



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**SELECT COMMITTEE ON INDEPENDENT INTEGRITY  
COMMISSION**

(Reference: [Inquiry into an independent integrity commission](#))

**Members:**

**MR S RATTENBURY (Chair)**  
**MRS G JONES (Deputy Chair)**  
**MS B CODY**  
**MS E LEE**  
**MR C STEEL**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**MONDAY, 24 JULY 2017**

**Secretary to the committee:**  
**Dr A Cullen (Ph: 620 50142)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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## **Privilege statement**

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*Amended 20 May 2013*

**The committee met at 9.31 am.**

**WATERFORD, MR JACK**

**THE CHAIR:** Welcome to this hearing of the Select Committee on an Independent Integrity Commission. I now formally declare the hearing open. On 15 December 2016 the Legislative Assembly established the committee to, amongst other things, inquire into the most effective and efficient model of an independent integrity commission for the ACT and to make recommendations on the appropriateness of adapting models operating in other similarly sized jurisdictions.

On behalf of the committee, I would like to thank Mr Jack Waterford for appearing today. Welcome, Mr Waterford. I remind Mr Waterford of the protections and obligations afforded by parliamentary privilege. I draw your attention to the pink privilege sheet on the table. I imagine you are familiar with the implications of that?

**Mr Waterford:** Reasonably enough.

**THE CHAIR:** The proceedings are being recorded by Hansard for transcription purposes, and we are back to webstreaming today, with new cameras, in fact, installed after an upgrade. Mr Waterford, I understand you would like to make some opening remarks, and then we will have an opportunity for a discussion and questions from the committee.

**Mr Waterford:** I want to make a couple of general comments but keep it primarily to discussion. I have been involved, as most of you would know, one way or another in Canberra public administration professionally for more than 40 years. I was involved in the self-government debate. I have been involved in FOI and various other matters associated with administrative law. I have worked in, advised and spoken at conferences in all states of Australia on the sorts of issues we are discussing today or wider issues of public accountability. But I have also done it at the OECD in France and in Hong Kong, where they set up a model of ICAC, which I was involved in and where I saw a friend of mine accidentally implicated. I should tell you casually of this, by the way, so that you are all warned.

People were being bounced in somewhat like the manner of the Wood royal commission. Some of you might remember Chook Fowler getting the money passed in the whatnot of the car. First of all, they were being pre-committed to versions of events before they were being shown the tape that said otherwise. A friend of mine was a senior government official. In fact, on paper, although he was an appointed person, he was a minister in the Hong Kong government. He was tipped off that the Hong Kong ICAC was about to disclose the fact that he had a mistress in the New Territories. He took the deep breath and went home and confessed to his wife and his children that they were going to be doing the routine in front of the flat the next morning—tearful wife promising to stand by husband and all of that sort of thing. The next morning there was no crowd of reporters. When he went to find out why, he discovered it was just a prank being played by one of his friends.

**MRS JONES:** So these things can be dangerous; is that what you are saying?

**Mr Waterford:** Yes. Anyway, I want to say that a lot of people, when we talk about issues like corruption and whatnot, think of crime and associate with it. But there are certain fundamental ways in which corruption and maladministration in government differ from ordinary crime as we know it. Something like 95 per cent of all crime is committed by the underclass, and most of that crime is impulsive, opportunistic and without giving any particular thought to the implications of it. This includes crimes involving drugs, violence, family violence and various things like that.

There are an awful lot of self-appointed experts on crime and, I am afraid to say, there are an awful lot of politicians and whatnot who grandstand about crime and say things like, “We need tougher sentences.” But the truth is that very little deterrence is provided against that sort of crime, that impulsive crime, by strategies such as higher penalties, changes in the law, anything. I am constantly bemused, in, say, the latest debate on motorcycle gang massacre, by the working assumption that we do not have laws already which make that sort of behaviour illegal and that we need some new law to deal with this phenomenon. I remember that we were all absolutely shaking in our boots when the first Hell’s Angel arrived in Canberra about 42 years ago, and that was a great crisis in the community as well. Somehow or other we seem to have managed.

The second thing, by contrast, is that corrupt behaviour by politicians or officials or by the people who procure or benefit from it is rather more likely to be calculated crime. The people who conduct it, who are people like you and me, are, generally speaking, people of the middle class, people who consider the consequences of their behaviour and in particular consider whether they are going to get caught and what the consequences might be. For all intents and purposes in a community such as we have got here, the consequences are the same and are not going to be changed by the legislature.

The consequences are disgrace, being removed from your job and public life, and never being able to conduct it again. You will probably have to leave town, but even then, thanks to the internet or something, your disgrace will accompany you forever. We have all seen in politics but also at the higher levels of public administration the consequent effects of that sort of thing. That, up to a point, is a constant.

The question is: are you going to get caught doing it? It is my experience that people think about that very carefully. I often urge public servants to think, when they are considering what they are going to do, “Just imagine to yourself how you are going to explain that to the estimates committee when you are being asked about it.” That involves a calculus: is the estimates committee likely to get into it? Sometimes there are places where there are heavy levels of scrutiny and the chance of getting caught is high. There are places where, frankly, the level is very low. You can get highly corrupt institutions—and I am not going to delve into the thing but just say Wollongong council a la the tree of knowledge case before ICAC a few years ago, that sort of situation. A massively incestuous relationship between local businessmen can prevail only when there is arrogance, contempt for process and complacency about what the police are doing, what the anti-corruption bodies are doing.

In that sense of the word, the presence of active anti-corruption bodies, the mere existence of them, is a substantial deterrent. I am in favour of such a thing even if it

were not necessarily to be absolutely inundated with cases. The mere fact that it was there and was looking for things to do would make some people a little alarmed. If you have an effective body, however, it is likely to operate well.

I do not think that the ACT is a particularly corrupt place. I do not think that we have a particularly poor calibre of public servant or politician or police officer or other type of official. But I do think that we have the normal propensities of people who attempt it and the normal propensities of people who are going to succumb to such temptation. I think that in certain respects the ACT provides more temptations than some other jurisdictions of equivalent size. A part of this comes from the fact that private industry in this town is particularly focused in a few areas which depend particularly on concessions, licensing and grants for government.

We often talk in Australia of great capitalists—the Packer family, for example—but we fail to recognise that the Packers have never been true capitalists. They do not engage in competition. They go to government and ask for a licence to run a television station or a licence to run a gambling system or something like that. There are so many parts of what passes as industry in Canberra or in other parts of Australia that turn on dealings with government. That is why in this town, partly also because we are a national capital, we have such a heavy lobbying industry and why information is such an important currency. In that sort of environment I think it particularly important that we have very strong and powerful things.

I favour an ICAC of very broad remit and I want this thing to be a bit virtuous and say, “No, that is rats and mice; we are not going to touch that,” but have the power to touch it. I also think that its remit ought to cover maladministration as much as outright corruption. There are things that happen in any community, including in this town, which do not amount to taking or soliciting of bribes or anything like that but which amount to the wasteful use of public resources and very poor stewardship.

