuals who seem to be on 10, 20 or 30 boards? Why are some board members not getting paid any sitting fees at all whereas others are paid \$150 a day,

others are paid \$400 a day and others are paid \$20 000 or \$30 000 a year. It may very well that in terms of equity some board members ought to be given higher payments as a result of the duties they undertake.

**Mr MARTIN** - Do you have you any comments on the process to appoint the Solicitor-General?

**Mr SNELL** - From what has been revealed by Stephen Estcourt I am concerned that the process was like that. The Solicitor-General's is an important statutory office. Given the last occupant held the position for over 18-19 years, it is a once in a blue moon opportunity for a statutory appointment to be made. The process should ensure that you get the best possible candidates applying for the position. There should be some certainty about it. I am amazed that it was left to people guessing that there might be an application process under way, and then putting in a 'I would like to be Solicitor-General, thank you very much'. There were no clear guidelines about who was making what determination, which minister or what committee was doing it. It is just unacceptable for an important statutory position to be selected in that kind of haphazard process.

**Mr MARTIN** - Do you have any comments to make about the whole process of the chairman of the RPDC being appointed and leaving and so on?

**Mr SNELL** - The appointment of chairs to these boards are important positions that ought to have more work done on them rather than just kind of pulling a rabbit out of a hat to put someone into the position. I think the positions should be advertised, the people carefully selected and there should be clear criteria involved in the process. I also think some scrutiny needs to be exercised when people are removed or resign in those sorts of circumstances.

**CHAIR** - That is an interesting point you make, Rick, about scrutiny at the time of resignation, in that there is none. Is that a fair assessment?

**Mr SNELL** - I think it is a fair assessment. One of the processes that has been put in place,, especially in the UK with the commissioner there, is that there is now in all selection processes an independent assessor who is involved in the selection process, independent of the selection panel itself, to provide a vetting mechanism, an audit process, both as it is happening and post factor. I think often we do not go back enough to previous appointments and say, 'Was that done successfully?' On this list of members of boards I think there are 1 300-odd names. Of those 1 300 names no-one goes back and says, 'What was the appointment process like in these particular departments? Do some departments do it better than others?' My guess would be yes, but I have no idea. There is a lot of activity taking place out there involving important responsibilities without judging whether we are matching and getting our selection and appointment processes right - and our training and induction processes - for the jobs they're doing. We just appoint people and leave them to it.

**CHAIR** - You would probably be interested to know, Rick, that the Auditor-General indicated to us this morning - and we were already aware - that he is about to report upon an inquiry that he has conducted regarding severance payments for some senior public sector appointments. I don't know how far that report is going to go, but would you see that the Auditor-General might conduct a performance audit with regard to separations?

**Mr SNELL** - Yes, I think in the private sector separation is one of the critical flashpoints. For the integrity of your organisation you should do exit interviews and audits to find out why it took place and what lessons can be learnt from that process.

**Mr MARTIN** - Regarding the question I asked you about the RPDC last year and the departures of Julian Green and Christopher Wright, is there nothing in a normal process to investigate that?

**Mr SNELL** - No. It is normally left to the government of the day to decide whether to do it or and in most cases the reasons not to do it strongly operate to prevent that from occurring.

**CHAIR** - Following on from Terry's question, what is your view about board appointments? I am thinking of the recently-retired TOTE CEO. There was a confidentiality clause there that prohibited either party from disclosing the terms of the separation. I then go to the matter of Nigel Burch, who has made it very clear that he doesn't care about having the terms of his separation disclosed, and yet the Government has inserted a confidentiality clause which requires him to remain silent on the matter. Do you have a view on those issues?

