

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

CLOSED PROCEEDINGS

Melbourne — 7 December 2015

Members

Mr Kim Wells — Chair

Ms Marsha Thomson — Deputy Chair

Mr Sam Hibbins

Mr Danny O'Brien

Mr Simon Ramsay

Mr Tim Richardson

Ms Jaclyn Symes

Staff

Executive officer: Ms Sandy Cook

Research officer: Ms Kirstie Twigg

Witness

Dr Simon Longstaff, Executive Director, The Ethics Centre (*via videoconference*).

The CHAIR — Dr Simon Longstaff, welcome to the hearing of the Independent Broad-based Anti-corruption Committee. You have chosen to give evidence to this committee via videoconference, audio conferencing or other electronic means. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, provisions of reciprocal legislation in other Australian states and territories. However, it is important that you note that any comments you make outside the hearing, including effective repetition of what you have said in evidence, may not be afforded such privilege. Are you clear about what this means?

Dr LONGSTAFF — I am clear.

The CHAIR — Have you received and read the ‘Guide for witnesses presenting evidence to parliamentary committees’?

Dr LONGSTAFF — I have.

The CHAIR — We are recording the evidence and will provide a proof version of the Hansard transcript at the earliest opportunity, so you can correct it as appropriate. Do you agree to have your evidence taken by videoconferencing or audio conferencing?

Dr LONGSTAFF — I do.

The CHAIR — I would like to invite you to make a verbal submission. We will then ask you questions as appropriate.

Dr LONGSTAFF — Chair, I have been sent this set of questions, so I am prepared straightaway to answer those rather than make a statement of my own.

The CHAIR — Sure. So, if you want to lead off with those.

Dr LONGSTAFF — I do not have a statement to make.

The CHAIR — No, but in regard to answering the questions, or do you want us to just go straight into the questions?

Dr LONGSTAFF — I am happy for you just to put the questions to me, and I can answer those and cover the material that you are wanting to discuss.

Ms SYMES — Hello, Doctor. Thanks so much for attending this morning. Can you tell us a little bit about the work of The Ethics Centre?

Dr LONGSTAFF — The Ethics Centre was established at the end of 1989 initially to address questions arising in business and the professions, and the impulse for its creation was from Sir Vincent Fairfax and Sir James Balderstone, who were respectively the chairman of AMP and BHP, in response to events which had involved the activities of people like Alan Bond and Christopher Skase. There was a sense in which the ethical standard of business and the professions in Australia had not been to a standard that they would approve.

That then gave rise to the Centre. Its purpose was not so much to be a moral policeman but rather to provide practical assistance to individuals and organisations who encounter ethical challenges. Later we have expanded over those subsequent 25 years to operate as required around Australia and internationally, and the work extends now much more broadly than was originally conceived. We have two bookends, if you like, to our work, both involving life and death.

We prepare Australian forces for deployment to Iraq and Afghanistan. All personnel (other than special forces) spend time with us in the pre-deployment phase. We prepare them for the challenges of asymmetric warfare. At the other end of the life-and-death spectrum we work in hospitals with individuals and families

around life-and-death questions, particularly issues to do with whether or not to continue with medical treatment in circumstances where one might not prolong life so much as inadvertently cause a person to die very slowly.

Across that spectrum we deal with everything from mining companies, banking, government departments, not-for-profit organisations. Really it is the only organisation of its kind in the world, because although there are other ethics centres they tend to focus on just business ethics or just military ethics or just bioethics, whereas in our case everything is addressed under the same roof.

We have some unique services. We offer what is still the world's only free national helpline for people who are experiencing ethical dilemmas or have been affected by ethical failure. It is called Ethical Call, and any Australian can contact that, and its users range across policemen, company directors, lawyers, doctors, journalists, even politicians, who phone on occasions when they are wrestling with some particular issue.

And then there is a public engagement side predominantly dealing with things like the Festival of Dangerous Ideas, which is presented in partnership with the Sydney Opera House as an annual event — the Intelligence Squared debates and a number of other things which are done. So it is a very comprehensive list of activity in which the Centre engages, including, as I say, working with individuals in organisations in the context where they are trying to address issues at the most fundamental level of culture. I think this is probably the thing of greatest relevance to the committee's interest today.