I could give you an example—and I am not throwing around allegations here. I was in a suburb relatively recently and noticed that finally, after what must be seven or eight years, some work on a long boarded-up service station is about to begin. In truth, that service station should have been forfeited to the government about seven years ago—if it closed eight years ago—because the land laws of the ACT are set against land banking and are set against land speculation. If you have got property in the ACT you should be occupying it, you should be building on it. If you do not want it you should be forfeiting it. But if we did that at that particular unnamed suburb we would have to do something about the state of Civic, because Civic is increasingly shut up by whole streets, in effect, almost boarded up without any business going on because of the existence of the Canberra mall.

The ACT government, like the commonwealth government on its behalf beforehand, the old Department of Territories, has long failed to enforce lease purpose clauses. Whether that is right or wrong—and there are some people who think that if you do you frighten off private business or something like that; I think that is a nonsense—the impact is that there is a massive loss of revenue to the ACT. It also, as I say, encourages secondary land speculation.

I am not going to sit here listing things that an ICAC might look at in the ACT, but

I use that as an example of where what you might call maladministration—I know of no evidence whatever that indicates anybody has taken a bribe or anything like that about that sort of thing—is costing the citizens of the ACT. That is quite apart from our reduced capacity to enjoy Civic as it ought to be, even up to the point of Garema Place. I wonder sometimes, when I see the wreck that Civic is becoming, why there is such anxiety to shift it over to the lake—a process that may well occur in time but is hardly being indicated by the death, the slow stagnation of the Civic centre.

I have mentioned before that it is the type of industry we have in the ACT which is likely to increase the propensity for it. All around the world, and we see this on television all the time, it is known that corruption is particularly associated with old-style definitions of vice: prostitution, pornography, gambling, alcohol, illicit drugs and whatnot. I think the ACT has, in certain respects, worked its way out of some of the problem zones in that. There was corruption in the ACT in relation to prostitution. I could give you chapter and verse, although I am not going to volunteer it, but I do not think there is any more. I do not think there is in relation to pornography. I do not think there seriously is systemic corruption in relation to illegal drugs in the ACT.

But I think the situation is very problematic and suspicious in relation to gambling and liquor, and this brings me to a second point that I think is very important in the ACT: while the proper purview of an anti-corruption body must necessarily be government, whether at the political level, the judicial level or the bureaucratic level, we should be looking closely at people who are associates of government.

When I think, for example, that the ACT is the jurisdiction which most generously subsidises politicians from the public purse—and this is \$8.50 a vote, Shane—and which has the least effective laws involving political donations in Australia, then I think it is particularly important that if we are going to give public money for it there is quid pro quo. And that is transparency, openness and full disclosure of all office bearers, including at the sub-branch level of politicians. I am not in the least bit focused on the Labor Party in relation to this, but the Labor Party is a fairly natural party of government in the ACT and I am inclined to think of that in particular.

When you talk about associated agencies or bodies and whatnot, you also think of people whose corporate memberships of political parties—including, if you are in the Liberal Party, the Cormack Foundation in Victoria; or if you are in the Labor Party, you might think of things like the Labor clubs and the trade union movements, which give very generous donations to the Labor Party—mean that their party political and government-oriented activities should be subject to scrutiny.

I do not think that we should have the problems such as we have had in New South Wales, where there was a positive limit to how far one could go in questioning, say, an Arthur Sinodinos because you are getting to a second or a third stage of distance from the New South Wales government. The man was, at the end of the day, treasurer of his party. He was lobbying government as to its activities. I am not casting anything on his guilt or innocence but there was a close association between what he was doing and government activity. I think that, properly, such activity, particularly activity designed one way or another to influence government in its operations, should be part of the purview of an ICAC.

I might add that this is a special need. When we get situations where there are bodies which seem to have many hats, often simultaneously worn and it is never quite clear which is which—you might have a body which is on one occasion an advocate for the workers and focused on issues such as trade union safety and so forth; on the other hand, it is a major club owner; on the other hand, it is a major property developer; on the other hand, it is a major member of the Labor Party whose clout can control preselections and determine which factions exercise power in the party and who is going to be a minister of this or a minister of that—these roles are often exercised simultaneously.

The problem is that it is not always apparent which role is being played when there are land transfers, when deals are being made. And we live in an age and an environment where the public is increasingly cynical about appearances of insider trading and so on. I think such matters—I will not go any further in this area—are properly in the purview of an anti-corruption or an integrity body.

The only other thing that I want to focus on at any level is this: I believe that it is absolutely critical that the police force of the ACT be subject to an ICAC. I believe not only that the existing AFP integrity controls, whether it is ACLEI or various other things, are weak and unsatisfactory and not befitting the ACT. I think also that although we pay Rolls-Royce prices for our policing services from the Australian Federal Police we get a very ordinary return for it. The calibre of the police force is not high. The calibre of its work is very poor.

I was examining my conscience last night, thinking about anti-corruption work in the ACT. The last case of any substance which came before the courts that I can recall was the Emanuele case in the late 1970s, which involved the sale of Belconnen Mall, and that was brought to notice because somebody, in effect a senior public servant, walked through the doors of a police station to detail a bribe he had been offered. The police then acted very professionally in setting them up and recording conversations and so forth like that, though I might say, fatalistically, at the end of the day the fellow used court processes and the like to escape any form of justice.

But be that as it may, the point is that the police force has never been proactive in searching out crime in the ACT. They love the publicity associated with matters such as terrorism and work against drugs because there is nobody to gainsay what they claim, and in any event what they do in that field makes absolutely no difference whatsoever. In spite of what ministers at every level of Australian government claim, there has never been the slightest indication that police seizures of drugs have had the slightest impact on the supply of drugs, let alone on the demand for it, and we waste an awful lot of time and effort in that regard, not to mention leaving ourselves open to institutional corruption of the sort that happens.

But what troubles me is that the police are not very good at solving our local murders. They are not particularly good at solving our local burglaries. We are a very middle-class city, by and large, and we do not have high levels of crime here. That may mean that the ACT is not a particularly good training academy for good, hard policing, that it is actually better to learn policing in Kings Cross or wherever. But it is the only practical place where the AFP actually practises what some people might call real policing, and it is from that experience that they then go out and save us all



from terrorism or drugs or walk with machine guns around Parliament House or whatever. It troubles me that they are not particularly well equipped to do so.

It troubles me also that they have an internal culture, not the traditional police culture of old that we learnt of in the Wood royal commission or in the Fitzgerald royal commission or whatnot, which is secretive, hostile to any form of external scrutiny and complacent about their internal security and essential honesty. If the AFP was anything like as good as it pretends, it would be the cleanest police force in the world. Alternatively, its systems, starting with its ACLEI, are hopeless and inept and just simply do not get it. I think that there are good reasons to suspect that the latter is the case. I am not going to detail them here but I can think of a number of eyebrow-raising matters involving ACT Police that could be, should be, affecting the ACT and which could be, should be, the subject of external inquiry.

We have got an Ombudsman that has become very low profile. We have got an Ombudsman that, by mistakes of government, particularly at the federal level, has become compromised by being given additional watchdog functions, particularly over terrorism and whatnot, but which is certainly not in any event blowing the whistle or drawing matters to account. The ACT is very blessed in that it has got an activist Auditor-General. I know that can make politicians' lives unhappy but it is almost the only operating check and balance, I think, apart from a reasonably active media that operates in the territory.

