THE JOINT STANDING COMMITTEE ON INTEGRITY MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY 16 NOVEMBER 2026.

INQUIRY INTO THE CONFIDENTIALITY PROVISIONS OF THE INTEGRITY COMMISSION ACT

The Committee met at 9.01 am

Chris Gunson SC

CHAIR (Ms Armitage) - Good morning, everyone. Thank you very much for appearing at today's hearing of the Joint Standing Committee on Integrity. If you could please state your name and the capacity in which you're appearing before the committee.

Mr GUNSON - Chris Gunson, SC. I'm appearing before the Committee in relation to the questions of confidentiality and privileges being adopted by the Integrity Commission, and in relation to some litigation that I've been involved in in the Supreme Court relating to the Integrity Commission.

CHAIR - Thank you. Can I confirm that you've received and read the guide sent to you by the Committee Secretary?

Mr GUNSON - Yes, I have.

CHAIR - The hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This hearing is public. The public and media may be present. Should you wish aspects of your evidence to be heard in private, you must make this request to the Committee at the time.

Before I ask you to read the statutory declaration, I'll introduce the members of our Committee. Online we have Michael Ferguson, member for Bass; at the end we have Peter George, member for Franklin, we have the honourable Meg Webb, member for Nelson, the honourable Cassy O'Connor, member for Hobart, myself, Rosemary Armitage, member for Launceston, and Ella Haddad, member for Clark. Assisting us, we have our secretariat, Mary and Fiona, and we have Roey on Hansard.

CHRIS GUNSON SC WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you. Do you wish to make a short statement before we start?

Mr GUNSON - A very brief one. I've been involved in matters before the Supreme Court relating to the Integrity Commission over the last few years. Tied up with that is the interaction between confidentiality obligations imposed by the Integrity Commission as part of its investigations and, often, parliamentary privilege, and the intersection between the two. And also a general public interest perspective.

Over the last week or so - well, last week, there was a judgement delivered in the Supreme Court in relation to one matter. I'm not authorised to speak generally about that matter, but a ruling to the effect that the Commission does not have the power to table investigation reports in parliament. In essence, what the court held is that section 58 is exhaustive and that is all the Commission can do. It is not entitled to rely on section 11, which includes the power to table reports in parliament; that it separates out what is an investigation report from a general report. That approach is consistent with High Court authority in relation to the equivalent, I think it's the Crime and Misconduct Commission of Queensland, which has a similar structure to its Act, which is an important thing for the Committee to be aware of.

CHAIR - Thank you.

Ms O'CONNOR - Thank you, Mr Gunson, for coming in and talking to us today. Is it possible for you to provide further detail on that matter because it comes at a similar to news reports of Operation Cuvier, which was the Integrity Commission's first tribunal, and a decision not to hold a public hearing into allegations of serious misconduct by a public officer. An investigation was undertaken, a report apparently completed and it's never seen the light of day. The Integrity Commission made a statement that they'd be seeking clarity on whether they had the power to table that report into Operation Cuvier.

Mr GUNSON - Operation Cuvier was the only Integrity Tribunal matter that's been heard or even convened. I appeared for the relevant department in that matter throughout it. I'm not sure that the Integrity Commission would necessarily have the power to release that report. One of the important things to differentiate between the courts, the Integrity Tribunal and other matters, and other bodies, is that the Commission itself does not have the power to make findings of misconduct. It can only investigate and send its report on to someone else who might have the power to do that.

Cuvier was an interesting matter and, in my view, having been through that process, Integrity Tribunals should be convened more often than not because it allows the potentially affected person to cross-examine witnesses and the like. From my perspective with the tribunal hearing itself, what came out at the end was nothing like what was alleged at the start. That's where the benefit of having witnesses actually cross-examined and give evidence arises, rather than an investigator, or the board of the Integrity Commission not making findings of misconduct, but making findings about conduct in general based on witness statements and interviews that someone hasn't had the opportunity to respond to.

Ms O'CONNOR - Okay, thank you. You mentioned in your introduction that you'd been a party to matters involving the Integrity Commission that were in the Supreme Court. We have here a minister of the Crown who had to resign for misleading parliament about whether or not she was a party to matters before the Supreme Court. Can you confirm that you have knowledge of that matter?

Mr GUNSON - Yes, that relates to Ms Madeleine Ogilvie in relation to a complaint that was investigated by the Integrity Commission. I acted as senior counsel for her.

Ms O'CONNOR - Okay. Our terms of reference ask us to look at the confidentiality provisions in the *Integrity Commission Act,* specifically sections 11, 94, 98 and 100 - and I would argue section 92 as well, which allows for a claim of privilege. Are you able to enlighten us about how those sections in the legislation have interplayed with your work, to

whatever extent you can share that with us? We're talking about, in the instance of Operation Olegas, for example, an investigation that's gone on for four-and-a-half years and doesn't seem to be going anywhere.

Mr GUNSON - I can. One of the biggest difficulties that arises from Integrity Commission investigations, particularly of ministers, is how to deal with the very knowledge that there's an investigation at all. If I can take Ms Ogilvie's matter as an example, the person who is designated to be told by the Integrity Commission of an investigation is the Premier, because she was a minister at the time. That means that when we filed the proceedings that were filed in the Supreme Court, it was necessary to serve the Premier as well. To do that, the hoops that we had to jump through were somewhat extreme in the sense of arranging for the Premier to be personally served with the originating application that he had no real interest in. It makes it quite difficult to conduct a matter sensibly and easily because there are always more people that need to know or will come across us as something. So, from a lawyer's perspective, you'd have to me as senior counsel, my junior, the solicitor who's predominantly doing the work, maybe one or two junior solicitors. You then get secretarial staff. It starts to blow out. And you can imagine in the Premier's office, there's a similar blowout of knowledge.

I accept that there are cases where it's entirely appropriate for a high level of secrecy to be involved, but there are also a lot of cases - and to some extent I would argue Ms Ogilvie's case - where that secrecy was not required.

Ms HADDAD - On that same matter, Mr Gunson, just to clarify, when you were explaining that complexity of needing to serve the Premier as the authorised officer, or whatever the terminology is in the Act, that's had to happen at the same time that you filed in the Supreme Court for that matter?

Mr GUNSON - Close to it. One of the things that's important to appreciate with the three pieces of litigation that I'm involved in is that it's proceedings for judicial review of the decisions or conduct of the Integrity Commission. It invokes what we refer to as the supervisory jurisdiction of the Supreme Court, which is to supervise the conduct of the Executive or a statutory decision-maker. It has nothing to do with a merits review or the facts; it looks at whether the decision-maker - in this case, the Integrity Commission, has acted in excess of its jurisdiction and, coupled with that - so, it's a fairly unique type of court proceeding. What the process is in relation to an application for what we refer to as prerogative relief is that an originating application with a supporting affidavit is filed, that is then listed on an ex parte basis - that is, only the party filing, and you seek what's called a general order to show cause. On a relatively low legal threshold, the general order to show cause identifies what each of the grounds of review are.

Now, what occurred in all three of these cases was that because the Integrity Commission had imposed very broad confidentiality requirements under section 98, the proceedings in the Supreme Court were then made subject to suppression orders regarding even their existence, not because the applicants involved wanted to hide what was going on but, rather, because the Integrity Commission had imposed strict confidentiality requirements. Obviously, the starting point with any litigation is the principle of open justice.

Ms O'CONNOR - That's right.

Mr GUNSON - And that's that the public should be able to know and observe what occurs in the courts. So, the use of suppression orders is the exception rather than the norm and were it not for the section 98 confidentiality requirements imposed by the Commission on each of these pieces or its investigations, my view is that they would not be entitled to a suppression order.

Ms HADDAD - In terms of procedurally or administratively, those section 98 confidentiality requirements that the Commission imposed, did they also need to formally request the suppression order of the court, did your client have to seek that suppression order or did the court have to - I don't know if the court can automatically apply one because of section 98. Or was that actively sought by the Commission or someone else?

Mr GUNSON - No, we sought them as part of the general order to show cause, so that the matter wasn't even appearing in the court lists and the like from the very start. It was -

Ms HADDAD - Because of section 98?

Mr GUNSON - That was the only reason that those suppression orders were sought.

Ms O'CONNOR - It's quite unusual though, isn't it, to have suppression orders of that blanketing nature over public interest investigations?

Ms WEBB - Yeah, section 98 is quite blanket in itself. My understanding is, for example, that ICAC in New South Wales has a much more flexible arrangement in their Act, where their integrity entity can much more, in a tailored way, decide what, if anything, needs to be confidential, the extent it needs to be confidential and the timing of the confidentiality. And it has to be quite open about stating reasons for where it has made decisions on that basis. Is that something that you would point us to as a more appropriate way to think about how to empower the Integrity Commission through its legislation on these matters?

Mr GUNSON – I think that what needs to occur is that this Committee and Parliament needs to identify what type of model it wants and try to work from there. The ICAC legislation is very complex compared to the *Integrity Commission Act* here. When it started in New South Wales, it fairly closely resembled what is now our *Integrity Commission Act*, but over the years, often because of court proceedings being brought, they've amended it considerably. So, it provides a model that might be useful to Members of this Committee and to Parliament in general, but it needs to be considered with the caveat that it's completely different here. What I think needs to be considered is, how extensive should the use of section 98 be?

Ms WEBB - That's what I was asking about: not so much whether we should, holus-bolus, adopt an ICAC but on this matter, around the issue of confidentiality of investigations and proceedings, whether we should look to the more nuanced, it would seem, approach that they have in their legislation. That that's an element of it that we could look to for a model that may work more effectively here to deliver justice?

Mr GUNSON – Of course, yes.

Mr GEORGE - Thank you for your clear exposition. Can I be clear: is the secrecy or the confidentiality imposed mandated upon the Integrity Commission, or is that the way that the Integrity Commission decides to pursue its investigations?

Mr GUNSON – It's the way that the Integrity Commission chooses to conduct its investigations. Typically, what occurs is, the first that someone knows about an investigation is that they receive a letter from the Commission that imposes the section 98 obligations on the person. And you'll be aware that the breadth of such notices can be extreme, in the sense of the very existence of the notice or the complaint, or the investigation can be confidential in itself. So, it is not mandated to be used but, from my experience at least, the standard approach of the Commission is to impose the confidentiality provisions.

Mr GEORGE - So, if I read you right, you're saying that the imposition of the confidentiality process is actually too onerous. It's onerous on the people being investigated, it's onerous on the judicial system and it's onerous for having an open judicial system which people are able to follow and understand?

Mr GUNSON – I agree with that proposition that it's onerous. I accept that there are cases when a high degree of confidentiality is necessary. I query whether, under the current legislation, if such a matter arose, whether the Integrity Commission should be investigating it or the police should be investigating it because it almost gets to a criminal level at that point. So, it's necessary at times. But if we take Ms Ogilvie's matter, for example, it was not necessary for it to be secret that the main allegation was that she had a conflict of interest during, I think, the 2021 election campaign, making an election commitment to fund a pontoon at a rowing club as part of that.

What was said to be the conflict of interest was that her daughter happened to be a member of the rowing club because she did rowing at school, and the process was that she became a member. It was also said that the conflict of interest arose because Ms Ogilvie's husband, two years after the event, became a gym-only member of the same rowing club. The Supreme Court has identified very significant problems with that, such as, where can a conflict arise? That there was no benefit that either Ms Ogilvie or her daughter would receive over and above what an ordinary member of the public or the relevant rowing club would obtain. If you take it - and the further issue that was raised by the Integrity Commission, and you may recall it, was that shortly after that election, the budget was delivered and the appropriation bills contained one line for about $12 million of election commitments. The investigator at the Integrity Commission thought that Ms Ogilvie, at that stage, was required in some way to disclose a conflict of interest, which frankly did not exist. Now, parliamentary processes don't allow for people to stand up every time that a bill is debated to disclose a conflict of interest. If you took it to its extreme, when a minister approves a new overtaking lane on the Midland Highway, they've got a conflict of interest because it means they'll get from Hobart to Launceston a bit quicker. That's the type of level which is not, as a matter of law, a conflict of interest.

