CLOSED PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

Melbourne — 23 May 2016

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

Witnesses

Mr Peter Marshall, chief operating officer and senior vice-president, and
Ms Glenda Beecher, deputy general counsel, office of the general counsel, Monash University.

The CHAIR — I declare open the meeting. Peter Marshall and Glenda Beecher, thank you very much for your time today. Peter, it is great to see you are from Monash University.

Mr MARSHALL — That is right.

The CHAIR — I need to read a statement, and then as an opening presentation you will go straight to the questions.

Mr MARSHALL — That would be our preference if that is all right with you, Chair.

The CHAIR — Yes. That would suit us probably down to the ground. At the end of your response to our written questions, we could then open it up to questions.

Welcome to the closed hearing of the Independent Broad-based Anti-corruption Commission Committee. 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.

This hearing is closed to the public; however, it will be transcribed by Hansard and the transcripts will be published when the committee tables its report in Parliament. However, it is important that you note that any comment you make outside the hearing, including effective repetition of what you have said in evidence, may not be afforded such privilege. Have you received and read the guide for witnesses presenting evidence to parliamentary committees?

Mr MARSHALL — Yes, we have.

Ms BEECHER — I have.

The CHAIR — It is also important to note that any action which seeks to impede or hinder a witness or threaten a witness for the evidence that they would give or have given may constitute and be punishable as a contempt of Parliament. We are recording the evidence, and we will provide a proof version of the Hansard transcript at the earliest opportunity so you can correct it as appropriate. I would like to ask you to make your verbal submission, and then we will ask questions as appropriate.

Mr MARSHALL — Fine. Thank you very much. Thank you to the committee for inviting myself and Ms Glenda Beecher to appear this morning. Look, most of what we would intend to say has been set out in our written submission. Therefore, as the Chair flagged, we thought it might be most efficient if we get directly into responding to the specific questions that have been raised with us. I presume you have a copy of the questions you have raised with us.

The CHAIR — Yes.

Mr MARSHALL — So if it is all right with you, I will just move to — —

The CHAIR — Yes, sure.

Mr MARSHALL — The first question we received was:

> The submission identifies that Monash University is 'less responsive' to notifications of protected disclosures under the new regime as it is no longer being able to receive protected disclosures under the Protected Disclosure Act 2012 … What are the implications for the university of this change? What are the implications for an individual making a disclosure?

Look, as we stated in our submission, we do consider that we are less responsive to notifications under the new statutory regime than we were under the previous regime. I think to give you some context we should perhaps just outline the process that applied under the Whistleblowers Protection Act. Under the old regime a disclosure came in, we had 45 days from the receipt of the disclosure to decide whether it was a protected disclosure, and usually it was decided significantly more quickly than 45 days. And often we sought expert legal advice to validate that our decision as to whether it was a disclosure or not was compliant with the definition of the disclosure under the act. We then informed the person of our decision and in most cases informed the Ombudsman's office as well of the decision.

Once we took that the view that we had certainty that we were dealing with a protected disclosure, so we could immediately appoint a person to support the whistleblower and otherwise take steps to protect them. The whistleblower also had certainty that immediately we took that decision they were accorded the protections that they are able to enjoy under the act.

More importantly, because the disclosure came to us and we were acting on it we could move immediately to lock down areas to protect evidence. In many if not most disclosures we have dealt with or we have knowledge of, evidence is contained on computer hard disks, in computer files, in emails. It is therefore relatively easy to corrupt that evidence if a person under consideration knew they were under investigation. So we can covertly lock down that evidence very quickly. On some cases we have sent expert teams in overnight, often with contracted external sources, to grab copies of hard disks of computers or similar sorts of things. But more importantly we have the expertise to get access to particular work areas where evidence might lie. At Monash University — we are a large employer in this state — we have more than 200 buildings. Many of those buildings have various parts, so it is just not easy for any agency to covertly access workplaces where evidence might be without our cooperation or without actually dealing with us to enable them to source where they want to go.

Under the new regime we really have no role in the processes, and so the protections for the person under the act do not apply when they make contact with the university and we cannot initiate welfare measures at the early stage because we are kind of not meant to know about the matter if it goes to IBAC or the Ombudsman. In other words, the whistleblower or reporting person concerned is in a state of considerable uncertainty for, I believe, a considerably longer period. And because of that period of uncertainty, risks accrue to the whistleblower, risks accrue to the evidence, risks accrue to us being able to provide the necessary support services.