I will finish up commenting here. I do not think that this place is seething with corruption and that it is a kettle waiting to boil a la Wollongong council or something like that. But I expect that an ICAC here will have plenty of work to do. I think that if we get the right people and it is independent and given the resources we give it, then it will not only more than justify its existence; it will be an active deterrent against behaviour because people will be terrified that they might come before it.

**THE CHAIR:** Thank you. Early in your remarks you made reference to Hong Kong having the ideal model.

**Mr Waterford:** Yes.

**THE CHAIR:** You just sort of glossed over that.

**Mr Waterford:** It was the pioneer model, Shane. The very word "ICAC" came from Hong Kong.

**THE CHAIR:** Okay.

**Mr Waterford:** It came at a time of quite substantial triad activity in Hong Kong, and a time when there were, if you like, additional cultural problems which involved resentment of British administration, the fact that a large majority of the population did not speak English, which was the official language of commerce and so forth. There was a lot of crime and a lot of popular cynicism about it.

**THE CHAIR:** So it was not that you were particularly saying they had the perfect model; it was more that they were right at the forefront?

**Mr Waterford:** Yes. They got some brilliant and ambitious cops and some good legal associates and whatnot, and they held public hearings and they blew the place apart.

**THE CHAIR:** Do you have any particular views on an appropriate parliamentary oversight model or how an ICAC would be overseen? Certainly there is quite a discussion about who watches the watcher.

**Mr Waterford:** Yes, I accept that. There should be parliamentary oversight, obviously, and I think that the parliamentary oversight should also be assisted, although in a separate sort of process, by something of the order of an inspector or whatnot. I would not necessarily recommend the New South Wales types of chaps, because I think that more than a bit of jealousy and other things have percolated through the brawls that are occurring in New South Wales about the roles of inspectors of ICAC. But I think that an ICAC needs its own scrutiny, its own auditing, and a certain amount of critical at-a-distance sort of continual review, and that includes parliamentary review.

But I do not think it should be too intimate. One of the great problems of the ACT is over-intimacy by everybody. Even good and honest people, including politicians, are continually meeting people who have been involved in transactions before. The political class knows virtually everybody, and we are constantly tripping over each other at functions and so forth, and it leads not just to ambiguity and whatnot but often also to bad impressions, I might say generally, of corruption as well. In certain circumstances I would step back from saying this but, just as it is said that the appearance of bias is as bad as the fact of bias, sometimes the appearance of corruption is as bad as the fact of it. This is a particular reason why politicians, people at the high executive levels of government, should eschew too much direct involvement in decision-making matters such as money.

The Faulkner style of reforms that occurred during the Rudd government period, where government basically withdrew from all but a very limited number of government appointments and patronage, or from approval of tenders and whatnot, I think is much to be welcomed.

**MRS JONES:** Mr Waterford, it is good to have you here, to get a really different perspective on the more technical sorts of views that we have had, and obviously because of your long experience of musing over and trying to understand what is happening beneath our noses, essentially, in the ACT.

I know that at the last election all parties agreed that this would be a good track to go down, but obviously the question of public confidence comes up. I guess that is something that you have been involved in a lot. Do you want to comment at all on that? There is great cynicism at the moment towards politicians, and I think that it has predominantly been caused by the changes of prime minister in the last decade.

**Mr Waterford:** That has played a role.

**MRS JONES:** I have doorknocked thousands of houses. The cynicism is “we never know who’s going to be next” and so on. It is not particularly about reflecting on the

ACT. But can you see a way in which an ICAC with some teeth could attack the problem of cynicism? Or is it only going to make it worse?

**Mr Waterford:** Look, I do not want to overstate this. You talk about public perceptions and things like that. Such perceptions do exist and always will, up to a point, in whichever jurisdiction. But you can, up to a point, monitor it. One of the things that trouble me is that there are signs that cynicism is increasing and that it embraces corruption. In recent times I have been doing some house building and have had cause to speak to any number of tradesmen, including people who have not subsequently worked for me or anything like that. There has been casual discussion of things, and people at the tradesman level of things think that money is changing hands or is a part of the way in which, you know—

**MRS JONES:** Decisions are made.

**Mr Waterford:** decisions are being made. Now, I have no particular reason to believe that that is true, but it troubles me that it is an ingrained suspicion out there. As far as confidence is concerned, there is often a contradiction. You can have a searing review which will fundamentally shake confidence in your institutions. Look at the Fitzgerald inquiry in Queensland. But it can lead to fundamental reform, renewed institutions and, at least for a time, public confidence that this sort of thing cannot happen again.

**MRS JONES:** Or that people are not just going to get away with it.

**Mr Waterford:** Or that people are not just going to get away with it. In just the same way that I think the very existence of such a body operates by itself as a deterrent, I sort of think that from time to time an unpleasant case, or perhaps an inquiry which shows that concerns are not justified—because I do not think the news value of anti-corruption activity expires if you cannot find the so-called smoking gun—gives people confidence that if you commit crime you will be caught and you will be punished.

Again, I do not want to harp on about the AFP or whatnot, but a point was reached in the ACT about 10 years ago when if you rang the police and reported a burglary they would say something like, “Send us a note about it. Oh, you’ve got to claim it for insurance? Well, we’ll give you a note of the thing,” but it was perfectly plain that they were not going to investigate it.

**MRS JONES:** And do you think that has changed in any way?

**Mr Waterford:** Yes, it has. The police do, I think. They responded to extensive criticism of it. But that sort of thing shook confidence in the quality of policing in the ACT—the idea that a lot of crime, just the sort of crime that affects you and me as ordinary citizens and householders, was beneath the police’s contempt because they were so busy doing something really important like pointing machine guns at people at Parliament House or something.

Incidentally, I might say that it troubles me as well that it is the ACT taxpayer that is paying for all of these armed militias that we are developing because a less-than-vigilant ACT government allowed AFP empire builders to say that we

needed a tactical response unit and that, because the ACT was vulnerable to terrorism attack, it should bear its cost of it or whatever. So now we have whole sets of people who could take on, you know, the armies of Papua New Guinea being paid for by the ACT taxpayer.

**MS CODY:** I just want to follow on from Giulia's question. I do not want to harp on about the AFP here, but I would be interested in hearing more about the solutions you have. What do you think we should be doing on that front, from an AFP perspective?

**Mr Waterford:** I think we should be a bit more demanding of them. One of the things that I would like to see—not necessarily with the direct consequence of chucking them out—is putting the process up for tender. I think that if there were some competition for the role of servicing the ACT from, say, South Australia or—probably not the Northern Territory, I would have to say—

**THE CHAIR:** New South Wales?

**Mr Waterford:** Possibly not New South Wales. But it might sharpen up the AFP's act. I think that some of the model of the ACT AFP as a training ground for the national institution has got some legs on it, in particular because we are such a bourgeois local community. I am not quite sure entirely how we cope with that, but I think attacking their culture of secrecy is also an essential part of the process. They essentially do not answer questions about things and they also have long processes of delay. A lot of people wonder why we are still prosecuting David Eastman, for example. Well, one reason is that as long as some legal process is taking place against him, 28 years after the murder, the DPP and the Australian police force can say, "The matter is sub judice. It is premature to have an inquiry into the conduct and the judgement of anybody who was involved in it."