**Mr SNELL** - Yes. My gut reaction with these types of public authorities and boards is that there is little justification for confidentiality agreements on termination. It is not something involving your private affairs or arrangements. These are usually public appointments that have been made in the public interest and I think the appointment process, as well as the termination process, is just as important and should be just as accountable in that process. I think confidentiality agreements only serve the purpose of effectively killing any inquiry or investigation into why someone would be exiting a particular organisation before time. If there happens to be police investigation matters at hand or something like that, that is a whole different issue, but I have a tendency to believe that these confidentiality agreements are really just there for convenience purposes.

**Mr MARTIN** - The chairman mentioned the Nigel Burch case where he does not care about confidentiality, yet the Government still refuses to release it. Is there any justification for the Government doing that?

**Mr SNELL** - I would say that it would be very heavily dependent on the circumstances of the individuals involved, but given who Nigel Burch is, when an individual of that position and background decides to waive the need for any confidentiality attached to their former employment or thought processes, then I think we should take that waiver and accept it. I do not think there is a need for, if you like, a paternalistic government to then turn around and say, 'We know better and it might be too embarrassing for you so that is why we are not going to go along with your wishes'. If I, as a university lecturer, decided to publicly waive my rights to confidentiality or whatever to make a statement, then so be it.

**CHAIR** - Any further questions of Rick? I am about exhausted. Are there any concluding comments you wish to make?

**Mr SNELL** - My major one would be that I highly recommend you look at the Nolan Committee reforms, which were mentioned when a previous witness was talking about the experience in other Westminster systems. I think the Nolan Committee's report on standards in public life was an important milestone in the reform of British public administration. I think that the Public Appointments Commissioner and the process that they have put into place since then has been a good exemplary model to be able to at least start with in Tasmania and I would highly recommend our having some kind of consistency across the board.

As I said before, I think that my major concern is with those statutory appointments. I think there is clearly Australia-wide a major deficiency in the provisions in the appointment of people like ombudsmen, police commissioners, DPPs, et cetera. At the very least, they should be made to be advertised nationally and I think that there should be at least some degree of parliamentary involvement, and that is why I went back to my submission last week to the joint select committee that there be a kind of public accountability commission of some description that has the ability to be involved in that process. In New South Wales, one of their joint committees has a veto power over the appointment of the Ombudsman, the Auditor-General and the DPP. I would disagree with having a veto power. I would like there to be a much more prospective involvement in the selection of the appointment process, but at least for those officers you have the ability of the parliamentary committee to say that this person is not suitable for the position. I would much rather the committee be able to come forward and say, 'We think this person is the suitable person for the position'. I think it just adds to their clout, to their independence and to their reputation of being able to carry out their functions, and they not only have the endorsement of the Government but that of the Parliament.

**CHAIR** - Thank you very much, and as is the case when we report, we provide a copy of the report to all witnesses who have been prepared to make representations.

**Mr SNELL** - Okay, I will look forward to it.

**THE WITNESS WITHDREW.**

**Mr RANDOLPH WIERENGA**, PRESIDENT OF THE POLICE ASSOCIATION OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Randolph, thank you for, first of all, for your written submission and your preparedness to appear before the committee. As we said, the other witnesses who have been here earlier today seem familiar with the process of select committees and I think you are as well, and that you are protected by parliamentary privilege. If there is any time during the process that you would want to give evidence in camera, you are at liberty to make a submission to us and give your reasons. We will consider that and let you know whether we accept your recommendation that we do resolve into camera. But, as I said, you are aware that you are protected by parliamentary privilege within the confines of this deliberation. If you say anything publicly, for which there is no protection of privilege, then that is upon your own head in terms of any liability that might attach.

We have had your submission for a number of weeks now and we have certainly had the opportunity to read it. We would ask you, first of all, Randolph, to speak to that submission because it is important to have you expand upon that or speak directly to it for the purposes of the public record, and it gives us something to reflect back on when we are considering the report we will write.