Ms HADDAD - The consequences of the Integrity Commission's interpretation of section 98 were pretty severe, particularly in former minister Ogilvie's case. She's had to resign her position as a minister, she's been accused of misleading parliament. Arguably, she has misled parliament, but it's because of section 98. I note that it reads:

> A person on whom a notice that is a confidential document was served or to whom such a notice was given under this Act must not disclose to another person the existence of the notice, the contents of the notice or any matters relating to or arising from the notice unless

> the person on whom the notice was served or given has a reasonable excuse.

And it's a pretty severe penalty. It's 2000 penalty units for breaching that. But 'confidential document' is not a defined term in the Act, as far as I know. Is it standard procedure for the Integrity Commission to treat any documents that they serve, or expect any documents that they serve, to be treated as confidential documents? Or do they have any level of flexibility in how documents that they serve are expected to be treated by those people who have been served on?

Mr GUNSON - The answer to that is that, yes there's flexibility. It's not mandatory for documents to be considered confidential by the Commission. Their practice appears to be to make everything confidential as a matter of course.

Ms HADDAD - Yes, that's certainly been the experience I've seen, just in terms of just general kind of people talking about their experience of it. But that's not required by the Act from what your experience is?

Mr GUNSON - No.

Ms HADDAD - The second part of that first part of section 98 allows a person who has a reasonable excuse for breaching those first clauses to do so. This might not be something that you can answer, so please don't if you can't, but it seems to me that the risk of being accused of misleading parliament is a pretty serious matter. We all certainly understand it to be a very serious matter as elected representatives. Would that not have been considered a reasonable excuse for breaching those first parts of section 98 and disclosing the existence of the notice or the contents of the notice, do you think?

Ms O'CONNOR - That's a good question.

Mr GUNSON - It's a very good question, and not one that I can give an answer off the top of my head, other than noting that parliamentary privilege will trump section 98 confidentiality. Generally, parliament will give an appropriate level of respect to confidentiality provisions that are imposed and the like. But to identify such a matter outside parliament might be quite difficult. One of the problems that I guess I see with this, and having been through the litigation involving Ms Ogilvie, which actually was tried over two days during an election campaign when there were a number of suggestions made about her being under investigation, and that's occurred since. I guess what I see is the unfairness is that in a system of responsible Government, a Minister who is subject to a complaint or an investigation can't say anything about it, yet the opposition and crossbench members can ask as many questions as they want, or make as many statements, including outside the Houses of parliament, about that issue. So, it leaves the minister potentially hamstrung. And, as you identified, it can have extreme results in the sense of Ms Ogilvie was obviously compelled to resign as a minister for what, when we see is the ultimate investigation, is fairly minor if any conduct that could constitute wrongdoing.

Ms O'CONNOR - Ms Ogilvie resigned as a minister because she had misled parliament. Is Operation Olegas concluded, to your knowledge, because it's now four-and-a-half years since the investigation began. There's no information in the public domain, as I understand it. Journalists can't even get copies of the suppression order. Are you able to provide an update on

where Operation Olegas is at? That is the investigation, to be clear, that you have represented Ms Ogilvie in.

Mr GUNSON - Yes. Where it's at, at the moment, is the point where the CEO of the Commission provides the CEO's report to the board for consideration, and the board will make whatever decision it makes under section 58. I guess one of the issues with the construction adopted by the Supreme Court is that the result may be that no-one ever knows what the outcome of that litigation or that investigation was.

Ms O'CONNOR - As a consequence of the suppression order?

Mr GUNSON - No. As a consequence of the ruling that section 58, which is the decision-making powers of the board, is exhaustive, so they can't table investigation reports in parliament.

Ms WEBB - That's extraordinary.

Ms O'CONNOR - It is extraordinary. You have a minister of the Crown and a public officer who's been subject to an investigation, there are questions about natural justice over four-and-a-half years, and there is a real possibility that the people of Tasmania will never know the outcome of that investigation. Do you think that's open justice?

Mr GUNSON - Well, it's not really open justice at that point. What the Commission can do is that it can refer investigation reports to this Committee, as opposed to tabling them in parliament. Once disclosed to this Committee, it would be open for the Committee to determine to publish the report or table it, or publish a summary of it. I see that as being the appropriate way to inform the public because it just provides a system of checks and balances by going through this Committee. The Committee might form the view, 'Look, we do really need to tell the public about this, but we also don't want to tell the public about these personal matters to, maybe, a Minister'. I think that's the pathway to investigation reports being made public.

Ms O'CONNOR - Just to tease out how an investigation into a minister, a public officer, can take four-and-a-half years and the interplay between, potentially, section 92, which is the claim of privilege, and 98, how can it be that an investigation can take four-and-a-half years? What's the mechanism within the Act, whether it's for the Commission or the person who's the subject of the potential investigation, how can it be that it takes four-and-a-half years?

Mr GUNSON - From my experience, all Integrity Commission investigations are slow and laborious. In this case, the proceedings were commenced in late November 2024. There was a form of injunction granted, which if I'm - the form of the injunction that was granted when proceedings were commenced was that the board of the Integrity Commission be prohibited from exercising any of its powers under section 58 of the *Integrity Commission Act 2009*, or otherwise, in relation to Investigation Olegas, insofar as any of those powers applied to the applicant, which was Ms Ogilvie. That was crafted in that way to permit the investigation to continue and not bring it to a complete stop. Now, I don't know what occurred as a result of that. My impression is that it brought it to a complete stop. But that said, once it's getting to go to the board, the section 58-type decision, most of the investigation, if not all of it, should have been completed.

Ms WEBB - Just to follow on from that, my understanding and certainly from the - have we published these submissions yet, Chair?

CHAIR - No, I don't believe we have. Oh, we have, have we?

Ms WEBB - Great. So, in the submission we have from the Integrity Commission for this inquiry is that part of the duration of the investigation process is caused by litigation. I guess their contention would be, if they could just do their investigation and not be taken to court every five minutes on various matters that are allowed for under the Act, as it currently is, some of which are probably loopholes that need to be addressed, then it wouldn't be taking so long; that litigation is a key delay for these investigations to be concluded. It seems as if the confidentiality matters are probably ones we could discuss in a more nuanced way relating to investigations in the absence of litigation, but then when investigations move into the sphere of litigation and are taken to court on various matters. Do you think under the Act we have at the moment that there's an allowance for there to be that nuanced approach to considering matters of confidentiality at those different potential stages of an investigation playing out?

Mr GUNSON - Definitely there is. The Commission has the power to revoke a confidentiality obligation, and there might be times when that is appropriate to be used. What I have difficulty accepting is the proposition that the length of time of investigations is a consequence of litigation. I'm only aware of the three matters that I've been involved in being before the court. There may have been others. I accept that if there is litigation, it will typically slow down or stop an investigation, but I would expect that those are fairly rare. And, of course, the ability to just litigate is fairly limited that it requires allegations with evidence, and cogent evidence, that the Commission has been acting in excess of its jurisdiction. So, as a failure to afford procedural fairness, one of the issues that is still before the court and needs to be resolved is, what is the status of both the parliamentary code of conduct and the ministerial code of conduct? In relation to the parliamentary code of conduct, it is something for parliament that has got and I'm of the view that it has no legal force. Likewise, the ministerial code of conduct has no legal force, in my view. But where we're left at the moment is the Commission using those as codes of conduct that apply to a person, which is quite a complex area and still needs to be teased out. But it seems to me that if - take the ministerial code of conduct. If it's only a code of conduct for the *Integrity Commission Act* because it has the words 'code of conduct' on it, then it's an almost laughable position because if it was described as guidelines and expectations of ministerial conduct, it wouldn't be a code of conduct. And that's one of the difficulties that arises.

Ms WEBB - However, the MPs' code of conduct has a little bit of a different status than that in that that's been formally adopted by each Chamber of the parliament.

Mr GUNSON - Yes.

Ms WEBB - So, presumably, you would see that as having, potentially, a different standing in terms of the code of conduct rather than the ministerial code of conduct which, as you said, could be construed as guidelines or expectations.

Mr GUNSON - The problem that arises with the parliamentary code of conduct is that it came into existence as a result of proceedings in parliament which excluded from the Integrity Commission a decision - it was actually in Ms Ogilvie's case. It said that the Integrity Commission can still investigate matters arising under the parliamentary code of conduct.

Whether that's correct or not is something that will play out, but it seems to me that the parliamentary code of conduct has no real status because it's not justiciable as a matter of law.

The other thing about the parliamentary code of conduct is that it sets up its own complaint and investigation process which doesn't include the Integrity Commission.

Ms WEBB - A point of clarification, if I may, on something you said. You mentioned that, from your reading of the Act, it's available to the board to provide a report to this Committee, for example. Is that under 58(2)(b)(iii), so 'to provide to an appropriate Parliamentary integrity entity', that being this Committee, that's where you read that in. And then, where is it available to the Committee to utilise that report or make it public in the public domain?

Mr GUNSON - Because it then becomes a Committee of Parliament -

Ms WEBB - Right, and has available to it whatever it wants to do in terms of information into the public domain within the context of the Committee?

Mr GUNSON - Yes.

Ms HADDAD - How much of this complexity that you've described in the matters that you've been a part of are down to the construction of the legislation versus the Commission's interpretation of the legislation that they operate under?

Mr GUNSON - At the end of the day, all of it has come down to what is the proper construction of the legislation.

Ms HADDAD - Okay. So, going to my previous question around their decision to treat everything that they serve on a party as confidential, do you think that they're being reasonable in interpreting that conduct or that practice? Or does the construct of the legislation allow them not to treat everything that they serve on a party as confidential, or to look at the circumstances of a particular matter and make a determination on whether something has to be kept completely confidential or not in that circumstance?

Mr GUNSON - Yes. It's discretionary as to whether they impose a confidentiality requirement. In my view, a number of the confidentiality requirements that have been imposed in matters that I've been involved in - and I should say I've also been involved in advising state servants over the years as to various matters. I don't think it is necessary to be imposed in every matter.

Ms HADDAD - So, that comes down to their interpretation of their legislation, rather than the construction of the legislation in and of itself?

Mr GUNSON - No, I think it's a practice of the Commission, rather than seeing it as a statutory mandate.

Ms HADDAD - Lastly, there's obviously real gaps in legislation around reports being made public. We've talked about section 58 today. The Cuvier matter also concerns section 78 and 11 in terms of whether or not a Tribunal matter could be released to the public. Is that

something that needs fixing in the legislation? Or does that come down to the board or the tribunal's interpretation of their ability to make reports public, in your view?

Mr GUNSON - That is probably a matter where it's not a deficiency in the legislation because there is the pathway for that to occur through this Committee, which will take away, or remove the, for want of a better phrase, the 'name and shame' approach of just tabling a report in parliament. It would provide, or it now provides for that check and balance to occur. So, I don't think it's a case of the legislation lacking itself. I think it's differing views on what the legislation means. And frankly, with a body like the Integrity Commission, with the reputational harm that can arise out of it, whatever legislation is in place, it'll be subject to challenge, potentially, or decisions under the legislation would be subject to challenge also.