The CHAIR — You spoke recently at the IPAA conference in Melbourne, and a lot of your talk was around the culture, changing the culture. Can we take you down that path in regard to what does the culture of integrity involve. You spent a lot of time talking about changing the culture in the public service, which was a main part of the theme of your speech.

Dr LONGSTAFF — As I mentioned at the time, many of the insights I was drawing on come out of our work with the defence forces. I know that the public service and the defence force are quite different in the context within which they operate, but over the 20-plus years that we have been working with defence one of the very significant things that we have learnt is that their approach to managing risk is quite different to what most people suppose.

They have two interlocking concepts: 'command' and 'control'. 'Control' is around things like planning, rules of engagement, standard operating procedures, all of the things that you would expect, but in a civilian context would be called 'compliance'. Then there is 'command', which is defined as "the creative expression of will in pursuit of a particular objective". When you hear that kind of language (invoking notions like that of 'will'), then you know that one is talking about human factors. In the complex world that they [the military] live in even a person of very low rank is capable of generating strategic effects. It is not just a general who can cause strategic effects; a corporal who burns a copy of the Koran and puts it up on the internet can bring about strategic effects.

They [the armed forces] have been wrestling to learn how to manage what the US Marine Corps calls the so-called 'strategic corporal'. Now, they invest a lot of time and energy in planning for the 'compliance' or 'control' elements, but they have also come to realise that that work, no matter how much they invest in it, only does 15 per cent of the things that need to be done in order to bring about effective operations, including the management of risk (which in their world can result in death or wounding). Eighty-five per cent of what they focus on is around culture. It is around that issue of command, and so much so that the Australian doctrine now has redefined leadership as "the exercise of influence over others in order to bring about their willing consent in the ethical pursuit of missions". The reason why ethical pursuit of missions is there is because they have understood that the core of their culture is to actually inculcate strong ethical foundations upon which they can rely even in the most taxing of circumstances, which is why we think it [ethics] is worth including in the pre-deployment phase for places like Iraq and Afghanistan.

The point I was drawing on from that (while recognising, as I say, the significant differences between the operating environments of public servants typically and the military) is that I think there are very

significant lessons to be learned here in Australia, in a civilian context, including in the public service, where one can put too much weight on compliance and on compliance systems, alone. As I mentioned at the time, I am not saying that there should not be any regulation, that there should not be any surveillance or any kind of prudent compliance, but that our society in the civilian space has tended to rely almost exclusively on those mechanisms and has largely turned its face away from addressing the underlying cultural issues.

Culture, itself, is built on an ethical foundation, because you cannot really see or understand a culture unless you take it back to the core values and principles (often related to a defining purpose) which is not actually being expressed in the day-to-day things that are being done. Unless you get that culture right, we are convinced from our experience that you are going to find all sorts of problems which you will only moderately affect by, as I say, the compliance regimes that people put in place.

So our argument for the public service, and in this case we are talking about the Victorian public service, was that it needs, if possible, to spend far more time and attention on going back and clearly articulating the purpose for which the public service as a whole (and its different agencies) exist(s); being explicit about the values and principles which are supposed to inform these things, then putting in place very well developed management techniques for both measuring the degree to which there is an alignment between what the organisations espouse and what they actually do, and then bringing about any closure of gaps that are subsequently revealed.

This is something we do — called ‘Everest’ — something we developed here over 20 years ago with the private sector, where you probably will have noticed that APRA and ASIC are both focusing much more fully on culture as part of their overall regulatory response. It is easily able to be done; it is just that organisations sometimes struggle with the challenge of having to look deeply into what exists, in reality, as opposed to what they aspire to do.

The goal for doing this is that it can bring about a proper alignment between what is espoused in terms of purpose, values and principles and what is actually done in practice – through the way that the culture operates. Then you can reduce the level of cynicism that typically exists in any organisation where people, through their experience, conclude on the one hand that we **say** one thing but we generally **do** something different. If you get that kind of cynicism abroad, it creates gaps that people then start to fill with other interests, sometimes self-interest, sometimes the interests of other groups, and what that effectively does is undermine the integrity of the organisation.