Likewise, if there is a violent death in the ACT, perhaps in a prison or on the street outside—I think of Clea Rose—the police force can stall answering questions for two years, saying that it is all sub judice pending a coronial inquest. We have very poor inquest and coronial legislation in any event, and we have a judiciary that seeks to limit rather than expand it. I will leave that out of it. But what I want is a culture inside the police force that is responsive to public opinion and believes and accepts that it is accountable to it, and that is what we do not have. It is not just a corruption inquiry that does that—a commission that does that—but it is part of the process.

One thing that also troubles me about that—and this is an endemic problem right through the Australian jurisdictions—is that police forces are powerful political players in their own right, and they do not hesitate to exercise that power not only to influence public opinion but also to influence public opinion against politicians who do not do exactly what they want. You can see evidence of that in relation to, say, the CFMEU matter and Joy Burch, but you can also see evidence of that every day when it comes to the great bokie massacres. The police are trying to pressure politicians and therefore they are creating, manufacturing and exploiting any incident which does it. No doubt they are doing it for noble purposes, but it is just plain political manipulation nonetheless.

**MS CODY:** You keep mentioning that we need an ICAC, and I am assuming you are

just using that as a—

**Mr Waterford:** IIC is just as happy a word. I am just using that because it is the name I am most familiar with.

**MS CODY:** That is okay. We are looking at the ACT. Our ACT committees have pretty strong powers. We have powers to compel witnesses to appear for inquiries and to hold public hearings, and we get to ask a lot of questions about a lot of different things, and police officers obviously have powers to do criminal investigations and those sorts of things. How do you see that we need an ICAC?

**Mr Waterford:** Bearing in mind the time, I will not go on at any great length about this. The problem of doing it through the committee system—and I am an admirer of the ACT committee system, which is novel and useful in many respects—is that at the end of the day it will always have a partisan tinge to it which is calculated at the advantage of the government of the day or in the interests of possibly the opposition or some other political party, and its conclusions will be discounted or promoted a little bit in that sort of thing. With due respect to our committee secretary here, the fact is that we do not run a parliamentary committee system on the American model, where they have substantial investigative staff, lawyers to cross-examine and preliminary hearings at which they decide whether they have got something. We do a very good job but with a very small staff and not a lot of investigative resources.

The second thing is that—and I will use this as an example of a problem at the Commonwealth level rather than the ACT level—at the end of the day, one of the great weaknesses of the AFP model and a fatal weakness in their aspiration to be a sort of FBI of Australia is the fact that they are a recipient organisation. They do very little work that is proactive or off their own bat.

The recent tax thing came about because of a reference from the tax commission. The war against social security fraud and the risk that we might all be murdered in our beds by somebody who has overclaimed a widow's pension or something occurs because of references from Centrelink and the Department of Human Services. We do not have police going out and looking for crime; we have police sitting in an office, receiving reports of crime and then making bureaucratic decisions about what resources they will focus on it.

That sort of model of things has infected the ACT. They are no longer people walking the beat with an eye over things; they are people answering telephones and responding to concerns. We still have a need for a police force, perhaps even of that sort, but that is the reason why we need a few extra spurs, goads and whistles in the system to make sure that the level of crime in the community or the risks of corruption in the community are minimised—because they are just not good enough. They could be better.

The Ombudsman does not blow the whistle and has not blown the whistle for 10 years on anything at all. You find me one critical Ombudsman's report on a matter going to the integrity of public administration. You look at something like—

**MRS JONES:** They see themselves as working with a more positive approach, don't

they?

**Mr Waterford:** Yes. They want to change the culture of public service organisations. It is better; you can achieve more with honey than with vinegar. I understand all of those sorts of arguments.

**MRS JONES:** I just think that is how they see themselves, isn't it?

**Mr Waterford:** Yes. But they did not see, say, the Cornelia Rau case or the Vivian Solon case. It required external people to come in and say that. The model, it seems to me, does not work.

**MS LEE:** Mr Waterford, one of the things that we on the committee are grappling with is balancing the need to make sure that people's reputations are not tarnished for no reason, whilst at the same time making sure that we are instilling public confidence. As you say, the mere existence, obviously, could work as a deterrent. In a small jurisdiction like Canberra, how do we go about finding that balance in creating this type of body?

**Mr Waterford:** The first point that I would like to make about that is this: an IC, ICAC or whatever operates first of all as an organisational body which says, "What are we going to do? What are we going to focus on?" They look, if you like, for smoke and begin investigations. They have various powers—coercive, intrusive et cetera—and they exercise them.

It is only when they get to a prima facie stage, when there is some smoke behind this fire or something like that, that questions like "Will we have hearings? Will they be open hearings?" arise. There are many people—and I have seen this in submissions to this inquiry—who will say, "I am concerned that an ICAC will be a place where people will spray out allegations and people won't have a chance to answer them," et cetera.

They will point to various ruined reputations: "I bleed every day when I think of the poor state of Eddie Obeid or Ian Macdonald—an old mate of mine, I might say—whose reputations have been completely traduced in the community." The fact is that in relation to those sorts of inquiries, they were under investigation for 18 months beforehand. They had been extensively bugged, monitored, surveilled et cetera. They were the subject not of a spray of unbriefed allegations or whatever but of a carefully focused inquiry. That is the model for a proper ICAC or IC sort of body.

I struggle to think in Australia of reputations traduced in the sense that everybody purports to fear. It is fairly obvious to me that the sorts of people who express most concern about it—and they include politicians, I might say—are the sorts of people who would have most to fear, because they are involved in the exercise of power and do not greatly welcome scrutiny of their decision-making process.

I look with some contempt at the rats and mice efforts of bodies that are primarily focused on secretive inquiries and passing them over to the DPP and so forth. They are just not catching the big fish, and only rarely are they getting systemic corruption. I first knew that ACLEI was completely useless when, about five years into their

existence, they put out an excited press release announcing that an ACT policeman had been charged with checking the details of his girlfriend on the computer system so that he could work out whether what she—

**MRS JONES:** If she was decent.

**Mr Waterford:** That is a terrible and deplorable thing, and the cop should have been punished for it, but if that is the best that ACLEI can do, then either, as I say, we have a fabulously successful system or they are just not getting it.

**MR STEEL:** I want to ask about the scope of an integrity commission. Some of the matters that you discussed at the beginning of your opening statement—lease purpose clauses—went to an issue that we have been trying to grapple with; that is, there are certain matters of government policy which some people in the community may consider to be corrupt but which may be completely lawful. There are some other matters that may be genuinely corrupt, and there is that fine line sometimes in between as well—sometimes things will be completely lawful but some people in the community will still think they are corrupt. Which jurisdiction do you think has the definition of “corruption” right?

**Mr Waterford:** A wide and embracing thing based on the New South Wales legislative model is the ideal, but I think that an IC sort of body should be a little bit grand about this and decide what they are going to investigate and what they are going to pass on to other bodies. It should not depend on reference from below so much as on a broad jurisdiction from above.