**Mr WIERENGA** - Thanks, Mr Chairman. I will speak briefly to the submission because you have had it for some time and obviously you have read it. The Police Association makes the submission as a result, probably, of the recent appointment of the commissioner and the concerns that members raised about the process. The Police Association represents the industrial, political and legal and welfare interests of the sworn members of Tasmania Police. We are registered under the Trade Unions Act and affiliated with the Police Federation of Australia, Unions Tasmania and the Australian Council of Trade Unions. We have some 1 250 members and we represent 99.5 per cent of police officers in Tasmania.

The Police Association looks at appointments on the basis of merit and we do that because that is what is enshrined in the Police Service Act and that is how all appointments are conducted generally within the police service. When people are selected for promotion or appointment, particularly for promotion, members who have not been successful are able to appeal those appointments.

We have also had a look at the State Service Act and basically they also appoint and promote on merit. We note the difference between appointments at the lower levels of the State Service Act and the Police Service Act and the appointments at the higher levels. We believe that the principles that apply to the lower levels of appointment in the Police Service and the State Service should apply to the higher levels of the State Service and the Police Service. We say that for a couple of reasons. It ensures that the merit process is applied. Under the current legislation there is no reference to merit in the appointment at higher levels in the Police Service or the State Service. We also say that because it makes sure that the process is open and transparent and not subject to criticism. When appointments are made without going through a process, it leaves those who make the appointments open to criticism and subject to all sorts of rumours and

innuendo. It makes it fairer on everyone involved and it also makes it fairer on the people who are appointed, that they are not subject to any criticism that may ensue because of the appointment.

I am not sure whether you want me to speak about the appointment of the commissioner directly, Chair.

**CHAIR** - I think you can do, that will round out your contribution I think and then we will proceed to questions.

**Mr WIERENGA** - I will talk about the time frame in relation to the appointment of the commissioner and the disquiet that was caused amongst some members of the Police Association. The disquiet was caused because the position was not advertised, no applications were called for and, as I said, the members could not see where the merit principle was applied in relation to the appointment. That is no criticism of the current commissioner at all but a criticism of the process by which he was appointed. Members are also concerned about the haste in which he was appointed, particularly due to the short time frame. On 22 January the former commissioner, Richard McCreadie announced his retirement, effective on 7 March. On 29 January the former Premier, Mr Lennon, announced a cabinet reshuffle and the former Police minister, David Llewellyn, was replaced by the new minister, Jim Cox. On 2 February the former Premier, Paul Lennon, made the announcement that the Deputy Commissioner, Jack Johnston, had been appointed commissioner for a three-year term.

The swiftness of the appointment process and the lack of transparency caused unrest within members of the association. These events caused members to attend meetings around the State in large numbers to express their concerns and endorse the following motion that:

'The Police Association of Tasmania on behalf of its membership, the police officers of Tasmania, expresses its disappointment that the Government failed to follow a fair and transparent process in the appointment of the new Commissioner of Police, such fairness and transparency being basic principles of policing.'

We voiced our concerns in the media and the then Premier was reported as saying that there was no justification or need to advertise the position. This was not a view shared by the association or any of its members.

In relation to those meetings, we had large numbers of members attend those meetings around the State. This was not the only issue that members were attending those meetings for. You would be aware that we were in the throes of negotiating an EB and there were a number of other issues that had been causing concern amongst the membership.

That is our submission in relation to that and I am open to questions.

**Mr HALL** - Randolph, in regard to the appointment of the commissioner - and I understand your concern and your association's concern at the manner in which that was done - we had some evidence this morning which said that the only jurisdiction in Australia where there is a requirement to publicly advertise the police commissioner's job is New South



Wales. In all the others it is done pretty much as has been done here; whether that be right or wrong that is another question. I just put that point to you. You also mentioned in your submission the mirror test applied to appointments. If it is applied to lower levels of the Police Service and State Service; why is it not applied at higher levels? I just ask you there, for example, with regard to the Assistant Police Commissioner -

**Mr WIERENGA** - There were two commissioners' jobs recently appointed; the deputy commissioner and as a result the assistant commissioner. As I understand it, both positions were advertised and both positions were put to interview where a number of applicants were interviewed and I assume that the best person who applied for the job received the job.