Ms O'CONNOR - Back to Operation Olegas. How would it work if you've got a scenario where more than one member of parliament is under investigation as part of a whole Integrity Commission investigation. How do those lines of investigation, if you like, interact, to your knowledge?

Mr GUNSON - Usually they are fairly separate if it relates to different conduct by different people. But there may be an underlying theme as to the nature of the conduct. So, in that case, it was the Liberal Party's election commitments that were under challenge. And more than one person had a complaint made against them and were investigated. So, that's an example where, if a report was to be provided to this Committee, although the Supreme Court had ruled, for example, that it couldn't be provided in relation to one person, I'd imagine it would be redacted and provided to the Committee.

Ms O'CONNOR - Tasmania doesn't have a crime of misconduct in public office. You've worked in other jurisdictions that do have such provisions. There's a debate about whether or not we need such a thing on our statutes here. I would argue we do. Do you have anything you want to share with the Committee about that? Is it a gap in Tasmania's integrity framework?

Mr GUNSON - I think that's the classic example where my views as a barrister would be with no assistance to the Committee whatsoever.

Mr GEORGE - You may not be able to answer this that easily. In reference to other models that might have made a template for Tasmania, you said with the caveat that it's that it's completely different here. Can you explain why it's completely different here?

Mr GUNSON - My understanding, and I could be wrong about it, was that the intent when the *Integrity Commission Act* was devised was to basically make it fairly much a toothless tiger from the outset. It's my understanding is that that was part of the modelling for it.

Mr GEORGE - So, you're referring to the intention of the Act, rather than that we have different circumstances to another? Okay, thanks.

Ms WEBB - Can I have a tiny follow-up on that? It's really quick and it's just -

CHAIR - Well, if it's very quick, and very quick answer if we could.

Ms WEBB - One of the other things that's dissimilar here to other jurisdictions is we don't have a parliamentary inspector role that would be available to inform us, as parliament,

about the functioning of the certain elements of the integrity entity. Is that something that you see as a deficiency in this jurisdiction as well - that if matters did need to be investigated about the conduct of the Integrity Commission itself, we have no mechanism for that?

Mr GUNSON - There is no mechanism here. The National Anti-Corruption Commission has an inspector that supervises it, ICAC has an inspector. It's probably a sensible thing.

CHAIR - Mr Ferguson hasn't had his hand up, so he's all good. Thank you very much, Mr Gunson, for your appearance today. What you've said to us today is protected by parliamentary privilege. However, once you leave the table, you need to be aware that privilege does not attach to comments that you may make to anyone, including the media, even if you're just repeating what you've said to us. Do you understand that?

Mr GUNSON - Yes, I do.

CHAIR - Thank you very much.

The witness withdrew.

The Committee suspended at 9.46 a.m.

The Committee resumed at 9.51 a.m.

Professor Michael Stuckey

CHAIR (Ms Armitage) - Thank you very much, Professor Stuckey, for appearing at today's hearing of the Joint Standing Committee on Integrity. If you could please state your name and the capacity in which you're appearing before the Committee.

Prof STUCKEY - My name is Michael Stuckey. I am an honorary professor at Victoria University in Melbourne. I made a written submission and I'm happy to discuss that with the Committee and answer any questions that might be arising.

CHAIR - Thank you. Can I confirm you've received and read the guide sent to you by the Committee Secretary?

Prof STUCKEY - Yes, I have.

CHAIR - Thank you. The hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This hearing is public. The public and media may be present. Should you wish aspects of your evidence to be heard in private, you must make this request to the Committee at the time.

I will introduce the members of the Committee. Going from one side of the table we have: Peter George, the member for Franklin; the honourable Meg Webb, member for Nelson; myself, Rosemary Armitage, member for Launceston; Ella Haddad, member for Clark, on the other side of the table, the honourable Cassy O'Connor, member for Hobart. Online we also have Michael Ferguson, member for Bass. Assisting as secretariat, we have Fiona and Mary, and Roey on Hansard.

PROFESSOR MICHAEL STUCKEY WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED via Teams.

CHAIR - Thank you. Do you wish to make a short opening statement before we ask questions?

Prof STUCKEY - Sure. I won't take up too much time, because you have questions. But I just make a couple of observations first of all. The first observation is this: Australia is a bit unique in the integrity and anti-corruption systems that it has developed over the last 20, 30, close to 40 years. What I mean by that is that there is no comparable developed common law system that has that kind of an ecosystem that we do at state and federal level. Now, I don't think that's a good thing or a bad thing. It's just what we have developed as Australians for ourselves. But it also means that we have to find our own answers for the matters around this because we can't really look at other places where we often do, like Canada or the UK, for example, because they just don't have these kinds of systems. That's the first observation.

The second observation is that there are a couple of articles that I've written recently. I think they've been provided to the Committee. Mostly what I have to say is provided in those articles and in the submission which I provided a month or so ago. And I think all of those go

towards this statement: My views around confidentiality are that it is an essential thing to an effective integrity system but there's a qualification. Confidentiality has to be proportionate, it has to be reviewable and it has to be accountable. That kind of a system works only when secrecy endures for as long and extends only so far as its legitimate purposes require. Maybe I'll just stop there and answer any queries.

Mr GEORGE - Thank you very much for a very clear submission. You quite clearly feel, it seems to me, that confidentiality has kind of outweighed the necessity for the airing of issues in public so that justice is seen to be done. Is that right? Is it the legislation, you think, that is imposing unnecessary forms of secrecy and confidentiality? Or do you think that that is how the Integrity Commission is interpreting the law and acting?

Prof STUCKEY - I don't think it's really a problem with the Integrity Commission's interpretations. The Integrity Commission works with the tools it's got, and the principal tool is legislation, which is the Act. My view is that the Act has some design deficiencies. I don't think that you throw out the whole lot, and I hope that comes out from my submission. I think that there are some particular areas where there are some deficiencies, and that could be addressed with some targeted reforms. As I said, secrecy is something which is important for investigations, but the qualification is that there are limits, it's not an unlimited approach. I'll just finish up by saying, I don't think those observations are unique or brand-new. There was a review, the Cox review, about 10 years ago identified some of these things. I think that comes out from some of the other submissions I've read as well.

Ms O'CONNOR - Thanks, Mr Stuckey, for coming along to talk to us today. Just on your specific observations of how the Integrity Commission operates here in Tasmania, you'd be well aware that it's had a single tribunal. It chose in that situation not to conduct a public hearing. There are multiple investigations, Olegas, Loyetea, Cuvier, that have all been undertaken in complete secret and there's no certainty that the outcome of those investigations will ever be known by the Tasmanian people. Can you point us to, maybe through your experience, your views on how different the Act, the integrity body operates here in Tasmania relative to other jurisdictions? There's a loss of public trust here because of the way the Integrity Commission operates, probably because of the limitations of its Act, when it's undertaking inquiries and investigations.

Prof STUCKEY - I can make a few comments. I don't think I've got the definitive answer to that. But, as I mentioned, Australia's got this ecosystem of jurisdictions and, let's say, at the level of constitutional law and criminal law, that's well understood and well worked out. It's less so with the integrity and anti-corruption systems, which have been more recent developments. I'll give you a couple of examples.

The New South Wales ICAC system: I think it's the oldest one. I'm pretty sure it's the longest one in existence in Australia. It's been around for close to 40 years. Some people regard that as the gold standard or platinum standard because it's big, it's powerful, its resources are many, many times that of anything in Tasmania. Public hearings are very common. But on the other hand, there are there are many who would say, 'Well, New South Wales has got it wrong because this system is a bit oppressive. It's too big for its boots and it could be more restrained'. So, not too much secrecy in New South Wales because everything is out in the public, and that can be quite damaging, too. Damaging from the point of view of conducting investigations, but sometimes damaging for individuals who are coming into contact with the process.

I think Tasmania is probably at the other end of that spectrum. As you quite correctly said, there are a number of matters which may well never produce public reports or be subject to that kind of public scrutiny. And actually, you mentioned a few. There may be more. One of the problems is, actually, we don't know how many more. That's kind of the issue in a bit of a microcosm: is that there are those unknown unknowns as well as the known unknowns, if I could put it that way. Then there's jurisdictions that are in the middle between those two ends.

Ms O'CONNOR - I wanted to take you to section 92 of the Act, which is effectively a right-to-silence provision. If the person who's the subject of a preliminary inquiry claims privilege and refuses to provide information to the Commission then, effectively, the whole of the investigation can stop there. It was a recommendation of Justice Cox that that right to silence be removed. It's unlike any other integrity bodies in the country. Do you have thoughts on section 92 in the Act?

Prof STUCKEY - I agree with the recommendation from 10 years ago. Very often - and this has been the experience in other jurisdictions, it's the very officers and bodies who are, perhaps, subject to more serious kinds of investigations which are capable of invoking that kind of a privilege. So, it defeats that purpose. Whereas maybe some of the more - I don't want to say insignificant, but maybe lesser sorts of investigations tend to focus on lower-level civil servants who probably don't have those kinds of privilege. I mean, there's an analogy here with the RTI legislation, but I don't want to talk about that. It takes us off in a bit of a different direction. So, section 92, I think, is one of the areas, it would be one of the sections where, in my view, some reform would be necessary. I'm not saying wipe out privilege completely, though. That's a balancing kind of question.

Ms O'CONNOR - The former Chief Commissioner, Greg Melick, also backed in calls to make section 92, or that right to silence, not available, just as an observation.

Ms WEBB - Thanks very much, Professor Stuckey. I appreciated that your submission quite clearly identified that there's a tricky balance here between procedural fairness and the procedural fairness that can be jeopardised, or the person's experience of fairness can be jeopardised if things are exposed during early stages of investigation, and the reputational damage that can occur. But then, if they are silenced, and then things are coming to light in the public domain through other measures, they can't then clarify or defend themselves in any sense because they're silenced. So, that's not fair on that side of it.

I liked your suggestion of a more nuanced approach through categories of confidentiality levels. The reforms you put forward in part 7 of your submission to us: in your view, do those 12 suggestions you've made there around reforms amount to implementing the category approach that you've outlined as your suggested way forward?

Prof STUCKEY - I think so. I was hoping that that would be how it would be read. Ultimately, this is going to be a question for debate for not just this Committee but for the whole parliament if a reform of the legislation is something which is going to be pursued. I guess my big takeaway on that is it doesn't have to be an all-or-nothing. It needs to be something which is carefully thought out. As you mentioned, the staged approach I was suggesting was an attempt to find some kind of balance which preserves the proper work of investigation but tries to have a more sophisticated approach to how confidentiality can be dealt with, rather than just a sledgehammer kind of approach.

Ms WEBB - I appreciated your careful work actually laying that out because when I read our submission that we have from our Integrity Commission, it really is an all-or-nothing, as you described it before. They're basically saying, 'No, leave it as it is, don't change it'. They make the point that, for procedural fairness reasons, you need to keep early investigations confidential, but that they don't necessarily - in this submission at least, recognise that there can be jeopardising of fairness in doing so. It's a perhaps disappointingly limited view of it, just from one perspective, so I appreciated the two perspectives. What do you think the reluctance is from an integrity entity like our Integrity Commission to contemplating a more nuanced approach that provides for more tailored responses to individual situations?

Prof STUCKEY - I'd really only be speculating about that, so maybe it's better for me not to speculate. You know, I'm not pretending this is simple because it's really not, and I'm not suggesting that other jurisdictions have got the perfect answer either, because they don't. We've seen at the federal level, in the federal integrity - you know, the new federal body - has really not lived up to what was promised, and I think right at the moment it's undergoing, it's been described as a bit of a reset. At least there's a recognition there that, after a couple of years of operation, there needs to be a review. I think these bodies - Western Australia did so recently, and I appeared before the same Committee as Western Australia a few months ago, and they were looking at just these same kind of questions: how to tailor things a bit more carefully and get better answers.