In relation to perceptions of corruption even when general government policy is being followed, I think an endemic problem in the ACT—and I am not being partisan about this—is that the things that would guarantee that the public was reasonably satisfied that things were occurring, which is to say by way of an at-a-distance, impartial public tender, rather than an announcement out of the blue that somebody had been selected to do this, would dispel a lot of those perception problems.

**MRS JONES:** A better process.

**Mr Waterford:** There is a continual crisis in the ACT, rightly or wrongly, in that almost every development proposal is coming from the Chief Minister and his very fertile and active brain, rather than a process of coming up from government.

**MR STEEL:** But doesn't the Auditor-General already perform that function in terms of performance audits?

**Mr Waterford:** The Auditor-General has had some very critical things to say about the way this has happened in practice, but the Auditor-General's focus so far has been on a very narrow range of transactions. I have myself referred to government the appearance of cronies and mates. What I mean by that is that these are not processes of tender or open competition. They give the impression of being arranged over lunch—not necessarily with money changing hands. I do not actually believe that it does. But I believe that it is very untidy looking. Sometimes I am sure that if some of the players in this town were paying bribes, they would not be getting results as good

as they are getting in practice, given the state of mind of some of our public officials and some of our politicians.

**THE CHAIR:** Being mindful of the time, although I have some other questions and it would be great to have a discussion, we have other witnesses to hear from. Thank you for your time and your thoughts today. When available, a proof transcript will be forwarded to you, to provide you with an opportunity to check it. If there are any concerns, you should come back to the committee with those. I would like to thank Mr Waterford for his time today.

**Mr Waterford:** Thank you.



**FATSEAS, MS MAREA**

**EDQUIST, MR JOHN**, Deputy Chair, Inner South Canberra Community Council

**THE CHAIR:** Welcome to the inquiry, Mr John Edquist, on behalf of the Inner South Community Council, and Ms Marea Fatseas, appearing in response to your individual submission. On behalf of the committee I thank you both for taking the time to come today. I remind you of the protections and obligations afforded by parliamentary privilege and I draw your attention to the pink privilege slip on the table in front of you. Are you comfortable with the implications of that statement?

**Ms Fatseas:** Yes.

**Mr Edquist:** Yes.

**THE CHAIR:** Thank you very much. Can I also remind you that proceedings are being recorded by Hansard for transcription and also webstreamed and broadcast live. Would you like to make any opening remarks before we go to questions from the committee?

**Ms Fatseas:** Yes, I would like to make some opening remarks. Thank you very much for inviting me to speak today. I am here in an individual capacity and as a former independent candidate in the 2016 ACT election. I would like to address why an independent integrity commission is needed. Through my involvement over the last seven years or so in community organisations I have been exposed to issues where there appeared to be inexplicable decisions and poor transparency, which made it difficult for the community to find out why those decisions were made. Through subsequent research by me and others, and through reading media investigations, I came to the view that there were potential integrity issues, especially in the domain of planning. Perhaps the risk is higher in the area of planning in the ACT due to the ACT government undertaking both state level and municipal functions.

Some particular cases that concerned me were the sale of the Brumbies club in Griffith and the question of who benefited from the deconcessionalisation of the lease and remission of the lease variation charge; the proposed complex swap of land occupied by the Canberra Services Club, MOCCA—the Manuka childcare centre—and the Telopea Park School tennis courts; the subsequent unsolicited bid for the redevelopment of Manuka Oval, with indications that there had been substantial discussions between the proponents and the ACT government for a considerable period of time before it became public (in the context of the absence of a land management plan considered by the Legislative Assembly, which I understand is a legislative requirement for public land, and in the context of the \$11 million or so media centre that is particularly relevant); and also the Glebe Park land purchase. They are just a few; there are others I have had concerns about.

It was such cases and other concerns that precipitated my decision to stand as an independent in the ACT elections. Establishing an independent integrity commissioner certainly was a key policy in my platform, and it remains a major concern of mine. To date there is still uncertainty about what happened in these cases. That can lead to a lack of confidence that we are being governed for the benefit of the

community and the common good rather than for the benefit of special interests. Establishing an independent integrity commission can help to address and allay community concerns about these and other cases and help to prevent future integrity issues through improved awareness, vigilance and education with respect to maintaining high standards of integrity.

The terms of reference of this inquiry have sought views on the structure and governance and powers of such a body. I have addressed these in my submission, but a couple of key points are: in general I support the features and powers of a model integrity commission as proposed by Prenzler and Faulkner, with qualifications outlined in my submission. I think it is important that the integrity commission establishes a strong community engagement strategy from the outset. This will ensure that the integrity commission has a good understanding of, first of all, the integrity concerns of the community and, secondly, possible strategies involving the community that could help to prevent or reduce the likelihood of integrity issues arising in future.

**Mr Edquist:** I am here as the vice-chair of the Inner South Canberra Community Council—I will refer to it as the ISCCC, because it is much less of a mouthful. I am appearing for the ISCCC because Marea, as she just told you, is giving evidence in relation to her own personal submission and therefore is excluded from representing the ISCCC.

The ISCCC itself is an umbrella organisation; there are eight residents associations in the inner south which cover all the suburbs, and the ISCCC sits on top of them. The idea is not to compete with or supplant our constituent associations but to complement and assist them and focus on bigger issues that are more than just one suburb wide, such as this. This is a sort of territory-wide issue, obviously.

Marea and I have been in our current positions for only a very short time, since the ISCCC meeting of 13 June. At that meeting Gary Kent, who had been our chairman for five years, resigned. Marea moved from being deputy chair to being the chairman, and I was elected to replace Marea.

The ISCCC lodged a submission which grew out of a public forum on 9 May where one of the issues discussed was the need for an independent integrity commission. Shane addressed the meeting along with Jack Waterford and Tony Harris, and then we had a question and answer session. The first part of the ISCCC submission was a paper that had been prepared by Tony Harris which was circulated around the ISCCC. Most of our members thought it was a good paper and liked the way he dealt with the issues, so we thought we would put it on the public record by sending it in. I see he has made his own individual submission which says much the same things. We also submitted a brief note of the question and answer session. I am sorry that that took so long to get in, but we had to clear what we were saying with the people who had been there and some of them did not respond in a time frame that was as helpful as it might have been.

Although the ISCCC did not write in response to your issues paper, one of our constituent groups, the Griffith Narrabundah Community Association, did. I signed that off because at the time I was the President of the Griffith Narrabundah

Community Association. Because I am now deputy chair of the council I had to resign from that position, so Dr Leo Dobes is in that role now. That submission has been circulated around the ISCCC as well, and there is general support for most of the conclusions that draws, although there has been a bit of discussion about one issue which I will talk about later.

Basically the feeling in the ISCCC is that the ACT needs an independent integrity commission and that such a commission should be established as soon as possible. The preferred model, simply because it seems to be the most successful model in Australia, is the New South Wales ICAC model. If we are going to go to the trouble of establishing a commission, it should be modelled on that. It should have a broad definition of corruption which deals with not only criminal activities but official misconduct and a lack of impartial behaviour when dealing with issues. It should also have a power to hold public hearings. We consider that essential. Clearly the integrity commissions which do not have public hearings are complete failures and a waste of public money. Why would you bother? They are an indulgence.