**Mr HALL** - Yes, so clearly your association would like to see the commissioner's job advertised.

**Mr WIERENGA** - Certainly, yes, and open to the best applicant.

**Mr HALL** - Yes. Who do you think would determine who would be the best applicant? Do you have a view on that? Who should do that actual job; who should be the arbiter?

**Mr WIERENGA** - Well, I don't have a formal view but off the top of my head I would say that members of the Government and senior-ranking public officials should be involved in the process but there should be selection criteria, as there are for normal positions, and people should be matched to those selection criteria and obviously the best person, at the end of the day, would receive the appointment.

**Mr HALL** - You are also concerned in this case about the speed by which this process occurred.

**Mr WIERENGA** - Certainly it was a very quick process in terms of appointment of the Commissioner. Whilst I understand what you said about appointments in other States, that only New South Wales would advertise, I'm sure that other jurisdictions would actually seek out applicants or have companies determine the field in relation to who may or may not apply and provide those details to those who are making the appointments. I'm pretty sure that they just wouldn't look at one person and say let's give that person the job.

**Mr HALL** - So that is a real concern that here in this case one person was -

**Mr WIERENGA** - I don't know -

**Mr HALL** - It would seem that way -

**Mr WIERENGA** - I don't know what the process was apart from what's in the public view.

**Mr HALL** - And in other jurisdictions you're saying even though they may not be advertised, apart from New South Wales, there is some canvassing going on or there is -

**Mr WIERENGA** - I would be surprised if there wasn't.

**Mr MARTIN** - What's happened in the past in Tasmania with the appointment of commissioners when it goes back a way?

**Mr WIERENGA** - Look, the previous appointment was obviously Commissioner McCreadie and I really wasn't around during the process but, as I understand, he certainly went to interview. I don't know whether this commissioner went to interview or not.

**Mr MARTIN** - Before Commissioner McCreadie there were a couple of interstate appointments.

**Mr WIERENGA** - Certainly there were some interstate appointments; John Johnston came over from the Federal Police and before that Bill Horman from Victoria, so some kind of search and application process probably was gone through in relation to that.

**Mr MARTIN** - So, section 21 of the Police Act; does that refer to - at what level does that kick in if it doesn't apply to the Commissioner? Would that be an Assistant Commissioner?

**Mr WIERENGA** - No it applies to inspectors and below. So above inspectors, there are commanders and commissioners.

**Mr MARTIN** - So it doesn't apply to commanders - there's no designated process for commanders either?

**Mr WIERENGA** - That section -no.

**Mr MARTIN** - So with the appointment of commanders in the past, what's been the normal process in the last few years?

**Mr WIERENGA** - Positions have been advertised and the applicants have gone to interview and a determination has been made on the merits, as I understand it.

**Mr MARTIN** - You can't think of any exception where that hasn't happened?

**Mr WIERENGA** - No.

**CHAIR** - So, Randolph, can I conclude from that that in order to put in place the process which you're suggesting, that of transparency and openness and so on, there will need to be an amendment to the Police Service Act - requiring?

**Mr WIERENGA** - That would be one way of addressing it, yes.

**CHAIR** - Or it could be implemented by policy directive?

**Mr WIERENGA** - It could be implemented by policy. As a head of agency I think the Premier has the power to appoint. Really, an amendment to the Police Service Act or the Public Service Act in terms of the appointments of head of agency would do it, though I am not sure which one.

**CHAIR** - I do not have any further questions. Randolph, your submission was clear for me in terms of the concerns of the Police Association. If at some future time on further deliberation we conclude that we would like to hear further from you we will make contact but at this stage we are grateful for your evidence, both written and verbal.