Mr FERGUSON - Thank you very much for your submission and for joining us today. I recognise, as other members of our Committee will, that criminal matters or matters being investigated by other enforcement bodies like the police might be leading to a future court case, might be a live court case. As politicians, we're constantly reminded that we have to be restrained in anything that we would bring to the parliament because it's sub judice. Could you, to put our broader discussion on integrity bodies and their investigations, help us understand how, from a good practice and good legal doctrine point of view, that general precaution around sub judice with those kinds of matters should help us frame our thinking in this space, with integrity investigations often involving claims and counterclaims by politicians and political opponents perhaps, if I can say, at times guilty of weaponising some rumour that a person might be under an investigation at the moment?

Prof STUCKEY - Okay. That's a really big question. It's probably the biggest question that we need to think about.

Mr FERGUSON – If I could just help, where I'm coming from is: should that sub judice rule help inform our thinking here?

Prof STUCKEY - I think it has to. But I think we have to look at the range of different contexts. You mentioned politicians and weaponising things. It's kind of in the nature of politics that things do tend in those directions. The whole idea of parliamentary privilege is to provide a - I don't want to say safe zone, but a space where freedom of speech is at its highest level. And that's really what it should be. But then the other zone that you're talking about is where there are investigations and, at the highest level, criminal investigations where the potential penalties could be imprisonment and very serious penalties are involved there. How do we negotiate that range of different circumstances for our thinking? And that's what I mean by proportionate and staged kinds of responses. It's the identification of what the context is and, therefore, responding to that context in an appropriate kind of a way. So, I'm not saying forget about sub judice, by any means. That would be a terrible creation of a problem. But there are

all kinds of different - and I'd say these contexts can cross jurisdictional boundaries very quickly and very easily in days of modern communications. Social media is just the latest extension of that. But we can easily think about situations where a matter could be discussed electronically across two jurisdictions, like we're doing right at the moment, that could involve things that are subject to parliamentary matters in a third jurisdiction but investigation elsewhere. What's the interaction between all of those?

That's what I meant by an ecosystem that's not really complete. We have to think more in terms of how we have that respect for those things like freedom of speech in parliament, but also safety for individuals not being subject to unsubstantiated attacks. But also for investigative bodies to be able to carry out their work properly, and that sometimes means secrecy. Sorry if that's a little bit vague. I'm doing my best, but it's a very big issue, I think.

Mr FERGUSON - You helpfully make a range of proposed recommendations, one of which was you recommended a right, more or less a right, to seek permission for a person to make a limited corrective statement or for the Commission to issue a neutral or corrective clarification on what's going on in their procedural space. Can you see the potential difficulty there? I like the recommendation prima facie, but can you see a difficulty that, you know, how would you make that right effective when a person's reputation is perhaps being publicly damaged, but the Commission itself is still the all-powerful Commission and it decides that confidentiality must continue. How could a person have an effective right to correct completely false or misleading information being made about them? Should they be able to, for example, have an independent right of review if the commission refuses that permission?

Prof STUCKEY - Look, I certainly do recognise that that's not a perfect answer, and in some ways that sort of thing could then generate a snowball of response and counterresponse, and could make it worse rather than better. To some extent, that already does happen a bit. And there have been some occasions where that has been raised in other forums and it's really not been helpful because, at a certain point in time, the information just stops, as you say, because there's a determination that confidentiality has to remain. And there may well be very good reasons for that. But then it leaves the matter hanging in the public space, and that's not a satisfactory answer either.

The New South Wales experience is one where there is a great deal more of that kind of openness, but I suppose you'd have to say there's also a great deal more weaponising of those things in New South Wales as well. So, I think those suggestions would be helpful; I don't say that they're going to be a perfect answer.

CHAIR - We do have five minutes, if members have a further question.

Mr GEORGE - I might ask, if I may. It goes back to how these investigations unfold. It seems to me that the problem is you start off with, if a complaint is made, an investigation is held. Now, if this is a police matter, that investigation could quite possibly be held in confidence. But they get to the stage where they think there is a prima facie case, they'll take it to the DPP, the DPP will make a decision and then it generally goes before a magistrate, who also makes a decision about whether there's a prima facie case. Doesn't the Integrity Commission have a real problem in the sense that when it gets to the question that these matters should become public when the Integrity Commission believes there's a sufficient prima facie case to be able to take it further - I'm just trying to work out where the investigation should be confidential and where it might become public.

Prof STUCKEY - Well, most certainly, the Integrity Commission does have a process that begins at an assessment stage and then makes a determination about whether to proceed to an investigation or not proceed to an investigation. These matters are reported on, but they tend to be reported on much after the fact and only in very summary ways. In that sense, the commission's following the act quite perfectly, and that's appropriate. But there are a couple of comments I'd make.

If at any point in time the Integrity Commission reaches the conclusion that there's the possibility of a criminal act having occurred, then it's a matter for referral to the police and, again, that's quite normal to do that. I don't know, because we don't really have stats about that, how common that is. And this is one of the other things that I was suggesting: that some more information in summary form, in aggregate form, about what is happening would be helpful for the public. I know maybe six months ago the new chief commissioner gave some evidence, I think it was before this Committee, about a number of matters that were outstanding and have been outstanding for a very long time. But, again, we don't know exactly how many; we don't know what the review process has been around that.

I think part of the answer is also to - and this is what I've been suggesting in those articles, is to lock in review processes and to lock in, in the legislation, reasoning about that. Again, all of that is absent from public knowledge. I'm not suggesting every detail of every investigation as it's proceeding. Of course not. That would be quite inappropriate. But what we have right at the moment is not very much information at all. That is one of the things that leads to a lack of public confidence.

Ms O'CONNOR - This is just reflecting on the Integrity Commission's submission to us on this question of confidentiality and a resistance from the Commission for there to be change to the legislation that provides potentially a more tiered or nuanced approach. A lot of the sorts of issues that we're looking at in terms of how the Integrity Commission seems to function here, to me, come back to the smallness of the jurisdiction. That sort of explains the reluctance to have tribunals and public hearings, that attachment to confidentiality. Do you think some of the peculiarities of the way the Integrity Commission was set up and the way it operates relate to the fact that we're a small island jurisdiction, everyone knows each other and, potentially, it's made the Integrity Commission very, very cautious, if not a bit timid?

Prof STUCKEY - Look, I couldn't agree more, really. I actually wrote another article about size of jurisdictions recently, but I didn't submit it because it's not about the Integrity Commission. It's more about legal jurisdictions generally. I could send that in, I could correspond that. I think size is absolutely a factor, and there's actually quite a lot of research done on these matters. Not just in Tasmania, lots of other places as well, so.

CHAIR - Thank you very much for your appearance today. What you have said to us is protected by parliamentary privilege. Once you leave the table, you need to be aware that privilege does not attach to comments you may make to anyone, including the media, even if you're just repeating what you've said to us. Do you understand that?

Prof STUCKEY - I do understand.

CHAIR - Thank you very much.

The witness withdrew.

The Committee suspended at 10.22 a.m.

The Committee resumed at 10.30 a.m.

Robyn Lewis

CHAIR - Thank you very much for appearing at today's hearing of the Joint Standing Committee on Integrity. Could you please state your name and the capacity in which you're appearing before the Committee?

Ms LEWIS - Robyn Lewis is my name. I'm appearing as a private citizen, a Tasmanian, and also an academic in the field of corruption and governance.

CHAIR - Thank you. Can I confirm that you've received and read the guide sent to you by the Committee Secretary?

Ms LEWIS - Yes, I have.

CHAIR - This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This hearing is public. The public and media may be present. Should you wish aspects of your evidence be held in private, you must make this request of the Committee at the time.

If I could just introduce our Committee. We have Michael Ferguson, the member for Bass, on screen. We have Mr Peter George, member for Franklin, the honourable Meg Webb, member for Nelson, the honourable Cassy O'Connor, member for Hobart, myself, Rosemary Armitage, member for Launceston, Ella Haddad, member for Clark, our secretariat Mary and Fiona and we have Roey on Hansard.

ROBYN ANNE LEWIS WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Would you like to make a short opening statement before we go to questions?

Ms LEWIS - Thank you very much for having me. I've prepared quite a lengthy submission, which I take you've read. I've also brought along some work that I've done previously which is referred to, and I was just mentioning the URLs of that have changed, so I'll refer to some of that in the discussion. So, I think it's really -

CHAIR - The questions?

Ms LEWIS - Mainly questions to start with. I've got some follow-up from the last two sessions as well, but we can talk about that as well.

Ms O'CONNOR - Robyn, thanks for coming along today, and thank you for your very thorough submission, which reflects on the work that you've undertaken as an academic, principally through the University of Sussex School of Corruption. Through your experience, what are your observations about the way the Integrity Commission operates in Tasmania to prevent misconduct and corruption in public office?

Ms LEWIS - Well, I don't believe it's functioning as, hopefully, it was intended when it was originally set up.

Ms O'CONNOR - What's the consequence of that?

Ms LEWIS - The consequence is that we have a considerable amount of corruption occurring in Tasmania that's not being detected, it's not being referred to the Commission, and I think this is something that became clear in Professor Stuckey's discussion just then - that we're talking about some of the aspects of a bottleneck, a legislative bottleneck. But, certainly in my experience, from what I've observed, there's a lot of corruption not even being referred to the Commission because people are aware that these bottlenecks are basically sending things into a black hole. And also, the penalties on them if they can't talk about it. It's very, very difficult. So, I think that you've got to look a little bit further back in the funnel, and the sort of things that we're talking about today are actually causing blockages further back in the funnel. A lot of things are not coming to light here and it's causing a considerable cost and damage to Tasmania, not just economically and socially, but reputation-wise as well.

Ms O'CONNOR - Through your research, you've identified that Tasmania's subject to what you have described as Elite Cartel corruption, also intrastate capture where you've got various parts of Government running the show, Lingchi corruption, which is corruption by a thousand cuts. A lot of what would fall under those definitions of corruption might be argued as being legal. Do we have a problem here in Tasmania that the threshold for understanding what corruption is here, or misconduct, is misunderstood or misapplied?

Ms LEWIS - Yes, we do. There's several aspects to that. First of all, as far as I know, there is no definition of corruption in the Act, which is a problem in itself. Now, corruption, I think I've seen 186 different definitions of corruption, but they all boil down to basically abuse of public power for private or sectoral gain, and various nuances of that. But I think that's a real problem. One thing when we were listening last week to the new CEO, or the relatively new CEO, of the Integrity Commission, the first question she said was, 'Is it legal?' in her hierarchy of analysis of things that they were looking at. Well, that rules out somewhere between 95 and 99 per cent of all corruption in the modern-day world. The days of money in brown paper bags or cryovac packages in the freezer have gone. This is globally, not just here. So, if you're constraining yourself to looking at what is legal, or breaches of legality, particularly if you don't have a definition of corruption, well, I think that's a fairly poor starting point, so -

Ms O'CONNOR - Just to follow up to that, the CEO of the Integrity Commission told the Commonwealth Parliamentary Association conference that the focus of the Commission is on education and prevention. As you've heard through the hearing this morning, there's an issue of delayed investigations, investigations the findings of which are never made public. Do you think there's an issue with the way the Integrity Commission interprets its charter, let alone how it applies the confidentiality provisions in the Act?