In addition, the commission should have the power to initiate its own inquiries, to compel witnesses to attend and answer questions, to apply for warrants to search for and seize evidence, and to engage in covert investigations. I know your paper talks about covert tactics, but that is a bit evasive or confusing. I think “undercover operations” is a better description, including wiretapping, bugging people, following them and such like. If you do not have those your integrity commission will be much less effective at the very least.

The debate really revolves around the point about whether the integrity commission should have responsibility for the AFP, or at least that section of the AFP which polices the ACT. The position that the GNCA ended up with was that it would be better to set up the integrity commission now, even if you had to exclude the AFP, so that it could start its work and then you could leave till later the negotiation of an agreement between the territory government and the commonwealth or the Federal Police about covering the AFP. But you should not let that hold up the establishment of an ICAC now. There are those who say it is essential to cover the Federal Police. Those on the other side are saying not that you should not cover the Federal Police but that you should not let that stop the establishment of an independent integrity commission. So it is more a tactical debate than an in-principle issue. I welcome your questions.

**THE CHAIR:** Thank you, and thank you for appearing together. Part of our thinking is that we have tried to group some witnesses to enable more of a flowing discussion. So please feel free, as we go through the questions, to interact with each other as well. We will start with Mr Steel.

**MR STEEL:** I will continue with the question that I asked earlier about the definition of corruption and the scope of a potential commission in relation to matters. Ms Fatseas referred to a few different matters where the public may disagree with a policy decision taken by government. But at what point does that become corrupt? How do you think the definition should be provided in the legislation to cover matters? Also, how do you think a corruption commission would increase transparency?

**Ms Fatseas:** In terms of the definition of corruption, in my submission I used the definition that was used by Transparency International, which is the abuse of entrusted power for private gain. I guess the examples that I gave were examples where there is still a lot of uncertainty, a lack of transparency, about what actually happened.

It could well be that it was perfectly above board, but I think it is the point that Jack Waterford mentioned before, that sometimes the appearance of corruption can be as bad as the actual corruption itself. If you look at the Brumbies club, all we know is what we saw in the paper. We heard that the planning minister at that time basically intervened to ensure that the land sale could go ahead and that there was a deconcessionalisation of the lease. Then we did not hear anything for a long while.

All of a sudden, there is all that stuff in the paper about the new CEO, the Federal Police being brought in, then somebody being sacked and leaving the city, some kind of financial deal being done and confidentiality being maintained. From the point of view of the community we are thinking, “What actually happened?” What was the process the planning minister undertook? It was the—

**Mr Edquist:** You mean a call-in?

**Ms Fatseas:** Yes, the call-in powers. It was the use of call-in powers. When you are looking at public interest, you are thinking, “Okay, that was a concessional lease; it was deconcessionalised and then sold.” I understand that there was some kind of remission of the lease.

**Mr Edquist:** Waiver.

**Ms Fatseas:** A waiver of—

**Mr Edquist:** The Chief Minister used his power as Treasurer to waive the—

**Ms Fatseas:** Waive the lease variation charge, which was a matter of several million dollars. It leaves people in the community, such as me, wondering who benefited. How come we still do not have any answers?

**Mr Edquist:** Particularly as it then turns out that, some years afterwards, the club does not have the \$11 million and no-one can say where it went. The new CEO arrived, found the money was not there, called in the auditors, who wrote a report for him, which immediately had court orders slapped on it and Michael Jones was basically fired from his job and run out of town on a rail. It is—

**Ms Fatseas:** Yes.

**Mr Edquist:** Who knows? All the rest of us can say is, “Gosh, that is all very strange, isn’t it?”

**Ms Fatseas:** Yes.

**MR STEEL:** I suppose the question, though, is: how do you think an integrity commission will be able to deal with issues where you think—

**Ms Fatseas:** Presumably in that sort of case, where all the other existing mechanisms have failed to inform the community, that would be the first cab off the rank, I would say, to be referred to the integrity commission.

**MR STEEL:** But is it about informing the community or is it about actually hunting down corruption and misconduct?

**Ms Fatseas:** I think potentially there is enough there to look at to see whether there was any corruption in that example. We do not know until we actually have it examined in detail. It has been to the courts. The Assembly has had a look at it, but we are still none the wiser. The community is none the wiser.

**MRS JONES:** To clarify, are you saying that you think an ICAC process would give the opportunity to clear up matters?

**Ms Fatseas:** Yes.

**MRS JONES:** Do you see the point in having a process which deals with matters that are not necessarily criminal, not necessarily quite at the criminal level, because they have created an environment in which trust has been lost in government?

**Ms Fatseas:** Yes.

**MRS JONES:** If so, what do you think the consequences could be for a finding that was not criminal but perhaps corrupt, or perhaps giving the impression of corruption?

**Ms Fatseas:** I think that is covered in the Prenzler and Faulkner requirements. Where it is serious and intermediate, you could directly investigate it. The integrity commission could investigate it and make findings. Then, if it was something that was perhaps not as serious, they talk about making disciplinary decisions and managing a mediation program. My qualification to that was criminal activity being referred to a law enforcement agency and non-criminal misconduct being addressed through a transparent process between the integrity commission and a relevant public authority.

**MRS JONES:** And that should be made public so as to restore confidence in government systems, essentially?

**Ms Fatseas:** Yes, depending on the scale of the misconduct, I suppose—whether it was what Jack Waterford referred to as “rats and mice”. You could have a different approach to something that was considered to have made a major impact on public confidence.

**MRS JONES:** Yes; very interesting.

**THE CHAIR:** Thank you.

**Mr Edquist:** From my perspective, as I said, the definition of corruption should cover

not only things which are already crimes but also maladministration. I think Tony Harris defined that very well when he talked about maladministration or misconduct, including malfeasance, which is an act that is unjustified or harmful; misfeasance, which is an abuse of power; non-feasance, which is an improper failure to act when an official or a politician should have acted; oppression, extortion and imposition. As in New South Wales, he believes that a failure to use your powers impartially would also be corruption. I think that is important because people expect a bureaucracy to be absolutely neutral and treat all similar cases in the same way, and—

**MRS JONES:** And that is difficult, yes.

**Mr Edquist:** It is difficult, but that is why we have these cumbersome bureaucratic rules. It is to try to make sure that people do behave in that way. It is important to have systems that make it easier. That sometimes clashes with other policy objectives—for instance, in the planning field. The planning department tends to be full of people who are planners and who probably had ambitions to be architects when they were young. Though they put great emphasis on originality, innovation et cetera, and how we must not stifle things, the trouble is that when you are issuing permits to build buildings it is a matter of licensing.

What we are saying is, “This building will not harm the inhabitants. It will not harm the neighbours.” In an ideal situation, there would be very little judgement in granting or refusing a building approval. You would simply tick the boxes. If you say, “Tick the boxes” in respect of ACTPLA, they would have a fit. They would say, “Oh, that is terrible!” But to my mind, as a bureaucrat, that is ideal.

**MRS JONES:** Because it avoids these other issues.

**Mr Edquist:** Yes. You want to avoid subjective judgements where we say, “Oh, that is okay; that is not okay.” If you do have to make judgements they should be recorded. Who is making the decision? What is the decision they make? Under what power are they making it and why did they make it? It should be, “I decided under section such and such of the act that this is right because blah, blah, blah.”