**THE WITNESS WITHDREW.**

**Mr JOHN BAXTER FORSYTH WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

**CHAIR** - Welcome, Mr Forsyth. By virtue of the process under which we convene you have the protection of parliamentary privilege. Outside the precincts of the Parliament, if you choose to speak to the media about any of your concerns about matters related to the select committee's deliberations, you are not protected by parliamentary privilege, so you are accountable for your own actions outside the convening of this committee. If at any time during your presentation of evidence you feel a need to ask the committee to resolve into camera, you are at liberty to make a representation to us and give suggestions as to why we should resolve into camera.

Thank you very much for your written submission. We would invite you now to speak to the submission.

**Mr FORSYTH** - My submission asked a question: to what extent should the self-interest of influential lobby groups override the wider public community interest when appointments are being made to taxpayer-funded government boards, tribunals and committees? I don't have any answers to that. I am here today to plead with you to consider that question as part of your deliberations in this inquiry and hopefully you will come up with answers after the proceedings are completed.

In my submission I used the recently formed Legal Profession Board to demonstrate the concerns I have. According to the now former Attorney-General, David Llewellyn, the taxpayer-funded body was to be responsible for monitoring standards of legal conduct and dealing with complaints against legal practitioners. He also claimed that this was an independent body. Now, I maintain that this is clearly not the case. I say that there are six appointees to this board. Three of these, exactly half of them, are direct nominees of the Tasmanian Law Society and the Tasmanian Bar Association. I want to make it clear from the outset that I have no intention of commenting on the merits of any of the individuals appointed to this board.

What I want to do is focus on how anybody can argue that a board responsible for policing ethical standards of the profession are chosen by the very people who may be called to account by it can be described as independent. What I can say with absolute certainty is that individuals nominated by bodies such as the Law Society are primarily on that board to serve the interests of the organisation they represent. Should a conflict of interest arise between this role and that of serving the public interest, I ask which competing priority will win out. I find it almost impossible to believe that a taxpayer-funded board which is dominated by lawyers can be totally impartial when dealing with complaints by consumers.

I ask the question, why was this board created? Now, as far as I understand it, it is supposedly to take over from the Tasmanian Law Society's discredited investigative and disciplinary processes, which were practised under the unique self-regulation regime the profession enjoyed for many decades. We find three of the appointees to the new board were involved in this previous regime. The question that I think is legitimately asked is if people genuinely believe the Law Society's previous complaint-handling system was fair to aggrieved consumers of legal services, then surely it's logical to ask why it was

considered necessary to create a new taxpayer-funded body. On the other hand, if the system was not working, why appoint the same people to the new taxpayer-funded body?

The board's now been on the payroll for three months. I invite any of you to type into your web browser, 'legal profession board Tasmania'. I did; no practical information whatsoever; no contact address, no information about its function, no information about who is on it; absolutely nothing.

I will conclude with one final observation. Last Saturday's newspaper carried an advertisement for yet another \$48 000 position as part of the new regime. Apart from the completely irrelevant fact that this ad was three times the size of the ad that called for expressions of interest, it does show the attitude of the current State Government. The Government says it doesn't have money for adequate health care; it doesn't have money for affordable houses but it does have lots of money to create a mini bureaucracy solely to create some sort of veneer of plausibility for a body that will not, and simply cannot, provide one iota of additional accountability from Tasmania's legal fraternity. That's really what my submission's about.

**CHAIR** - You have referred specifically to the legal body. Do your comments apply to appointments to other like-government boards?

**Mr FORSYTH** - There isn't another like-government board. There are pressure groups, if you like, on huge numbers of government bodies. You have the farmers and graziers, the Chamber of Commerce, the Conservation Trust on environmental things, but this is somewhat different because this is, if you like, a court; it is policing the standards of the profession. You cannot have an independent body if you have the people who are going to appear before the body on dictating who goes on that particular body.