On occasions we do get reports where a staff member or a person wishes to make a disclosure to us, and we have to report to them that they need to take the matter to the Ombudsman or IBAC if they want protection. Again we find there is no clear follow-up to us, so we do not know whether the person takes the advice, and, because on occasions we do not know whether they have taken the advice to go to IBAC or the Ombudsman, if it is a prime facie case of fraud or corrupt conduct, we do not want to initiate our own procedures because we do not want to pollute the ground that the Ombudsman or IBAC might want to investigate. And there are often significant delays between getting clarity on how a matter is to be handled.

All through that period — I am probably repeating what I have said before — the person themselves that made the report I think is in a state of being unsupported and with lack of clarity. It takes a lot of courage for many of these people to make a report, and they have probably contemplated the action of making the report for weeks if not months beforehand. When they finally take action to do it they are then left in a period of considerable uncertainty, without support, until they get clarity over whether their report is a defined protected disclosure.

What I should say, and we will get to the stats, is that there are not a large number of these cases, but on the cases we have received, whistleblowers have gone to significant lengths to covertly contact the university, and in such cases we just have to turn them away and go to a third party. I think that places another barrier on their willingness to continue to pursue through the process. Glenda, is there anything you want to add?

Ms BEECHER — No.

Mr MARSHALL — I think that is our response to question 1.

The CHAIR — Sure.

Mr MARSHALL — If I can keep going then to question 2 — —

The CHAIR — Yes. We will ask questions at the end.

Mr MARSHALL — Okay, fine. To repeat the question:

How does Monash University currently address the difficulty identified in the submission about feeling compelled to undertake investigations in accordance with fraud and corruption procedures when an IBAC or Ombudsman investigation may be underway, and what is the impact on the university of this difficulty?

We have adopted what we believe is a lawful and pragmatic approach, which is that when we do get a report from a person wishing to make a disclosure, our preference is to give them written advice back that they need to go to the IBAC or the Ombudsman. On occasion we will just do it verbally but keep clear case notes of the verbal direction given to them. This is obviously a person who might call up and make an anonymous disclosure on the phone and we are not able to contact them in writing so we will give this advice to them over the phone.

We ask the person to say if they took up this advice within 7 or 14 days, after which we say, 'If we haven't heard from the Ombudsman or confirmation they have reported within that period, then we will assume that the staff member prefers that we should take it up under our own fraud and corruption procedures'. So we effectively give them a period to report. If there is no report, we cannot just go for months and months, particularly if you have a prima facie case that something wrong is going on, so we normally take that period and then we will institute our own procedures.

Mr RAMSAY — Do they nominate a preference at any point in time?

The CHAIR — I was actually going to ask the same question, but I wonder if we could come back to it, because it will be pretty involved, I guess, exactly that question.

Mr MARSHALL — Okay. I also mentioned in the submission that it is the university's experience that the person may want to keep it confidential but on occasion they raise their concerns with colleagues before blowing the whistle, and in this context another impact or delay in the process again increases the potential that the whistleblower may not feel protected. More importantly I think it increases the potential that the evidence will be corrupted, removed, disappear, that sort of thing, while we are in this period of abeyance, while we are working out whether it is protected disclosure or not. Is it in our own internal fraud and corruption procedures or is it something that the state agency has to manage?

Under our own fraud and corruption procedures, particularly if it is a prima facie case, we move, I think, very professionally and very quickly, because it is just something that I can do given my seniority within the organisation. It is pulling together a range of groups — from our audit group who normally do the investigation, to our IT group, who overtly or covertly will lock down computer access and stop any prevention for people to corrupt or remove computer files, to our security group that on occasion will go in and change locks on offices and that sort of thing to preserve, again, the site of the evidence and also, particularly if it is a staff member who appears to have, in our words, very serious misconduct, to make sure the staff member is taken out of the workplace and is not able to return to the workplace until we finish the investigation.

To do it effectively there are a lot of internal groups, and all of this needs to be overseen by our legal people to make sure we are acting lawfully and compliantly. There are a lot of groups to coordinate often on these matters if they are going to be done effectively, and the sooner that we have clarity as to how a matter can be handled, I think the more professionally the investigation can be carried out and the outcome, particularly if it is a case of serious misconduct, can be dealt with.