**MS LEE:** I want to continue on a theme that Mr Steel has brought up. That is the definition of corruption and what have you, in terms of the threshold. You mentioned earlier a number of examples, Ms Fatseas, and some of the concerns that you had heard from the community and that you have. You talked about them. Under questioning from Mr Steel, you said also that these were issues in respect of which, clearly, other existing bodies, mechanisms and powers had failed. In your capacity as somebody who has represented the community for a long time, what are some of those specific powers that you think would be helpful in a new body? Is it investigation? Is it compelling witnesses or documents?

**Ms Fatseas:** I think a lot of the points in my submission that I mentioned about conducting own-motion investigations are a lot of the powers that Prenzler and Faulkner have already outlined. I definitely think that it should require attendance, answers to questions and holding public hearings. We are in a public hearing today; so people could make allegations in here. I tend not to be afraid of having public hearings. I think people should be given natural justice, of course, so that they can

respond to any allegations made against them. But really if you do not have transparency and you do not have public hearings, it is going to be very difficult not only to address some of the concerns but also because I think the community can learn as well.

We are all on this journey together, in a way. We all have to keep ourselves to high standards and it is good for us to learn from each other, through these examples, what we expect should be standards both for public officials and also people in the community such as us who hold positions heading up community groups. I think it is an important thing. That is why I have mentioned here the importance of community engagement right from the beginning, because it is really about getting everybody to become more aware of what it is that we are trying to achieve in having better governance—whether that governance is by politicians, by public servants—and as a community how we can ensure that we have better governance.

**MS LEE:** Thank you. Mr Edquist, did you have anything to add?

**Mr Edquist:** I think having public hearings is essential. I suppose it is part of the theatre of civic life. Most countries have public trials for a very good reason. Justice must not only be done, but people want to see it being done. I do not think that a wide range of human societies over thousands of years can be entirely wrong about this. Why would we want to have secret trial? I mean, secret trials are what you have in dictatorships and so on. People should have the right to be cross-examined in public and the right to reply in public. It is not just one way.

**MR STEEL:** But that is not the approach that the other ICACs have taken. I do not think there is an ability to cross-examine, and those sorts of levels of procedural fairness that you would see in a court do not apply when it comes to public examination in an ICAC body. Do you think that those sorts of rules of evidence and rules of natural justice should apply in relation to an ICAC?

**Mr Edquist:** I am not a lawyer, but I am not going to agree to the proposition that the laws of evidence and the laws of natural justice exactly coincide. Laws of evidence differ from one jurisdiction to another. For instance, I understand under the Code Napoleon they have a very different approach to what can be tendered in court to what we have here. I do not think if I was on trial for murder in Germany and France I would get less justice than I would in an Anglo-Saxon country.

**MR STEEL:** I suppose the concern is that because those rules of evidence, natural justice and so forth do not apply in an ICAC context, it means that people's right to a fair trial—they are not really at trial—is compromised.

**Mr Edquist:** No, that is it.

**MR STEEL:** It is compromised.

**Mr Edquist:** No, that is it—

**MR STEEL:** And that is the concern, yes.

**Mr Edquist:** because what they say and evidence which appears in the ICAC is not necessarily admissible at a criminal trial. At a criminal trial they have all the rights and all the protections of the laws of evidence. So the only punishment that they suffer from a public hearing, if they have engaged in activity which can be interpreted as corrupt, is the loss of public reputation, which is okay. You might say that is harsh, but it is not nearly as harsh as Eddie Obeid and Ian Macdonald are suffering now, when they are in jail and are going to be there for some years.

**MR STEEL:** So you think it is justified by that?

**Mr Edquist:** I think there is a balance in these things, yes. I would say that the public feels that the ICAC process is a much better process than what you have in South Australia or Victoria, for instance. In Victoria they are paying about as much as New South Wales is paying for the ICAC. What are they getting out of it? They get two cases of people fiddling procurement at government schools in the western suburbs. I would be very upset if I were a Victorian taxpayer. When you have speakers of the parliament from both parties rorting the system hand over fist and the IBAC says you cannot touch them, that is a joke.

**MS CODY:** Continuing with the same line of questioning, I want to get your views on how you think other people should have their jurisdiction changed to make space for the ICAC to operate.

**MRS JONES:** Like other bodies.

**MS CODY:** Yes, like the Ombudsman, the Auditor-General or the AFP. If we are saying that we are giving covert powers to an ICAC, surely that is going to impact on other bodies?

**Mr Edquist:** Not necessarily. In New South Wales I do not think the police have had their powers changed or reduced by the ICAC. Similarly, the Ombudsman and the Auditor-General do different things. They investigate how public administration has worked, whether money has been spent the right way and whether methods are the most efficient and things like that. It is an essential function, and I think we are very lucky in the ACT. I think Maxine Cooper is an excellent Auditor-General; she keeps everyone on their toes, and that is the way it should be.

I think the role of the Ombudsman would remain the same. Jack might have been right; he was critical in suggesting that the Ombudsman here is pretty tame. But the sorts of issues which are dealt with by the Ombudsman are not the sorts of things that an ICAC-type body would be looking at. I think they are all separate jurisdictions. They are all tools to improve public administration. In Victoria the Auditor-General, the Ombudsman and the IBAC are all under the same inspectorate. That is my understanding.

**MS CODY:** We went to speak to them.

**MS LEE:** We spoke to the Auditor-General when she gave evidence the other day. She mentioned specifically that it is not the job of the Auditor-General's office to find corruption and investigate it. That is not their role. Their role is specifically in terms



of performance and financial audits, to try to identify perhaps system risks that may exist. She did go to some length to say that that is not the role, per se.

**Ms Fatseas:** Could I refer to submission number 13 by Professor Benedict Sheehy? In terms of the focus of an integrity commission, he says that, in designing it, you should look at the specific risks posed by the ACT's unique governance. He made the very good point that in the ACT planning is subject to less scrutiny than in other jurisdictions that have both local and state scrutiny.

That ties in with the examples that I gave, that they are all in the planning area. Perhaps that area has a particular need in the ACT, more than in other jurisdictions, for those very reasons—that we do not have city councils to look at planning applications, with perhaps some state government oversight. We have both of those functions collapsed into one organisational agency. So there is perhaps more risk associated with that. Perhaps that partly answers your question, Ms Cody. We can look at the things in the ACT jurisdiction that are unique and therefore perhaps pose more risks.

**MR STEEL:** I would have thought there was less risk with an independent planning authority. That is just a comment.

**Ms Fatseas:** Do you really think it is independent? Ever since the pretty dramatic exit of—

**Mr Edquist:** Neil Savery.

**Ms Fatseas:** Neil Savery some years ago, I do not think it is independent anymore, is it?

**Mr Edquist:** It is nominally independent.

**Ms Fatseas:** Nominally; in practice, I wonder whether it is.

**MR STEEL:** We do not sit around as politicians and make decisions on planning applications. I suppose that is the difference with some of those other jurisdictions.