Integrity in the sense which we talk about it here is in two senses: firstly, the sense in which we ‘are what we say we are, we do what we say we do’ and we have a rigorous commitment to making sure all of the systems, policies and structures that we pursue are in alignment with this. We make sure that it is not just a matter of rhetorical flourish but that it is amply evident to people working within those organisations. That is the first sense of integrity. The second sense of integrity is to do with being ‘whole’ – in one sense, not seeing pockets [of behaviour] that are inconsistent. When we talk about bodily integrity for each of us as humans, we want to make sure that all of our organs are working as they should be, working in a way which is consonant with the flourishing of human beings. So we are looking at both senses of integrity. They were the general ideas that I was outlining in making that presentation to the IPAA gathering.

Mr RICHARDSON — Thank you, Dr Longstaff, for speaking with us today.

Dr LONGSTAFF — Call me Simon by the way.

Mr RICHARDSON — Simon. Thank you, Simon. Tim Richardson here. In relation to the culture of the public service, my question goes to some of the challenges or emerging threats that you see and how does the interaction with an anticorruption agency like IBAC work to strengthen some of that culture and those learnings longer term.

Dr LONGSTAFF — Just taking them in reverse order, I think there is a challenge for a body like IBAC to deal with this particular issue. The charter of bodies like IBAC and ICAC in New South Wales is

very clearly expressed in its name. It is about being against corruption and their having investigative functions. There are very profound consequences for those who fall on the wrong side of what they are looking to try to secure. I am not sure if they are best placed to promote, in the sense I am talking about here, the kind of healthy culture that you want.

It makes it difficult for people to expose themselves, if you like, through an IBAC in the way that I think we need to do to get to the ground and the need for a good culture if they also have these investigative and coercive powers.

I think what IBAC could probably do itself is reinforce a certain policy direction of the public service in which it says to it, 'You need to understand what your culture is, and you are responsible for proving to us that you are actually measuring it and closing the gaps'. Parliament could do this too. But as for doing more than that, I think there is a problem. The interesting analogy here has been with what APRA has done in relation to prudentially regulated institutions (banking and finance) in Australia. Under what is called CPS 220, which is the Risk Culture Standard, APRA has said to the boards of all of these banks and other financial institutions, 'We're not going to tell you what your culture has to be. There is no ideal notion, in abstract, that you have to accord with. Rather what we are going to insist on is that every board must for itself define what culture it aspires to have; secondly, it must show how it is able to say whether it knows this to be true or not; and thirdly, what it is doing about closing any gaps which it has discovered in the course of its investigations'.

I think IBAC or the Parliament should take the same approach – to set a general framework is a really useful thing to do – but then they should leave the agency or the department to define for itself, with proper negotiation with the government: what its central purpose is, what are its core values and principles, bearing in mind that there will be a 'family resemblance' amongst them because they all belong to the Victorian public service. So [although all belonging to the same public service structure] there will be something slightly different in education than there will be in say agriculture, because they need to be fit for the particular purpose for which they exist.

But each of them will have this family resemblance, so a public servant should be able to go from one to the other. It's a bit like all of us with our families. You can meet my brothers and sisters and you will know that they are distinctly different individuals but you will also see, just by looking at us, that we are related.

I think the risks are partly to do with a perception, within the public service, that the commitment of the public service, as a whole, to what it says it is going to do, is only rhetorical rather than real – and that generates cynicism. A lot of that comes about not because of people deliberately choosing to do things which are bad or inconsistent. More often than not when you go into organisations and ask people, 'Why do you do what you do?', they will tell you, 'We just do it because everyone does it that way. That's just the way things are done'. So, developing a program of reflective practice is part of the antidote.

Mr D. O'BRIEN — Simon, Danny O'Brien. Just following on from that, one of the questions we have got is about measuring integrity, and I am interested in whether that is possible to do on a department by department basis, but also how much effort an IBAC should be putting towards enforcement and how much towards education.