Ms LEWIS - Yes, I do. To backtrack a bit, as we've just heard, Australia is unique or different, for example, to the UK, where they don't have integrity commissions, but they're actually looking at implementing them now. Ours has come about through the result of the British colonies of Hong Kong and Singapore, where actual investigation and penalties are the absolute foundation of that. Education is now the second tier of enforcement. It's not the first. You can't have education without actual investigations and penalties. I think that New South Wales has adopted that. As we've heard, they've been going for 40 years, and John

[Hatzistergos AM, Chief Commissioner of NSW ICAC] will be talking about that. Education is very big in New South Wales, but the absolute fundamental is there's actually got to be a process of investigation with penalties attached.

Professor Stuckey was saying Tasmania is different. Well, it's different to other jurisdictions. We have a different syndrome of corruption, and my academic works focused on that with the world's leading expert on it, Professor Michael Johnston in the UK. This is the first investigation that's been done on Tasmanian corruption since 1973, and that alone, I think, should tell a story that, you know, it's the air we breathe here. People think it's normal, and it's not normal. You go anywhere else, what we put up with here would not be tolerated anywhere else virtually, except in a kleptocracy, quite frankly. You can't educate your way out of this; you've actually got to have strong legal systems and enforce them.

The Elite Cartel system doesn't apply in New South Wales. It's very similar to South Australia, interestingly enough, but New South Wales has evolved into what's called 'Influence Markets' and that's what we call now the 'dark quartet' of corruption, which is political financing, revolving doors, conflict of interest and lobbying. Now, they are here as well but the system in New South Wales and everywhere in the world - I mean, the UK is grappling with this right now. Everyone is grappling with how to deal with it, but we don't do that at all well, and believe you me, they are coming. This is the relatively new form of corruption now that we're facing.

Ms O'CONNOR - How much do you think the fact the confidentiality provisions in the *Integrity Commission Act* mean that any investigations that they do undertake are largely unknown by the public and we're not seeing open justice, so there's not that public awareness of the extent of the problem that you've researched and described?

Ms LEWIS - Yes, well, that's part of the education process. It's not just having handouts and leaflets, and having seminars for public servants; it's actually people can see what the process is and see that there are consequences. And that's part of the educative process in itself. But it goes back to the beginning of the funnel as well. It's a huge deterrent for people to refer to the Integrity Commission. People are now referring cases to me. I've got eight in Infrastructure, two in Health, numerous cases in local government, because they're too frightened or distrustful, or otherwise not interested, partly because of these secrecy provisions. They know that they'll be totally and utterly hamstrung, and they can't go and have a beer with their mates on Friday night and talk about what they're doing because they're going to get into severe trouble. So, I think it's actually deterring the public from even coming forward.

Ms O'CONNOR - Also the amount of time that's taken.

Ms LEWIS - And the time and the cost, and not many people have got that, or the patience, and it can go on for years. You've got to be really tenacious and determined, and most people think, 'Well, at the end of the day, nothing's going to happen anyway, so why would I bother?' Quite frankly, I can see why they think that.

Mr GEORGE - In the papers that you wrote with the University of Sussex, which I think was called 'Tasmania: the Corruption Island?', you make the point that the most effective form of corruption is legal corruption; in other words, what you refer to as Elite Cartels. How would you approach the issue you've just raised, which is that if there is no definition of corruption,

how would you expect an integrity commission in Tasmania to investigate the sorts of issues to which you refer?

Ms LEWIS - Well, I think there needs to be legislative reform so that there is a definition of corruption and I think their powers need to be broadened. Perhaps that's beyond the scope of this particular meeting. One thing, Peter, Elite Cartel corruption is just one syndrome of legal corruption, but it's a huge problem. It's incredibly costly to Tasmania. We did some calculations of what we call a "corruption tax," and it's thousands of dollars per individual per year. All that is money that is not going to its intended policy outcomes. It's being siphoned off legally through deals being done with organisations. And one of the big problems now - and this is, again, a global problem, it's not just here - more and more government functions are being devolved to the private sector. That's a big problem in Tasmania because our legislation doesn't allow investigations into the private sector, as I'm aware. If you're handballing government functions to engineering companies or environmental consultants, or whoever, or health, whatever, companies, they can't be investigated. That's an enormous problem because that's where most of the corruption is occurring. So, whether it's secret or not doesn't really matter because it's not even going to get into the pipeline. Does that answer that question?

Mr GEORGE - I think it does. I'd still like to go back to the idea of, if there's no legal definition, what you would propose as a legal definition? And I would like to take it on. But if the Integrity Commission were to impose that, how would you like to see that dealt with in terms of an Integrity Commission investigation?

Ms LEWIS - Well, Sussex University have come up with what is now accepted as the UK's official definition of corruption, and it's a four-tier - it's in my paper, so I won't go through it now. But it's a four-tier type of definition and it starts with abuse. The process is actually built around that definition. So, was there abuse? Not 'is it legal?', but has there been abuse of public power? That's the first question. Did it cause harm? Based on the definition, you work through that as a process of investigation, really, and it filters out. Then you get to the point of should we hold these investigations in camera or should they be public? Well, that's really a second or tertiary question. You go through this filter first and then look at, 'Have we got enough evidence?'. Obviously, as we've been hearing, in preliminary stages of any investigations, you want to keep it secret. You don't want someone being vilified on the basis of early investigations.

John will talk about this later, but in New South Wales their default is really open unless there's a reason. Funnily enough, we're talking about Tasmania being small. Well, I have to say, the Northern Territory is a lot smaller than Tasmania and they don't have any problem with open investigations. The default there is open unless the commissioner decides otherwise. And it's not just about reputational harm. New South Wales won't open - I mean, ask John about this, but New South Wales won't open an investigation unless there's a fairly high probability of a finding of corruption. So, it's a judgemental call, but based on their vast experience. I think we should be looking at something like that. Instead of secrecy by default, we should have openness by default, and I think the public demands that. At the end of the day what we're trying to do here is reduce or curb corruption in Tasmania. We're not looking at defending the system. That's what the ultimate aim of this should be. And if we're not getting anywhere near touching the problem, we're not going to be able to reduce it. It's not here for the process; it's here to actually achieve outcomes. Does that help?

Mr GEORGE - Yes.

Ms O'CONNOR - We have an amendment bill [the Integrity Commission Amendment Bill 2026] that's making its way through parliament that's finally going to give effect to a whole range of recommendations by former Justice William Cox, 10 years after he handed down his report. This has something to do with the fact that we've got a minority parliament, but it does provide some strengthening of the Integrity Commission's capacity. And now we're looking at these confidentiality provisions. In your view, what would it take to make the Integrity Commission strong and effective as an anti-corruption body? I'm not sure if you know what's in the bill that's before parliament, but there are some good recommendations in there. What do you think it needs?

Ms LEWIS - If I had a wish list, I'd turn it into an independent ICAC, which is probably beyond the extent of what you're looking at, at the moment. A very, very good analysis, which is actually linked, that Dr Ng Yee-Fui has done through Australia and New Zealand School of Government (ANZSOG), she's done a review of all integrity commissions and bodies in Australia and she's come out with the same sorts of conclusions. She interviewed 56 people, only three of whom argued against removing secrecy, one of whom was David Bartlett who was, of course, instrumental in designing the legislation, so. But you know, 53 out of 56 actually said we have too much secrecy, and that's across the board in Australia. So, I think it's time for a step back and look at what we were doing. I've said this before in my - we have a lot to learn from New South Wales. New South Wales is built on Singapore and Hong Kong's ICAC, which is sort of the gold standard globally. New South Wales is held as the role model here and they can help us a lot. They've offered to help. They've actually just helped the Northern Territory because they had some internal issues with their integrity commission there. They've actually reformulated things, and New South Wales was out there. And they help Pacific nations, too. I think maybe it's got to be a staged approach, but unless we've got full independence and unless there's a budget - because without an adequate budget, it's useless.

Ms O'CONNOR - But you'd also have to deal with those right-to-silence and confidentiality provisions as well.

Ms LEWIS - Yes, but to me that's sort of stage 2 - well, it should be stage 2, but perhaps it's like something you've got to deal with first. But this is about curbing the costs of corruption, curbing the impact on Tasmanians. It's huge, particularly women and children. One of the big indicators of corruption globally is, are your education and health budgets inadequate? That's an indicator of corruption.

Ms O'CONNOR - And the answer here, of course, is yes.

Ms LEWIS - And the answer is, of course, yes. And that impacts on every citizen. You go and ask all those people in the hospital sitting in the queue in ER or waiting for an ambulance what they think. That's where the money's not going because it's being siphoned off. And we can't lose sight of the fact that that's what we're meant to be trying to do; we're meant to be reducing the cost of corruption. Now, not every dollar lost - and it's over $1 billion a year, and that's a huge amount. Globally, 5 per cent of GDP is the general average and in the construction sector, up to 40 per cent globally of your construction budget can be siphoned off. Now, how would we know here? Because another thing that came out of that conference last week was when the CEO was speaking, she was saying education will improve things. My immediate question was: how would we know? There hasn't been a survey of corruption conducted by our

integrity body since 2017. So, our data - there's no benchmark. How would we know if we're improving because we don't even know what the starting point is, let alone how to measure it?

I'm in a group, Measuring Corruption, which is run out of Osaka University, with about 20 professionals. It meets every month, and I've been in it for three years. So, there's a whole heap of knowledge out there about how to do this stuff, and we are not tapping into it. And that's part of the education process, too. You know, Tasmania is a long way behind, and we need to lift our game and educate our way out of that. And part of that will be coming - not much will come from the public, probably, at first, but it's got to come from this Committee. Sorry, we're running out of time already.

Ms WEBB - No, it's all right. It's all quite interesting and you've touched on a lot of areas that I may have asked questions about, and we probably don't need to revisit them. Thank you for your submission. It was really interesting reading. I think it largely goes way beyond the confines of our particular inquiry that we're undertaking right now, but it's all very interesting food for thought, and it's an interesting context for us to consider, I think. That particularly fundamental question of whether we have an integrity entity as we have now or whether we have an anti-corruption commission is a very key one, although not within the scope of this particular inquiry.

While our *Integrity Commission Act* doesn't define corruption because it doesn't deal with corruption - it deals with addressing misconduct, our Criminal Code has an offence of corruption, for example, which the police can investigate. But that's a very limited, on my reading, and very old-fashioned view of corruption, which is really just the 'money in brown bags' type of corruption. So, we are very limited in how we might investigate and understand, and deal with corruption in that sense that you're talking about broadly, I would welcome further discussions about this.

For the purposes of today, though, and the inquiry here, the things I was interested in - some of the things I was particularly interested in from your submission were when you spoke about things that might improve transparency and accountability of process, which I thought were really valuable. You laid out a number of opportunities there. One was around automated procurement sanitation. Did you want to speak a little bit more about that?

Ms LEWIS - Well, it's interesting. I think transparency is a huge issue, and I think it might shock a lot of people to learn that our systems are worse or less transparent than those of Tunisia, for example. And you may well laugh, but this is true.

Mr GEORGE - Only out of shock.

Ms LEWIS - So, I think, yes, there's a lot to be done around transparency, and I think it should really start with our integrity body. I believe in transparency by default, and why not, unless there's really something to hide? Now, I understand there's a reputational factor, but I think that, really, that has been answered by Yee-Fui's research. She's looked at this in a hugely funded report, and they've come out with basically this conclusion that secrecy should not be the default. Yes, you have to protect people's reputations, but you can't just use that as a smokescreen and avoid doing anything, basically. And that goes back to public trust, because the public just basically know that there's not going to be an outcome. Does that answer that, Meg, or do you want a bit more detail on that?