**Mr Edquist:** The people who head up ACTPLA, or the Environment, Planning and Sustainable Development Directorate, are now just ordinary public servants who have worked in other parts of the public service before and will work in other ones again. I am not saying there is anything wrong with them. I know many of them; I like them.

**MR STEEL:** So it is the officials that you are questioning, not the politicians?

**Mr Edquist:** They are just standard bureaucrats. There is no longer a separate career path for planners. It is not self-funded. It should be. In my mind, it should have the power to set its own fees when people lodge plans so that it does not need to get funded by the government. What has happened is that its funding has been reduced and reduced. With the best will in the world, they find it very difficult to conduct the planning functions that they should. This is really a matter for another inquiry. It would probably be the planning committee that would look at that. I do not think there

is much corruption, if any at all, in the planning; it is just that they have been put in a difficult, almost impossible, situation. It would be good if there was some kind of random audit of decisions every now and then, which there is not.

**Ms Fatseas:** If you look at the case of Manuka Oval, it is public land. I understand that—I am a volunteer, and I found this out—apparently there is a requirement for a land management plan which is examined by the whole Assembly, but I do not think that the Assembly has had a look at this land management plan. I think it has not been done yet; yet there is going to be—how much?—spent on the media centre. How do we get to a point where there is a requirement under legislation and the Assembly itself has not had an opportunity to look at what is a requirement?

**Mr Edquist:** That is an example of misfeasance, isn't it?

**Ms Fatseas:** I do not know.

**Mr Edquist:** A failure to carry out your legislative duties.

**Ms Fatseas:** We are volunteers in the community. We know about this requirement. But it looks like the Assembly has not been given the opportunity to look at that land management plan for Manuka Oval, yet there is this massive public expenditure being proposed. I just do not understand how we can get to this point.

**MRS JONES:** One of the benefits of your coming to appear before us is that you have obviously invested a lot personally and you have really tried to get to the heart of what has been wrong with something that has genuinely disgruntled a section of the community. The purpose of an ICAC, at least to some people's minds, is to restore confidence in the community that our processes work, that individuals are not acting corruptly or, if they are, it will be shown up and there will be justice in some way, whether that is at the criminal level or not, so that the community can have some sort of recourse.

What do you think it would take to restore confidence on the matters that you have been involved in? Can you outline for us how you could imagine an ICAC process, maybe even during this term of government, restoring confidence? You are part of those people who feel affected.

**Ms Fatseas:** Definitely, I would not like to see what happened the last time an integrity commission was proposed, where it took years; it was only put forward just before an election, and then nobody heard about it for years afterwards. I think something should happen within the next year so that we have time for it to be established and to be working. We have already got some examples of what should be looked at and cleared up.

When these examples are not dealt with, they become corrosive. It leads to a lack of confidence in the community that our taxpayers' money, the rates that we pay, is being used to the best effect. Definitely, we need something happening within the next year, if possible. Also, I think we need to address some of those burning issues that are still of concern to the community.

**MRS JONES:** Would you say that a certain amount of retrospectivity needs to be available to the ICAC in order to resolve the reasons why it is being established, and also so that it has the capacity to resolve those issues?

**Ms Fatseas:** Yes.

**MRS JONES:** And that it should not be too long before it is implemented?

**Ms Fatseas:** Definitely.

**MRS JONES:** Mr Edquist?

**Mr Edquist:** I would agree. The sooner you can establish an independent integrity commission the better. That is going to take some time, though, and particularly recruiting a suitable head. You need someone who is vigorous and determined to make their mark and so on. Probably, and possibly regrettably, you need someone from out of town who is only here for three years or so, because if they are doing their job properly they are going to make enemies, and you need someone who is not going to be upset by that.

The issues which I think most call out to be looked at by some kind of integrity commission are some of the purchasing decisions by the Land Development Agency, which are rather anomalous, to say the least. Either the Land Development Agency had the most weird bureaucratic processes, and perhaps someone should have their pay docked for allowing that to go on, or there was much worse going on. I do not know; it was not at all like the federal public service when I worked for it.

You mentioned retrospectivity. I take it that you mean that the commission should be able to look at matters which took place before it was established?

**MRS JONES:** Yes.

**Mr Edquist:** Yes. To have it so that it dealt only with matters that occurred after it was established would be silly. If there have been improper activities, particularly illegal activities, they should still be investigated. There is a statute of limitations. I do not see any point in a commission investigating matters where no legal action could be taken if you did find that there had been corruption. I would imagine that there would be more work than time to do it in, at least when you start off, so you would focus on the issues where it was still within the statute of limitations and you could still pursue the matter.

**THE CHAIR:** Ms Fatseas, you made reference to the integrity commission needing to do a degree of community engagement. Can you elaborate on what you meant by that?

**Ms Fatseas:** I guess it is in two areas. One is engaging the community when it is being established so that people have some idea of what it is meant to do, and that is part of the awareness raising. The second part of it would be how you engage people once you are actually doing inquiries, and giving them feedback about the outcome of those inquiries. It is about engaging them at different stages—when it is first set up, so

that they are aware of the role, during the course of it, so that people have some idea of what is happening and so that they have an opportunity, if they have information, to provide information, and, subsequently, when a report is available, so that they know the outcome.

There could be different modes used during the course of the awareness raising. That could include deliberative processes so that the people have a better understanding of what integrity is all about and can exchange views on what could go into, perhaps, even an education program for the integrity commission. I think there is an important education aspect to the role of an integrity commission. We are looking at how we can prevent this from happening in future, as well as dealing with past cases.

**THE CHAIR:** Thank you. It is all right; I do not want to put you on the spot. I am happy to move along.

**MRS JONES:** What about community engagement?

**Mr Edquist:** I am not quite sure what that means in relation to an integrity commission. If it is this educational function, I suppose it is about giving advice to organisations on how they can set the incentives to discourage bad behaviour or to make it easier to detect improper behaviour; that is one thing.

I share Jack Waterford's doubts about the likelihood of decreasing corrupt or improper behaviour by educating politicians and bureaucrats about what they are supposed to be doing. Most people in the senior public service and/or politicians are pretty well educated. They know what is right and what is wrong. These are not dark, arcane secrets. Basically, if you would have trouble explaining to your grandmother why you had done something, it is probably pretty dodgy. That is a pretty home-grown test, but it works quite well, and people who do corrupt things know that they are doing something dodgy. It is just that they think that they can get away with it. They probably think, "Oh, everyone else does it too, so why shouldn't I?" Telling them it is wrong is not going to work.

The GNCA paper gave the example of Donald Trump, who behaves abominably; I am not saying he is corrupt, I suppose. But you are never going to convince him that he is behaving abominably. He is not going to change his personal style. People do not, unless there are firm laws against it.

**THE CHAIR:** Unfortunately, we are out of time this morning. I would like, on behalf of the committee, to thank you both for appearing today, both for making the time to make your submissions and then coming along and elaborating on them today. In a short period a proof transcript of today's hearing will be forwarded to you. That will provide you with an opportunity to check the transcript and, if there are any corrections that you feel need to be made, that opportunity is there for you.

The committee will continue its public hearings on Friday, 1 September 2017 at 2 pm. I now formally declare this public hearing closed.

**The committee adjourned at 11.04 am.**