Dr LONGSTAFF — Right. So if you take integrity to mean the way I was talking about it, in that broad sense of alignment, it is entirely possible. There are tools — we have got them; I suppose others have got them too — which allow you very, very accurately to measure the current state – the difference between what you say you want to be and what you actually are. The tool shows you all of the gaps and why they are there. You can point to particular policies or structures that might be driving aberrant behaviour. You can go across various stakeholders to get this information. The tool will provide you with a guide to what to fix, and it can also provide you with a running order of interventions, ranging from those which are very low cost but highly effective (in terms of changing the environment) through to those that are more costly and time demanding. So, measurement is not a problem; the tools are there. It is more to do with 'will', as to whether or not people really want to know what is there.

As for IBAC, as I suggested before, I think I would not have IBAC doing that work. I think IBAC should perhaps encourage agencies, and that might be selectively (depending on where it perceives risk to be), to do this kind of diagnostic, set a new base level and be transparent in reporting back to IBAC so that it can see inside the organisation, make an informed judgement about where it puts, if you like, its regulatory dollars, because it wants to focus on the points of greatest need, and you can see that by looking through these diagnostic tools.

I think it should encourage education, but as I said, I would keep IBAC more clearly focused on its investigative powers and not try to confuse people about what it is there to do, because I just think it is very hard for it to build sufficient trust to overcome the suspicion that comes from that fact that it has got coercive investigative power — but getting the agency to do it, so that whether it is Parliament or IBAC or somebody or ministers saying, ‘You should do this’. That should be mandated, but whether IBAC is the best, certainly it should not do it. They should not be the active agency that is undertaking the diagnosis, because people just will not be truthful. They will not talk to them. You have got to do this in conditions in which you are sure confidentiality is involved and you get as accurate a picture back, which you will not get if it is being distorted by those kinds of views.

Mr RAMSAY — Simon Ramsay. Welcome, Simon. I think we have met in another life actually, in another committee.

Dr LONGSTAFF — Yes. Hello.

Mr RAMSAY — Back in the Law Reform, Drugs and Crime Prevention Committee. I guess my question is just to expand on the previous answer that you made to Mr O’Brien. That was in relation to what organisations you believe best might be able to afford the sort of ethical standards in the public arena. You have talked about the role of IBAC and the role of parliaments. What sort of improvements in Victoria specifically, but more generally, by other organisations can encourage that ethical behaviour within their organisations?

Dr LONGSTAFF — Every agency and department should take primary responsibility for this as part of its core business. So, from the Secretary, or equivalent role, down they need to be living and breathing their obligation to bring about alignment, and they should probably have within their own ranks people who are able to support and impose that approach. The Public Service Commission, or its equivalent, has a very important role to play in the system-wide encouragement of ethical behaviour. I do not think it is IBAC’s job to do that; I think it can, as I say, be requiring certain things to be done, or such a requirement could be set by Ministers or the Parliament. If you think of where the ‘engine room’ is for this being done is to be found, then it is in the Public Service Commission. Or, it is in the departments and agencies themselves finding the best means to do that in an efficient and effective way; with an expectation that whatever they do must meet minimum standards in terms of transparency and the quality of the data that they are able to provide. And departments should be able to provide to anybody, who has a reasonable point of interest in this, an ‘open book’ account of where the gaps exist and what they are doing about it, in the same way as is driving the APRA approach. That kind of transparency will be very good, and it will also be aligned with internal initiatives which encourage people to draw to the attention of their own organisations any perceived gap between what is required and what they actually espouse to do.

I was down in Victoria last week talking to a group of public servants, and one of the issues that came up with that was about whistleblower protection. My view is that, typically, good cultures are those which encourage anybody – at any time – to raise a concern. Instead of this being seen as a problem, it should be seen as an opportunity to gain good ‘intelligence’ about how to close any of the gaps that might otherwise be open. If someone feels it necessary to ‘blow the whistle’ (in the sense of ‘going public’), then the system has already failed by the time it gets to that point.