Ms WEBB - That's a fine amount of detail. I also appreciated that you pointed to the opportunity to implement the recommendations of the [Adjunct Associate Professor Rick] Snell and [Professor Tim] McCormack RTI review that was done. There has been a demonstrated reluctance, I think, from Government thus far to do that.

Ms O'CONNOR - Silence.

Ms WEBB - Yes. And I would agree with you that that's a particularly important way to improve transparency around that. Were there any elements of that that you wanted to point to in particular while we were discussing it? It may not be something you've got at the front of your mind now, but I just wondered. Or did you want to speak about the importance of that?

Ms LEWIS - Well, I think it's fundamental. Having been involved in a number of RTIs and FOIs, I can only contrast them: that the federal FOIs are far more transparent than the Tasmanian RTIs. The corollary of that actually goes back to whistleblower protection within the public service, including of the people who are preparing the RTIs, funnily enough. There are people in there who - and a lot of public servants, most of them, act with integrity and they want this information to come out because they know it's wrong. They'll sit in there redacting stuff that they know should actually be in the public domain, and we err too much on the side of non-transparency.

To go back to what I was I was talking about, the automated systems, these are now being implemented around the world so that you can't hide documents. You can't conceal stuff in PDFs that can't be machine-readable. There's all sorts of tactics. Like, I wanted to get into some Treasury documents, and you have to do it manually. Now we've got AI, but even AI has trouble getting into these because they can put up smokescreens to deter agents getting in and looking. So, I think we've got to move away from that and move towards a more open form of, you know, Government in general, but that's broader than this. But I think the guiding principle is the same, in a way - to move towards more openness, because if you're not corrupt, what are you hiding, you know?

Ms HADDAD - I know that we're limited on time, but I wondered, Robyn, if you cared to expand on your experience researching other models around the country and the world as well in terms of - and it's question that you heard me ask of a previous witness earlier this morning - how much of particularly the confidentiality provisions around the work that the Integrity Commission does - how much of the way that adds to the complexity and time delays and so on is down to the construction of the legislation versus the Integrity Commission's interpretation of their legislation that they operate under? Also the cultural practice that's evolved over the time they've existed in terms of that automatic confidentiality and automatic secrecy of their work?

Ms LEWIS - Right, yes. I've done a review now of at least five - probably more - jurisdictions now, and I think that one big element that's coming out - and it's related to public trust - is timeliness. There should be, I believe, mandated time limits on these things. And I think, really, what we're seeing here - look, I don't know; I don't know the CEO of the integrity authority here, but I think it's interpretation, a lot of it here. But there's no doubt that other states and other jurisdictions are moving to more open, more mandated timeliness. Does that help at all?

Ms HADDAD - It does. I guess timeliness is one of the elements, but I think something that I've reflected on from your submissions and what you've said this morning as well is that automatic secrecy almost adds to the public perception that there is something to hide, and automatic transparency versus automatic confidentiality can influence that kind of perception of what is going on.

How much change do you think would be needed to our current Act to allow for that automatic openness, rather than automatic confidentiality, versus the commission has simply practice - in their kind of cultural practice over the years that they've existed - everything that gets served on a party is automatically confidential? How much of that is a deficiency in the legislation that we could address, first as a Parliament, versus cultural practice and expectations of how they do their work?

Ms LEWIS - Well, look, I'm not a lawyer, but I would think that this would be something this Committee could look at is to attempt to improve the legislation to make openness the default rather than secrecy being the default. So, I mean, that's going to be up to people such as yourselves to recommend on that. But it's a cultural problem as well and, you know, it's served the system very well to remain secret, and that's one reason why there is so much corruption here, quite frankly. And I think it's time for that to stop.

Ms O'CONNOR - Thank you, Ms Lewis. You mentioned earlier some metrics around the potential for corruption in construction contracts at about $0.40 in the dollar.

Ms LEWIS – Forty percent, yes. It's huge.

Ms O'CONNOR - We've got a massive construction project about to start down at Macquarie Point here - a more than $1 billion construction project funded out of public funds. Where are the potentials for corrupt conduct or the misapplication of public funds? Can you just explain, in some really simple terms, what that looks like?

Ms LEWIS - What it looks like? Well, I won't refer to that specific one, but in general, the bigger the spend, the bigger the opportunities there are for corruption. So, over-inflating tenders is one particularly obvious area. 'Project slicing' is another one, and that happens in Health as well. It's when projects are cut up into 'salami-slicing' projects, cut up into small pieces so that they fall under investigation or other reporting thresholds. That's another. But just in general, this whole lack of transparency about, you know, what are we buying? Whether it's a bridge or a road or a stadium, or whatever, and benchmarking. For example, I'd like to just point out the Bridgewater Bridge - there was great claims about that coming in under budget. Well, there's a thing called the Rawlinsons [Construction Cost] Guide, which is the Australia-wide standard for construction costs. Now, they give a 10 per cent loading for Tasmania just because transport and what have you. That bridge was five times the Australian standard cost. Even taking on the fact that there's difficulties with the River Derwent and bits of the end assembly, let's say it was four times the cost - and I don't think anybody's asked why and had a breakdown. It's all very well to say comes in on budget, but how is the budget actually put together? I'm not saying there was any impropriety there, but people should be looking at this, and that's when you should be building transparency in at the beginning so that the public can look. Look at Tunisia, every single contract, it's all there out for the public to look at. I'm not saying our public are going to be that interested, but someone will be.

Ms WEBB - The questions should be asked.

Ms LEWIS - And the questions should be asked and they should be answered. We've got benchmarks, we should be using them.

Ms WEBB - We do have public works committees and public accounts committees and things like that that operate with Parliament, but yes, we should always be looking to see what more we can do.

Ms LEWIS - But the mechanisms of transparency, I think, are really here.

Ms O'CONNOR - The foundational.

Ms LEWIS - The foundation, yeah.

CHAIR - Thank you very much, Robyn, for coming in. What you've said to us today is protected by parliamentary privilege. Obviously, once you leave the table, you need to be aware that privilege does not attach to the comments you make to anyone, including the media, even if you're just repeating what you've said to us. Do you understand that?

Ms LEWIS - Yes, I do.

The witness withdrew.

The Committee suspended at 11.02 a.m.

The Committee resumed at 11.05 a.m.

NSW Independent Commission Against Corruption

CHAIR - Thank you very much for appearing at today's hearing of the Joint Standing Committee on Integrity. If you could please state your name and the capacity in which you're appearing before the Committee.

Mr HATZISTERGOS - My name is John Hatzistergos. I'm the Chief Commissioner of the Independent Commission against Corruption in New South Wales.

CHAIR - Thank you. Can I confirm that you've received and read the guide sent to you by the Committee Secretary?

Mr HATZISTERGOS - I have.

CHAIR - Thank you. This hearing's covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in the court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This hearing is public. The public and media may be present. Should you wish aspects of your evidence to be heard in private, you must make this request to the Committee at the time.

I'll just quickly introduce the members of our Committee. We have the honourable Meg Webb, the member for Nelson. We have Peter George, member for Franklin, the honourable Cassy O'Connor, member for Hobart, myself, Rosemary Armitage, member for Launceston. We have Ella Haddad, member for Clark. The member for Bass, Michael Ferguson is an apology at the moment, and we have secretariat, we have Mary and Fiona helping us, and we have Roey on Hansard.

As you're appearing from interstate, we don't have to swear you in, but parliamentary privilege, as I said, does extend to you. Do you wish to make a short opening statement before we commence with questions?

Mr HATZISTERGOS - No, not at this time.

CHAIR - Thank you. For members who, Ms O'Connor?

Ms O'CONNOR - Yep, I'm happy to start off. Thank you, Mr Hatzistergos, for coming along again to talk to us today, and thank you for your submission. Within the, what we're looking at here today, as you'd be aware, is how the confidentiality provisions in our Integrity Commission's legislation might be strengthened, and how there might be potentially more capacity for open justice in the operation of our Integrity Commission. It's been put to us that you have at one end of the scale the New South Wales ICAC, the default of which is that there are public hearings, that justice is seen to be done, and here where there's never been a public hearing in 17 years of the Integrity Commission's operations.

How important do you think it is for an integrity and anti-corruption body to be able to - for its investigations to the greatest extent possible to be matters that can be public?

Mr HATZISTERGOS - Well, not all our investigations are public. I need to make that point. We have a process by which we make those determinations, and to give you some concept, contrary to popular conception that we're more prone to public inquiries, we get about 3500 referrals a year and we do about two or three public inquiries a year. So, it's a very small number of public inquiries. But they're obviously big cases, they're important cases, and the discretion that we have to go public is fundamental to our ability, not only to hold people to account and to be open and transparent about our processes in coming to those findings and conclusions, but also in terms of making the case for change, which we think is very important.

So, the selection of cases that we decide to investigate as a proportion of the reports that come into the commission is a relatively small number. Of those that we do investigate, the numbers that do go to public inquiry are again an even smaller number. So, it's not something that is as frequent as some commentators might think; it's very infrequent, but it is extremely important. If you just look at the cases that we do in public, they are important, high-profile cases which involve serious and/or systemic conduct.

Ms O'CONNOR - Thank you. So, I note in your submission you refer to Section 12 of the ICAC Act, which requires the commission to protect the public interest and prevent breaches of public trust, and makes those of paramount concern. We have nothing like that in our *Integrity Commission Act*. Do you have any sort of specific observations of the landscape for misconduct and corruption here in Tasmania relative to other Australian states and territories? We have received some evidence to indicate it's a very serious problem here.

Mr HATZISTERGOS - I don't, not in relation to Tasmania. I can only comment on the situation in our jurisdiction. Obviously, we see large amounts of reports that come in, some of them are at the very low level. Our threshold for reporting is one that obliges, particularly principal officers of organisations, to report any corrupt conduct. It doesn't have to be serious or systemic, it simply has to be corrupt under our Act [*the Independent Commission Against Corruption Act 1988* (NSW)]; if there are reasonable grounds it has to be reported. We will make the assessments in relation to whether or not that matter should go forward and, if it does go forward, how it should go forward.

In many of the cases we will allow the agency to investigate and look at the matter itself. In some circumstances, we'll make a decision that the matter will be referred for investigation by an agency and we will oversee the investigation in the sense that we will require an investigation plan. We'll put a timetable for an investigation report to be prepared and we will then form a view, once we've received the investigation report, as to whether we accept it or not. It's possible that we would not accept it, and we would decide to have launched our own investigation - that has occurred. In other circumstances, we've had a situation where we've decided to investigate, we've advanced it to a certain point, we don't think that it's appropriate for a public inquiry. We will send it back to the agency with such information as we have gathered, which we think will assist the agency to be able to undertake its own investigation.

If you read section 12A of our Act, you'll see that it requires us to focus our energies on serious and systemic corrupt conduct. That's a view that we take, particularly at the point that we go to a public inquiry, but it also requires us to recognise the role of agencies in developing their own culture of corruption resistance and being able to fight corruption and investigate corruption themselves. So, we have to work with agencies; it's a collaborative effort. I keep saying to people that the integrity landscape is not the commission alone; it's all of us working together. Our role includes working with agencies to ensure that they become corruption

resistant and that includes them investigating as appropriate. In some cases, they may not be able to do that, they don't have the range of powers that we have. In those circumstances, we might take it up, advance it to a certain point, then give it to them to take over.

Ms O'CONNOR - Thank you. Again, there's nothing like section 12A of the ICAC Act in the *Integrity Commission Act*, and indeed the Integrity Commission understands its role to be more weighted towards education and prevention and it trying to prevent misconduct. How important is it that any integrity body has very strong powers to investigate misconduct and corruption in public office? What, in your view, should be the weighting between that education and preventive role of the integrity body, but also that investigative and corruption prevention role?