Ms BEECHER — Can I just add to Peter's comment there? As the employer — because the allegations generally involve staff contact at some level — we have got the power to suspend staff from their employment and remove them from the workplace. We have got those powers under our enterprise bargaining agreement, and they are powers that we do use very proactively in situations like this, as well as the powers that Peter talked about, which is the ability to control the premises, the facilities, the equipment and the like. Because we have those powers, when these things become revealed to us, if we are free to act and we are not waiting for an IBAC to tell us, 'No, we are doing the investigation; do not interfere', we can then act immediately and preventatively in the ways that Peter has described.

Mr MARSHALL — That concludes our response to question 2. Question 3 reads:

> The submission notes in Monash University's experience it is common for a person (particularly a staff member) to approach the university with a disclosure first, rather than IBAC or the Ombudsman. Could you provide an estimate of how many approaches have been made which the university has had to redirect to IBAC? When individuals are redirected to IBAC, in Monash University's experience, are they supportive of making a disclosure in this matter?

We do not record the number of approaches we get. Whenever anyone uses the W word — whistleblowers — immediately it is a big scale-up for us. But you have got to take a reasoned opinion. Sometimes people will use

the whistleblower word and claim whistleblowers or corrupt conduct for instances where they are just plain wrong or they are trying to use that statement to, you know, win an argument — —

Mr D. O'BRIEN — Escalate a complaint.

Mr MARSHALL — Yes, that is right. The classic one — I was just talking to Glenda before — was where we had a staff member only a couple of months ago who was being asked to move to a new building and was trying to get some fairly minor benefits: free gymnasium access and free car parking. The thing came back — 'I'm not going to get that. I am going to be a whistleblower because I know that there is corrupt conduct going on that senior management get free car parking and free gymnasium'. Now they do not. So it is that sort of thing where we would probably say, 'We can assure you it is not going on. If you want to make a disclosure, you can go to IBAC, and here is the web page'. But we would not normally do a formal note on that when the claim is just so abjectly false.

On other ones, though, as I said in my earlier remarks, we tend to do a note. Even if we would not be sure that it would meet the corrupt conduct criterion, we will still do a note saying, 'We can't act on it. You need to go off to IBAC or Ombudsman'. We would probably do, we have estimated, about six of those sort of formal letters a year, and we would have to say that most of those are unlikely to be corrupt or improper conduct. And to be fair, we are not aware of any person redirected by ourselves to IBAC or Ombudsman actually then making contact with IBAC or Ombudsman. We have had a couple where we were surprised we had not heard, but it just seems to dry up with that referral. So that is our response to question 3.

Item 4, how many disclosures did Monash University receive and investigate under the previous act, we would like to table a paper with the data from our annual reports. I think this exemplifies that there are not a large number of disclosures, at least at our university. We have not looked at comparative material with other universities. We had quite an active year back in 2009, but apart from that the numbers have been low. Because we have not heard since the new act came in, we just do not have data for that since 2013.

I cannot surmise why government or the Parliament took the decision that universities could not remain able to investigate, under the supervision of IBAC or the Ombudsman, their own matters. It may well be that there was a concern that there were not enough reports coming out of universities, but I do not think as a result of the change that data that we are presenting suggests that there has been an increase in reports under the new regime relative to the old regime. So that is our response, with our tabled paper, to question 4.

Question 5 was:

> Monash University identified that a benefit of the new regime was having protected disclosures investigated by an external specialist agency. Are there circumstances in which it would beneficial for Monash University to be able to investigate disclosures itself? Why?

There is no doubt that we are very grateful or strongly support that there are often circumstances where an external agency such as Ombudsman or IBAC would have superior capacity to carry out an investigation, particularly in cases where they involve parties external to Monash or parties internal to Monash who refuse to cooperate. A particular example might be increasingly as Monash University, as with any research-intensive university, seeks to commercialise the research and inventions that are made by our staff. Often you commercialise that through forming a company with the private sector or a private equity, so our staff that have invented it would obviously be our employees but also do work with the often very small company that has been set up to try to commercialise the IP. In those circumstances, particularly if we got an allegation of corrupt conduct by our staff member but whilst doing work for the company and not doing work exclusively for Monash University, it gets very, very messy. That is something where we would say, 'Please, take it off our hands, IBAC or Ombudsman, you've got the powers; we don't. And you're far better set-up to investigate that sort of thing'.