The CHAIR — Just to follow up on that point, Simon, it seems to be that when you look at the whistleblower who has come forward to do the right thing, they are frustrated that they have been to their line manager and have not been able to get anywhere. They give evidence; they find out later that they

have either been dismissed or isolated or quarantined in some way. How better can that be managed by the public service?

Dr LONGSTAFF — It goes to the culture around openness. Open communication and delegated authority are two of the essential things needed to secure strong integrity in the public service. In all, there are six key ingredients, of which those are two. The six ingredients are: firstly, commitment from the top, and particularly from the professional head of any department, that they are genuinely committed to this, and not just at a rhetorical level but that they are also willing to ask specifically of the people around them, ‘Just name one or two things which I need to do to show you that I am practically committed to the purpose, values and principles of this organisation, and I will be committed to you to do those things. However, part of the deal is that you must ask your own direct reports the same question’. Amongst other things, this approach starts to take a lot of the guesswork out of the process [of building alignment] and builds confidence, across the organisation, that the commitment is real.

Secondly, you must look for system policy and structural alignment. There are far too many organisations that rely on legacy systems, that have been around for ages, pumping out mixed messages about what is really important. A classic case I know of is in the private sector, from retail financial services. When the [Federal Government] first introduced new legislation around the selling of life insurance and superannuation all of the big companies started to put in new auditing and training practices. Yet, when you asked them about how they measured and rewarded performance, [they reported that] it was done purely on the basis of volume of sales. The message that was being sent to such organisations was, ‘We don’t actually care how sell the products at all; just as long as you sell a lot of them’. It took some time before that started to change.

There are [bound to be] the equivalent systems and policies in the Victorian public service; systems that are just there for so long a time that people will not even think about them. But [those systems] may be sending mixed messages. So you need to be able to examine that situation, and some of the diagnostic tools, that I was talking about before, do that work.

Third, you then have to have delegated authority to provide people with the opportunity to practice making responsible decisions. Again, the temptation is to control risk by creating a world in which no-one can choose to do anything wrong, without understanding that we [inadvertently] create a world in which no-one can choose to do anything right. If you do not actually make any choice – but merely comply – all of the time; with a ‘tick’, ‘tick’, ‘tick’ [of the compliance check-box], then your capacity for responsible decision-making weakens; it eventually dissolves completely if it is not being used.

Fourth, you want open communications, and this comes back to the point about whistleblowing. The ideal is a culture in which people recognise that they are actually going to be rewarded for finding an incongruity rather than be punished for it. You need not just culture but also systems and structures that support people to say, ‘Look, we say ‘this’ but we keep on doing ‘that’. I don’t understand this. It just doesn’t make sense’. Such people should be rewarded by being acknowledged and supported. That will, in itself, make a big change – especially when compared to the current situation for people report their concerns to managers, who are all too often disinclined to listen. This leads to the very bad experiences that people have as whistleblowers in Australia. You start to get change with this more open approach.

Fifth, you have got to encourage the giving of reasons for decisions; and particularly reasons that have some kind of ethical content. If you have people in a public service department or agency who are being told to do something for no good reason, but just that, ‘You do it because I tell you to do it’ — then people will fill the vacuum [created by the absence of a good reason] with a made-up reason of their own. The made-up reason may have little value when compared to actual (but instated) reason behind the decision. So you need to get people who are willing to give reasons, including the ethical content of the reasons, so that they can address these issues.

Sixth (and finally) you need to require people to take a slightly longer term view.

If you put all of those six elements together, then you start to create a culture that is highly favourable to those who have concerns. It will not be to the satisfaction of every person, because some people just have a particular view of how the world ought to operate. Unless everybody agrees with them, they are constantly in a state of anxiety and disappointment. We all see people like this – people who cannot let go of a particular grievance, even if it has been fairly heard (and all the rest). If people do not agree with them, then they see a conspiracy in it. But, by way of those six measures, you can create a place that even the most aggrieved will trust to be a reasonable place for them to raise their concerns. More and more people will raise legitimate concerns if they start to be treated as a source of useful intelligence inside the organisation.