**Mr MARTIN** - Can I just clarify something? You don't have a problem with representatives of lobby groups being on some government boards, as long as they -

**Mr FORSYTH** - Well, it would depend on what they were actually doing. If you are talking about building a new dam and you have the TFGA, for example, on a body, that is entirely different to having them on a body that would, say, discipline farmers if there was a -

**Mr MARTIN** - Yes, so for example before I was in Parliament I was involved with the tourism industry and on the Tourism Council, which is the industry body, as their representative from Tourism Tasmania Board. You would not have a problem with that because it is marketing and not a disciplinary role.

**Mr FORSYTH** - Yes, there are differences. As I said, I do not have any answers. All I am asking is to what extent pressure groups should dictate what happens on committees.

**Mr HALL** - I understand where you are coming from, Mr Forsyth. Are there any other examples you can think of outside the legal profession at this stage that you are concerned about?

**Mr FORSYTH** - No.

**Mr HALL** - It is obviously one that has attracted your attention and you are concerned about.

**Mr FORSYTH** - I have had a long history of trying to get some accountability from the legal profession. It just seems a fairly obvious one to bring to you and plead with you to consider the question that I posed in your deliberations. It is that simple.

**Mr MARTIN** - I should know the answer to this, having dealt with the legislation, but can you just remind me what the make up of the board is? You mentioned three from the Law Society.

**Mr FORSYTH** - There are six members of the board: three are direct nominees of the professional groups; and the other three are one lawyer nominated by the Attorney-General, and two lay, non-legal members, also nominated by the Attorney-General.

**Mr MARTIN** - In that case it is fairly top-heavy with lawyers. Would you have a problem if there was, say, one representative of the law fraternity?

**Mr FORSYTH** - I just think if you have three people already there serving the interests of the industry, if you like, and you then get another lawyer - and again, I am adamant I am not going to comment on individuals - you really already virtually own the membership of that committee or that board, whatever it might be.

**CHAIR** - You have indicated that you have a long history of trying to get some accountability from the law profession. Can you give us some details of that historical content?

**Mr FORSYTH** - I have written letters to the editor and made submissions when the Legal Profession Bill was being debated in the days of Judy Jackson. Prior to that I think the Attorney-General, Peter Patmore, wanted a single Legal Commissioner to be the adjudicator of ethical standards. I pride myself in that I had some sort of influence in trying to get more balance there because if you have one lawyer sitting in judgment of the rest of the lawyers there is probably even more opportunity for the lawyer's point of view to take precedence over anything else. I gave evidence at the review of the Legal Profession Act, which was then the 1993 act. People generally ignore me but I keep trying.

**Mr MARTIN** - I can relate to that.

*Laughter.*

**CHAIR** - Is there any particular experience you have had which has led you to the conclusion that things are not being properly scrutinised?

**Mr FORSYTH** - Certainly I would not be as determined had I not had a very painful experience with the legal profession. That is a lot of years ago and, hopefully, I have been able to get on with my life since then, but has always bugged me that there has never been an acceptable level of accountability for Tasmanian lawyers. They have always enjoyed this self-regulation, where the Law Society has decided which lawyers could be investigated and which lawyers could not and consumers with complaints had no say in it whatsoever. They took their complaints and if the Law Society decided they

did not want to investigate them they just simply said, 'No', and that is it - and that, to me, was wrong.

**Mr HALL** - Are you aware of what happens in other jurisdiction in other States? Have you compared and contrasted what is happening?

**Mr FORSYTH** - I think it is a lot more standard now; I think most of them have a legal profession board. There are differences. I made reference here to the changes from when Judy Jackson first mooted her Legal Profession Bill 2007 and one of the things was the issue of practising certificates. I know that in Western Australia the board itself issues the practising certificates and that is exactly what Judy Jackson wanted in her legislation. However the Law Society objected to that and, as a consequence, it is not in it.

**CHAIR** - Thank you, Mr Forsyth.

**THE WITNESS WITHDREW**