Mr HATZISTERGOS - I don't see them as competitors; I see them as being two roads to the same direction. Our investigative work informs our education and prevention work. We do not do these investigations and just churn out these reports and release them like the tablets of Moses, expecting agencies to just abide by whatever the lessons are. We don't expect people to read these reports and somehow to - how can I put it? - absorb the lessons of those reports through some process of osmosis. We used those reports as a vehicle to be able to go out and inform public officials about what has happened, how it happened, how it could have been prevented, where the failings and the lessons are.

To demonstrate to them - I keep saying to them, my primary objective is not to bring you down, it's to lift you up, but I can only do that if I've got the practical examples and the practical circumstances to be able to demonstrate to them other circumstances where people have fallen short. And we won't turn a blind eye to those cases that come across our horizons where serious and/or systemic adoption arises or any corrupt conduct, but we will triage it and we will deal with it in an appropriate fashion. We've had a lot of experience doing so and, in my circumstances, I've come to the commission after a lot of other people have been able to develop the commission to a certain stage of maturity, which ensures that when we do go to those public inquiries, we're able to manage a lot of the risks that people are concerned about and they're understandable risks in having a public inquiry. There are risks to reputation, there's political risk, there's health and safety, there's a whole range of different risks, but we believe that with the benefit of the experience that we have had in conducting these inquiries that we can manage those risks.

Ms WEBB - Thanks so much for the submission. It's really useful. I particularly appreciated Part 2 of the submission made from ICAC, which is the comparison of relevant provisions from our Act here and your Act there in New South Wales. When I was reading through, it struck me that the approach that's available there to ICAC is quite a nuanced one in terms of confidentiality and how that's applied at various stages along the pathway of an investigation, but there's accountability around the decisions made about how and when to apply that confidentiality. Would that be an accurate way to interpret that?

Mr HATZISTERGOS - Yes, our accountability and our transparency are fundamental to us as an agency. We do not take lightly the extensive powers that are granted to us. We embrace accountability and we embrace transparency.

Now, obviously, when you have an agency such as an integrity commission of the New South Wales ICAC, which can execute search warrants, which can issue notices, which can have coercive hearings, you have to exercise those powers responsibly and transparently. We

have a memorandum of understanding with our inspector. Any complaints that we receive, we communicate those to the inspector. If we're aware of any complaints that are made or criticisms in relation to how we have exercised our powers, we refer those to the inspector proactively.

We account to our parliamentary committee [Committee on the Independent Commission Against Corruption] for the exercise of our powers. We put in our annual report more details than we are required to put under the annual reports Act. We do that deliberately. The Committee has given valuable feedback to us about how we can expand our accountability and we've embraced it. I'll give you some examples. They suggested that the Section 31 report that we have, which is the determination made by the commissioners to go public, before we announce it, it should go to the inspector so she can read the report and pass any comments to the commissioners in relation to the decision to go and have a public inquiry. That was a recommendation that came from our parliamentary committee. We embraced it and we do it. That's one example. There are other examples. A long time ago the parliamentary committee had asked that we explain in our reports the decision to go public and the basis upon which we decided that this was a distinguishing case that needed to be advanced in public and we do that in our report.

Ms WEBB - Those were the elements I was particularly interested in where you need to be explaining either where confidentiality is being applied or in fact deciding not to apply confidentiality that that accountability is there for you. When you look to our legislation here in comparison, do you see that in the way it is currently constructed, there is nuance in terms of it's available to our Integrity Commission to apply confidentiality in a nuanced or tailored way, given circumstances, or do you just see it as more black and white?

Mr HATZISTERGOS - It's not black and white; it is nuanced.

Ms WEBB - Okay.

Mr HATZISTERGOS - Even if we go to a public inquiry, we can make adjustments, we can go into private sessions during the public inquiry, we can switch off the live streaming, we can make adjustments. We can make non-publication orders in relation to parts of evidence which are given, which may be untested, which may create reputational risk.

So, there's various adjustments that can be made to protect reputations and health and welfare where those circumstances are appropriate. And it is tailored to the circumstances of the particular case. Sometimes, we will get requests that come into us for proceedings to be made the subject of non-publication orders or private hearings. We consider those. We will give reasons where necessary to the parties for that. We try to provide procedural fairness. We have an obligation to do that as best we can to ensure that all participants in a public inquiry are able to ensure that the issues that they want advanced in support of their particular perspectives are able to be accommodated in the cloak of the public inquiry. So yes, we do have a process which is not one-size-fits-all, but one which does have a range of adjustments.

Ms WEBB - Yes, that's what I was observing about what was presented about ICAC, but what I was asking you to reflect on, if in fact you've looked at it and turned your mind to it, is the degree to which the Tasmanian *Integrity Commission Act* provides there to be some nuance in the way our Integrity Commission can decide or not decide to apply confidentiality at different stages along its investigations. When you've looked at the two side by side, as you've

sort of presented it in your submission, do you have any reflections on, I guess where I'm getting to is: is it that our Act doesn't provide for a nuanced approach and an accountable approach in that sense, or is it that our Integrity Commission are deciding to interpret what would be and could be a nuanced approach, but is deciding to interpret it in a very black-and-white way and therefore they're just blanketly making things confidential?

Ms O'CONNOR - Everything.

Mr HATZISTERGOS - It's difficult for me to form a judgment of that kind in the context of your Integrity Commission. The legislation obviously speaks for itself. It may not have the same features as us, and I'm not familiar enough with the specific issues which have come across the Integrity Commission in Tasmania to be able to identify as to whether or not the cases that they had to examine were appropriate.

I was asked a similar question with the National Anti-Corruption Commission, which I have a bit more knowledge about, and I gave some evidence to their parliamentary inquiry about the circumstances of that commission, and to give you an example, when I looked at the matters that the National Anti-Corruption Commission had, I didn't think that any of them - with the possible exception of one - exhibited features which, were they to have occurred in New South Wales under our legislation, I would have gone public about. The public inquiries really have to be reserved for, I think, those cases which are serious and/or systemic, where you've explored the issues in private inquiries and you've reached a certain level of satisfaction that there are genuine issues to be raised, a case to be made for change, and a need to be able to report to Parliament to advance those, and in our case to hold individuals accountable.

CHAIR - Thank you. So, we have Ms Haddad, then we'll have Mr George and then Ms O'Connor.

Ms HADDAD - Thanks, Mr Hatzistergos. I've got a question following up from what Ms Webb just asked about and another one that came out of this morning.

There's a case here that we heard about earlier this morning from a member of parliament's barrister who's revealed some information around what happens - so in a nutshell, it's before the Supreme Court now but this member of parliament has had to initiate her own proceedings in the Supreme Court concerning an Integrity Commission matter. That, as Ms Webb outlined, everything that they serve on anybody they serve with a confidentiality notice that prevents that person from speaking about the existence of that notice or the contents of that notice unless they've got reasonable excuse to do so.

That member of parliament obviously was asked questions about that in the public and in the parliament and didn't answer them, which has led to her being accused, correctly, of having misled parliament about whether or not the Supreme Court proceedings existed and has now resigned her position as a Minister of the Crown.

I just wondered, reflecting on what you said, the matters that go public in your jurisdiction where there's systemic, serious misconduct or corruption that needs to be used as an example, I'm wondering whether you have any reflections on, perhaps, the opposite of that scenario, where this member of parliament wasn't able to answer questions because the Integrity Commission treats everything that they serve on parties as confidential, which has in effect led

to her resigning her position as minister and misleading the parliament because of confidentiality provisions that were placed on her by the Commission?

Mr HATZISTERGOS - Look, I can't comment on the case in Tasmania. What I can say to you is this -

Ms HADDAD - That's alright. Just wondered if you had a view.

Mr HATZISTERGOS - What I can say to you is this: our Act preserves parliamentary privilege so that nothing in our Act can be seen as in any way curtailing the rights of either House of Parliament to conduct its affairs.

Ms HADDAD - In that scenario, then, that member would have been able to answer that question in parliament?

Mr HATZISTERGOS - Well, I can't answer that because I don't know the intricacies of your situation, and there may be other ways that that matter could have been handled. We have similar confidentiality provisions, and we have had circumstances where people have asked us what they can do or could they communicate information in circumstances where they're asked and to whom they can communicate. There may be times where we would respond to that in a way that would enable that person to discharge their responsibilities, but not at the same time prejudice the investigation.

Now, that is a way that the matter can be dealt with. I can't address the situation that arose with your Minister and the obligations under the Act, and I'm not familiar with whether you have a similar provision in your Act to the section that I referred to in our Act, which preserves the rights of parliament.

Ms HADDAD - Thank you. Can I just ask a different question that's come out of today's hearings, that our Integrity Commission has quite limited jurisdiction to look really only at misconduct in public agencies. But there is an increasing public office - well, in the public sector - there's an increasing tendency of Governments to outsource Government service delivery to the private sector, or Government contracts to the private sector and, other than looking at the conditions of that contract inside the agency that's signed, the delivery or the performance of that contract then sits outside the jurisdiction of the Commission to look at in any further detail, if there is something to look at in further detail. I just wondered if that kind of Government outsourcing sits inside or outside your jurisdiction in New South Wales, and if you had any views about how that kind of government outsourcing should be looked at, potentially by anti-corruption commissions?

Mr HATZISTERGOS - We addressed that issue in Operation Hector, which was an investigation which included Transport for New South Wales and agencies under the Transport portfolio, but also a major tier-1 contract, the head contractor, which was Downer EDI, who then used a number of subcontractor agencies. In that case, we identified a range of corrupt acts that permeated a council, the transport agencies and also certain individuals involved in Downer. We, however, were limited with subcontractors in making findings of corrupt conduct. Now, this is an issue which has arisen - I understand Victoria has just passed a bill which has enabled its agency, IBAC, to be able to 'follow the dollar', so to speak, and to look at public funds more broadly. We have been asking for that reform for a good part of two years now. It's been endorsed by our parliamentary committee. I've raised it repeatedly with ministers

in the New South Wales Government. I thought that we were going to get legislation, but we've only got one more week of parliament, so I think the likelihood of that happening is remote to non-existent, at least this side of the election. However, it is something that we think is very important. As I said, we're often seen as being extremely powerful, but in one respect, Victoria's now getting a jurisdiction that we, at this stage, do not have and which we have sought for some time.

Ms HADDAD - Thank you so much.

Mr GEORGE - Chief Commissioner, the wheels of justice grind exceedingly slow, unfortunately, as you describe. Look, I was wondering if I could just -

Mr HATZISTERGOS - I was describing the wheels of Parliament and government.

Ms HADDAD - Even slower.

Mr GEORGE - Even slower, yes. Just to broaden it out a bit, if I may, for a moment. Section 8, I think, of your Act gives the definition of corruption. Do you find that definition is fit for purpose?

Mr HATZISTERGOS - Yes, I do. Don't forget there's a limit on it, because we also have section 9, which limits the corrupt conduct to breaches of the code, criminal offences, reasonable grounds for dismissal or, in the case of members of parliament, a breach of the applicable code. And we also have the other sections of section 9 which, in relation to members of parliament, if it doesn't fall under 9(1), it can also apply in circumstances where a person brings an office into disrepute. I think that's adequate.

An area where some people have suggested that our jurisdiction falls short is in relation to candidates at elections and promises they make, particularly in relation to alleged pork-barrelling at election time. That's not a jurisdiction that resides with us or that we've sought. We feel that those sorts of issues are more for the Electoral Commissioner than for us. We deal with public officials, obviously. We deal with public sector agencies. We don't deal with candidates, and we don't deal with political parties.