The CHAIR — Thanks. Just heading off in a different direction, what should the balance be between ensuring an effective integrity system with an anticorruption body which has coercive powers but then at the same time protecting civil liberties?

Dr LONGSTAFF — I think when people enter into public service they do so on a voluntary basis and that we as a society, particularly at this time I think, need to invest quite heavily in rebuilding trust, in general, in the institutions of politics and the public service, and in government as a whole. On that basis I think it is necessary that there be coercive powers for those bodies like IBAC to investigate thoroughly and to call to public attention deficiencies where they might exist.

Equally, I think the basic rights or civil liberties have to be preserved in this. For my part, I think people should not be coerced, in that sense, to give evidence. All the principles of natural justice, if you like, should apply in the way in which a body like IBAC can operate, and there should be a presumption in favour of those. But in special circumstances, this may be a ‘rebuttable presumption’ where, with adequate consideration and proper oversight, the presumption might be set aside if there is some particular harm of such great weight that it can only be addressed by setting aside the standard processes on which civil society normally relies for protection.

As to what those particular mechanisms should be and what constitutes an exception [of a kind that would justify the suspension of basic civil liberties], they would have to be very, very serious failings for the exception to apply, but I cannot give you the definition in that sense. But I would be looking for a presumption, as I say, in favour of the preservation of the civil liberties that are typically applied, whether in the public service or not, having regard to the fact that the ability to investigate completely and call to attention cases of corruption, is essential to maintaining public trust in the institutions of government.

Mr RICHARDSON — Just a question on policing. It is a significant work of IBAC in reviewing police across jurisdictions. I am interested, and you might be aware that Victoria Police is soon to hand down a report into its culture and particularly attitudes towards women and the treatment of women in the force. I am interested in your points about the defence force and whether there are similar learnings there to what Victoria Police will confront very shortly. How do you get about changing some of those systemic, entrenched cultural issues?

Dr LONGSTAFF — The Defence Force ... its own approach has been to go root and branch, so it brought in Ms Broderick. She is retired now from her role as the Commonwealth Sex Discrimination Commissioner. She basically had open access and went all the way down into ADFA, started a special program for not just students at residential colleges, like ADFA, but also in other universities in respect of colleges, to begin to address some of those issues. General David Morrison, again now retired, gave that very famous speech which had as its punchline, ‘The standard you walk past is the standard you accept’. There has just been a consistent approach to this.

It has proved to be very difficult [to solve the cultural problem] — we still see cases in defence where people do not act in a manner that we think would be appropriate — and it takes years to get this right. There will be people who are resistant, because they do not believe that they themselves are ‘bad people’, and one of the problems with a lot of these issues is that, too often, when we talk about them, we tend to

stigmatise [the perpetrators] as being ‘bad people’ rather than as essentially good people who have chosen to do some bad things – usually by following certain points of unthinking custom and practice.

{work to fix such a problem} will need to be undertaken across a whole organisation. And this is the thing about this area: you cannot pick a particular area and say, ‘We’re going to fix that one area alone while other areas are allowed to be ignored’. It is the lack of consistency of the whole which causes the problem. So in Defence, for example, you will find people talking about diversity, but they will be discussing, in the same conversation, issues about whether the quality of the kit that they have been issued is adequate for the circumstances in which they find themselves deployed. So, what have the two got to do with each other? In their own minds, it is to do with the consistency of the organisation in its giving effect to what it says are its core values and principles.

You will find that any piece of discontinuity, in the way the organisation operates, will be set upon by people to explain why their own lack of consistency can be excused. The challenge with Defence (and it will be the same for the police), is to make sure that they actually operate in a way which gives them a consistent approach. One thing I can tell you that does not work at all (and did not work in New South Wales with police) is to cut back on levels of trust of people, particularly of the sworn officers. Sworn officers in our system throughout the Commonwealth all exercise the ‘original authority of the constable’. They tried in New South Wales, as part of the reforms introduced after investigations [into police corruption] to strictly limit Officers’ ability to exercise discretion and to make responsible decisions. It got to a point where police officers felt as if no-one trusted them at all within their own organisation – given that they were so tightly controlled.