Under the old system we could investigate our own matters under the supervision of the Ombudsman. We had to report to the Ombudsman. We would submit our terms of reference for an investigation to the Ombudsman, get them signed off and then we would do the investigation and then hand over the final report to the Ombudsman. That did, in our view, seem to work better, because we could pull together this complex group of internal entities to support the investigation, which is a necessity. We believe we could do it far more speedily, and we have much greater clarity about where a particular investigation is going if we are doing it ourselves.

Under the old regime if we did not do it properly, we would hand over the report to the Ombudsman and the Ombudsman had the powers to (a), criticise us because we had not done it properly, and (b), do their own investigation. That never happened. We thought that was not a bad approach, where the Ombudsman retained the powers over the investigation but was able to get the investigation done. We were able to do it on their behalf, under their supervision, because we could do it, I think, in a far quicker and more certain way than under the existing regime.

I think it is very important that there are some matters we do not have the full powers — nor should we ever have the full powers — to investigate. That is entirely appropriate for IBAC or the Ombudsman. For many of the other matters, particularly within the confines of our own organisation, allowing us to investigate under the supervision of an IBAC or the Ombudsman we think has real benefits. That concludes my response to question 5.

Question 6 was:

> The submission identifies that the separation of the protected disclosure regime into three separate pieces of intersecting legislation is 'unduly complex'. How has this complexity affected Monash University?

I might get Glenda to respond on this one.

Ms BEECHER — Our view is that it is very complex, the current regime, as opposed to what we had in the past. At Monash we did not actually immediately realise that we had in fact lost the power to receive notifications and to conduct investigations, and there are a couple of reasons for that. The legislation that was brought in was at the last minute wholly amended, and so there was an amending act to read on top of another act, that you had to read together somehow, which was quite complex to unpack, and it was not consolidated until after the legislation commenced. So the preparation for moving to a new regime to unpack it was one thing, and the other thing was that the power for us to investigate and to receive notifications was removed through regulations which were not released prior to the commencement date either.

So it was not apparent. There was no public statement that universities would be losing these powers, so we had kind of naively, I suspect, assumed that we would retain the powers and continued with our preparations for the new regime as if we would have the powers. It was only in hindsight when we looked back and said, 'Where are these regulations?', after we had read this consolidated legislation, that we realised it was gone. That had a pretty big impact on us. We were actually quite shocked. We did not have any explanation as to why the power to receive notifications and to conduct investigations was removed from universities. There was no explanation forthcoming either from the government or from the new IBAC, and so we still remain in the dark.

Peter speculated that maybe it is the small numbers that we were investigating. In response to that, we would say we conduct investigations all the time, and this is just another type of investigation. We constantly get complaints about a whole raft of stuff. They are not corruption complaints. Corruption complaints have a particular manner in which you need to approach them because of what the legislation says about them. But it is not that we do not have experience in conducting investigations; we are doing them all the time. Peter has mentioned we are a very large organisation — we are probably one of the largest universities in Australia. That is sometimes missed.

Mr MARSHALL — We are the largest.

Ms BEECHER — We are the largest. There you go — even I missed it! So we are a very large organisation, and we have a lot of capacity to deal with this. When we do do our investigations we do draw on expertise when we need it, including expertise from outside the organisation. We pay princely sums to make sure that the investigations are done well.

We had seen at around that time that certainly there had been plenty of media of other organisations that had previously had the power to receive notifications and conduct investigations who retained it. The example there was local councils, who in the media have been resoundingly criticised on many occasions about how they have mishandled corruption investigations. So that was part of the real surprise — what did we do wrong? What have we done to lose that public trust? So, I guess, we are sort of still in the dark about that.

I did bring a small prop, which is why I was emptying my bag before. This was the legislation before, and this is the legislation now. It is a bit of a visual just to show you. It is very complex. There are three completely

separate pieces of legislation. To understand one of the pieces of legislation, you need to read the other pieces of legislation — the definition of one type of misconduct in one piece and the other type of misconduct in the other piece. You have to read together all of this stuff, whereas we previously had this very compact little act, which was obviously much more easy for a lawyer to traverse, but I suggest to you that whistleblowers would find this extraordinarily difficult, and that just puts another hurdle in their way, which I would have said is not really a welcome outcome for a person who is trying to bring forward corruption, if they have to navigate a process that is more complex for them.