Mr GEORGE - Right. I raise it because Robyn Lewis, who gave evidence before us this morning and has written extensively on corruption, has suggested that at least one definition of corruption, particularly when - as she's written in a number of papers - there are many forms of corruption which actually don't necessarily break any laws, is an abuse of public power for private gain. Does that sound to you like a pretty good definition of what corruption is, as an overarching definition?

Mr HATZISTERGOS - Well, it depends what you include as 'private gain'; whether it's just for the individual or whether it's for persons who are connected to the individual, like family and friends. The definition that we have includes breaches of trust; partial or dishonest conduct; also release of confidential information. Not all of these things may involve private gain for the individual who is involved. Some of it may involve gain for third parties; prospective employers, if you're seeking to ingratiate yourself for the purposes of securing employment; circumstances in which you want to advantage a friend or a relative - matters of that kind. So, I don't quite understand where the private gain starts and finishes.

Mr GEORGE - Right. I'm not suggesting that she says that is the only definition, but thank you for that.

Ms O'CONNOR - In fact, Robyn Lewis's work covers a new lexicon and a number of definitions of different syndromes of corruption - all of which, arguably, Tasmania is afflicted with. But I wanted to ask you, Mr Hazistergos, Chief Commissioner, about section 92 of our Act, which is the right to silence provision. So, along with our terms of reference that ask us to exam how the confidentiality provisions of the *Integrity Commission Act* may be working or not, there's also this right to silence provision, which I don't believe you have in your *ICAC Act* in New South Wales, and it effectively allows someone who's the subject of an inquiry to refuse to answer any question or provide any information or explanation or produce any record, material or thing, and it sort of stops there under our Act. A person can, effectively, prevent an investigation proceeding. Have you seen any other similar clauses with other integrity bodies? What's your view on having a right to silence provision like that for an investigatory body like an integrity commission?

Mr HATZISTERGOS - Look, I think you need to go back to why the model that we commenced in New South Wales in 1989 - when our legislation was passed in 1988, when we first came into existence - was as it is. The reality is that corruption, by its nature, is generally secretive. It's extremely difficult to detect. It involves, in many cases, consensual conduct on behalf of not just one person, but multiple people.

In the '80s - I recall it very well because I was a law student and a young lawyer - there was a serious breakdown of public trust in New South Wales. We saw a situation where we had a chief magistrate go to jail, we had a High Court judge on trial, we had a minister of the Crown go to prison, we had a police royal commission, we had a district court judge go on trial, we had a [deputy] police commissioner before a police tribunal. We had serious breakdown in public trust. The outcome of that was to lead to a number of changes. We introduced a judicial commission to look at judicial misconduct. We introduced, for the first time in Australia, an Independent Office of the Director of Public Prosecutions. We had a separate criminal registry, so the registry was no longer controlled by the Attorney-General's department. We then subsequently had the Independent Commission Against Corruption. The view that was taken at that time was that, because of the nature of corruption, that it was necessary to have extraordinary powers to be able to ascertain the truth.

In our Act, prosecution is made a secondary function; it's not a primary function. Now, we will seek to get admissible evidence wherever we can, but in many instances it's not possible to break that wall of silence. Therefore, we have this process whereby we can have these public inquiries where we can force people to account.

Now, the right to silence does not exist in our Act if we engage in compulsory examinations or public inquiries where we compel people to answer questions. What does occur, however, is that we can make a declaration under section 38 of our Act. The effect of that declaration is that that evidence can't be used against the individual in civil or criminal proceedings, except in two circumstances: one in relation to offences under the *ICAC Act* that includes giving false or misleading evidence, and the second one is in relation to public officials for disciplinary offences, in the event that the commission makes a finding of corrupt conduct. In those circumstances, that evidence can be used but outside of that it can't be used. So, the aim is to get to the truth, to find out what happened and to bring about a level of accountability - and it may not be criminal liability, it may be different types of

accountability - and to provide an opportunity for change, whether it's legislative change or cultural change, in the particular agency. That's why the model has been chosen.

I am aware that in some other countries, very effective anti-corruption agencies don't have that model. If you look at Singapore or Hong Kong - very effective anti-corruption agencies in their own right, but they don't have that model. But their criminal law is very different to our model. Our criminal law has the right to silence. Many of the offences that exist in other jurisdictions that have those sorts of bodies have what might be called as offences which effectively place an onus on an accused person to account or to explain in the criminal law that they presume an intention or, for example, you're living beyond your means, you've got to explain how you acquired your assets - things of that nature. We don't have that in our law. And I think there would be some resistance to doing that, because our culture is different in our criminal law.

That's the reason why these commissions have been established. That's as best as I can explain it. I hope that's of assistance to you.

Ms O'CONNOR - Yeah, it is. Well, I guess just tying it to the confidentiality provisions in a later section of the Act, how far - for the Integrity Commission here to be effective, to restore public trust, which has diminished because of the way it's operated. How far do you think confidentiality provisions in its Act should be able to go, given that at the moment everything that it does, every inquiry and investigation it undertakes, is effectively confidential behind closed doors, secret and we very rarely ever know the outcome of those investigations. How do you resolve that tension on confidentiality.

Mr HATZISTERGOS - Look, we use our processes robustly but fairly. We conduct compulsory examinations with a view to finding out what happened. We gather evidence through our various powers, and we synthesise that in making a decision as to where the public interest lies, whether it's in favour of having a public inquiry or not. We have to take into account the private interest and the reputational issues that might be involved, and we adjust any public inquiry to take account of that. Now, sometimes we do get circumstances in a public inquiry where a person or witness may come up and may make claims which are untested and potentially defamatory of individuals, and in those circumstances we will make appropriate directions to provide a level of protection, particularly through non-publication orders. We don't have a lot of it. It does happen from time to time

I think a commission which operates entirely in secret in a way that is unaccountable, in a sense undermines its very existence. I don't support it. I don't support just having public enquiries for the sake of it, for just demonstrating activity. I think a lot of thought has to go into them. We get criticism from time to time about those. I've tried to explain to you the robust process by which we go to make those sorts of decisions.

But in the end, we have to make a judgement on those and we try and make that through our model of having three commissioners, with a majority of commissioners having to be in agreement, and going beyond that by asking the inspector to oversee our work. Now, I'm pleased that in this state generally, the Commission has a high level of bipartisan support, and I'm grateful for that. I think that's fundamental.

I think it would be wrong to see the Commission as the sole repository of the integrity landscape of the state. It's got to be a joint effort on behalf of all stakeholders, and that includes

members of parliament and includes councils and other public officials. We have to all work at this together, and I think the adversarialism that I see from time to time is regrettable.

One of the ways of being able to address that is to be transparent and accountable to the maximum extent you can be. Now, obviously some things have to be done in private, but there's a balance to be struck, and that balance has to be struck in accordance with the values of the organisation. In our case, it's to be fair, to be accountable, to be tenacious, but to also act with integrity.

Ms O'CONNOR - And in the public interest.

Mr HATZISTERGOS - Always in the public interest.

CHAIR - Thank you.

Ms WEBB - This follows on quite well from that actually. The thing I'm interested to talk to you about is your accountability and, in particular, the feature which you've mentioned now a number of times and it's mentioned in your submission around the Parliamentary Inspector and the role that that plays in delivering very visible accountability around the actions of the ICAC. And you described earlier in your evidence that it's not just a mechanism which can follow up on complaints and investigate matters that are raised of concern about the ICAC, but there's also, you've put in place some proactive engagement with the inspector too at certain stages of your processes or investigations for their oversight and involvement, which I thought was really interesting. And you would be aware we don't have an inspector role here in Tasmania for our integrity entity, which I think potentially does us a disservice as a parliament in having that full confidence that there would be a mechanism available to help deliver, quite openly, an accountability measure for our integrity entity. Do you have a comment on the appropriateness of there being no mechanism of that kind available to us here?

Mr HATZISTERGOS - Look, I don't have a view to share with you in relation to your situation in Tasmania. It's a smaller jurisdiction, obviously, although there are other small jurisdictions in Australia that has them.

Ms WEBB - NT has an inspector.

Mr HATZISTERGOS - Yes. But I do commend to you, when I was a Member of Parliament - that was a long, long time ago - I was a Member of the Government and I was the Chair of the parliamentary joint committee and we didn't have an Inspector at the time that I was the Chair of the joint parliamentary committee. I put up a report to the Government saying that there should be one. Now, that was not embraced by the Premier of the day. There was a subsequent report that was done in relation to the ICAC and its need for an inspector by Bruce McClintock, and he picked up on that recommendation and it became law, and that's when we got it. So, I've always supported it. I continue to support it. I think it's very, very important, and I also believe in the joint parliamentary committee. I can give you work - I've given you some examples of where the parliamentary joint committee can make a difference - I can give you more because I think it also has a role, particularly in legislative changes.

I mentioned to you before that we asked for a change to section 8(2A) to give us a jurisdiction in relation to subcontractors, which we don't feel that we have and 'follow the

money' powers. But we had a somewhat contentious debate recently in New South Wales about surveillance laws and the capacity of ICAC to be able to access unlawful recordings made contrary to the *Surveillance Act*. That was a proposal that arose consequent to an investigation that we were undertaking, but the importance of it is that it went to the parliamentary committee for their consideration. I addressed the committee on a number of occasions about the need for that law; I was able to draw on a number of other jurisdictions which had that power. The matter was, we were given a regulatory permit to use that power for a specified period of time; we sought that power on an ongoing basis. The legislation was debated in parliament - it's fair to say that there were some people that were extremely cautious and hostile to us having that power without elaborate checks and balances to some extent, and I argued against those because it felt that they would actually be unachievable, we wouldn't be able to access the material at all. But in any event, the parliament came to a compromise and we got the power that we were seeking.

I looked at the debate, and I reflected on the committee's deliberations as to the issues that they were concerned about in the use of those powers. I've undertaken, and I've done this in our annual report every year, to document every case where we use those powers to explain in our reports the value that that provided, and to put in place a protocol, which is public on our website, about how we would use those powers, the checks and balances: who would have access to the material; if we were going to use it in the public inquiry; why we're going to use it, bearing in mind that that information would go to the inspector as well. So, in other words, I picked up the suggestions that the legislators had raised. I put it in place in a couple of processes: one in the annual report by describing what had happened, secondly in the report that we document things, and thirdly, in our decision to make a public inquiry, which would go to the inspector as to the use that that material can have.

Now, we don't get it in a large number of cases, and that was one of the concerns. One of the concerns raised was that if we legalised this, then there'd be lots of people coming into the Commission with unlawful recordings. But that hasn't happened, and we're able to demonstrate that by the circumstances in which we get it. So, I just give these examples to show how a committee such as yours, an integrity commission and an inspector working alongside of each other can, I think, make a significant difference in terms of enhancing public trust.

Ms WEBB - I agree. I think those are all the essential elements, aren't they, that can work well. That's the extent of my question.

CHAIR - Thank you. Do we have any other questions?

Ms WEBB - No.

Ms O'CONNOR - We've run out of time.

Ms WEBB - Yes, we're out of time.

CHAIR - Well, I thought perhaps if there were other questions, we could have gone on further. Thank you very much for your appearance today. As we've mentioned, what you've said today is protected by parliamentary privilege. Once you leave the room, you need to be aware that privilege does not attach to the comments you may make to anyone, including the media, even if you're just repeating what you've said to us. Do you understand that?

Mr HATZISTERGOS - I do. I wish you well.

The witness withdrew.

The Committee adjourned at 11.50 a.m.