Rather than that being a constructive and positive thing to do, it actually had negative effects. What they have had to do is rebuild slowly, whether trust or, to put it in another way, a sense of what it means to be a responsible officer exercising the burden of discretion as Officers are bound to do under the [institutional] arrangements for policing that apply in Australia.

The CHAIR — Further questions?

Mr D. O’BRIEN — I have one. Mine is more about your location than your position, Simon. Others may be aware, but vaguely I have seen headlines about some recent controversy over ICAC in New South Wales. Are you able to enlighten us a bit on what that is? The headlines I have seen have been about ICAC basically overstepping the mark and becoming a behemoth that is a law unto itself. Is that sort of the situation?

Dr LONGSTAFF — Firstly, in New South Wales, as you know, there has been a lot of controversy involving people within the political class, both Labor and Liberal, not the National Party, but Labor and Liberal have been brought in to investigate issues — —

Mr D. O’BRIEN — I am a National, Simon, just so you know. Thank you for pointing that out.

Dr LONGSTAFF — Go, you! But I cannot overstate the effect this has had on politics and the way it is perceived in New South Wales. There has been a really precipitous decline in public regard for politicians. Probably, the most infamous individual is Eddie Obeid, who was a Labor Party politician. His name is just synonymous now with corruption. We even have this, though, with Liberals. You might think of Operation Spicer, [taking us] back to the old days of Robert Askin — with a politician driving around in their Bentley with paper bags full of cash and handing it out. This has all come through ICAC. So, there has been a certain amount of reaction against ICAC that has been driven by those within Parliament who, of course, are feeling somewhat scorched by the investigatory process. That was fine when one side or the other was getting damaged, but when everybody was getting it, it has become a bi-partisan concern here.

But what really brought this to attention was the investigation involving a very senior barrister at the New South Wales Bar, where it was felt (and it is alleged now) that the Commission overstepped its mark – both in terms of the way it was prepared, allegedly, to leak information to suit its agenda and also to engage in investigative activities which went beyond what you might reasonably expect in terms of

recognition of the basic liberties of citizens. And then we come to the issue of ‘balance’. The matter that involved ICAC was not something that most people would regard as involving ‘grand corruption’, which people really worry about. It was more to do with the conduct of a person who happens also to be a public official but who was not acting in the discharge of their public duties.

There is a debate about whether or not ICAC has developed some features of the ‘Star Chamber’, the infamous Star Chamber, and needs to have its remit changed. What has happened, as well, is that the [NSW] Parliament has recently legislated retrospectively to ensure that whatever the High Court’s findings, concerning the powers of ICAC, will not impede investigation and reporting in relation to the alleged wrongs done by politicians, because there was some question that all the investigations would be thrown out on that basis, but Parliament has provided a sure and safe legislative basis for that to continue now.

I think it was a combination of those things, and getting the balance right is going to be difficult. I mean, part of [the challenge] is that often these bodies have investigators who come in from other jurisdictions where they are kept more ‘on the leash’ and then, suddenly, they find themselves with greater degrees of freedom. I think power of all kinds needs to be subject to ethical restraint and perhaps there is a need for some further thinking about that within ICAC itself, about what ethical restraint looks like. The fact that you **can** do something does not mean you **have** to do it.

The CHAIR — If there are no questions, Dr Simon Longstaff, we thank you incredibly for the amount of time that you have put into this. We really appreciate it. We were so impressed by your presentation to the conference in Melbourne. The secretariat will send you a copy of the hearing today so that you can go through and check what needs to be checked and send it back as appropriate. We thank you again for your time.

Dr LONGSTAFF — Thanks, and by the way any time if I can, through this mechanism or informally or otherwise, if you want to just touch base and have something to quickly discuss, feel free to do so.

The CHAIR — We really appreciate it. Thanks very much.

Dr LONGSTAFF — Thanks, and merry Christmas to everybody.

The CHAIR — Yes, merry Christmas!

Witness withdrew.