So that is why we say the regime is much more complex than it used to be, and we have not really understood the justification for the increasing complexity. The need for the change we absolutely do see, and it has been very welcome, and we have had positive experience of the change, I think, subject to the complexity. And the other comment we have got is about us losing the ability to receive notifications and conduct investigations. Do you have anything to add to that?

Mr MARSHALL — Yes, I think the only thing I would add is that still, as a very large Victorian institution with a governing council and with sort of governance bodies such as an audit committee of council and a finance committee, we think universities are well governed and managed, and why universities are not able to do investigations and other significantly smaller entities, such as local government, have retained that right under the act, we are unaware of reasons why, but it just does not seem consistent as to the basis as to why universities have had these powers removed from them and yet significantly smaller entities have retained them. We are a $2 billion business. We employ in any one year 18 000 people, so it is not as if we do not have the structures and the policies and the governance oversight that would not permit us to carry out these responsibilities we think appropriately and well.

The final question was:

> Are there any further enhancements or improvements which could be made to the Protected Disclosure Act?

I am not sure what the committee's considerations are. Some other states have moved to a system where universities are subject to mandatory reporting obligations for all potential corruption matters, with corruption defined at an incredibly low level.

At the meetings that Glenda and I attend, we hear of interstate universities' experiences under that regime, and we would urge the committee not to move to a system like that. It puts even more and more matters of fraudulent or corrupt conduct outside the university's control. The bodies that are charged with investigating this do not have the resources to do this in a quick or a timely manner. They also dealing with the matter outside an employment disciplinary regime. As Glenda said, most of the people who these reports are about are employees. The investigating agencies do not have a solid understanding of the disciplinary provisions that employees of universities are subject to, and the feedback we get from our colleagues at interstate universities is they are left with a far less effective way of dealing with matters of fraud, of corruption, than they were when they had some authority to manage these matters themselves.

Overall I think we should say that Glenda and I have not dealt with IBAC since the new regime. We have an occasions dealt with the Ombudsman, and we are tremendously impressed with the Ombudsman. They have been excellent in terms of their commitment and their approach on the investigations. Obviously we do not have a clear transparency of their actions, but we really think certainly the Ombudsman is an incredibly important state body, and we have tremendous respect for them. So we actually do not think significant changes need to be made to the existing regime. But obviously from our responses, I guess the two key areas where we would like to see changes are that we would really like the legislation consolidated and simplified into one act, so you do not have to go to three different bits to understand it, and we would prefer a return to the previous regime, which allowed us to receive and then investigate notifications of protected disclosures, but of course retaining that we can only do that under the supervision and ultimate control of the Ombudsman and IBAC.

The CHAIR — Thanks very much for that presentation; it was excellent. Simon, we will come to your question.

Mr RAMSAY — Well, can I vary the question, given the additional information?

The CHAIR — Of course, yes.

Mr RAMSAY — My initial question at the time was: how many of those that make approaches ask that it be dealt with internally and those that seek an IBAC preliminary investigation? The table does not indicate that significant numbers are seeking IBAC or Ombudsman investigations. It is only a very small number, and I guess that is why you believe you should have the capacity to do your own internal investigations in relation to a complaint at that stage. Given that, you have probably answered the question. There is only a very small number, and those that have probably wanted to seek it internally; is that true?

Mr MARSHALL — Yes. They are the ones that are under this legislation. As Glenda put it, we are doing investigations. It is not as if that is the only corrupt things that are happening at Monash. We have investigations not happening all the time but in any one year we would summarily dismiss three to five staff. Of course this is dismissal of ongoing staff. When I say 18 000, we do not have 18 000 ongoing staff; we only have about 7500 full-time equivalent. A lot of our workforce is sessional and casual staff that come in. We would summarily dismiss three to five staff. Sometimes that would be for things like stealing money. Sometimes it might be for stealing furniture. I am just trying to think of recent ones we have had. Another one might be using pornography on our systems. It is that sort of thing that we would investigate that would not hit the corrupt conduct. It is just prima facie cases of serious misconduct, and we are doing these investigations all the time as and when we become aware of them.

Mr RAMSAY — Can I just ask for clarification? On the basis of those complaints that come to you, under the new act do they automatically go to the — —

No, you are still able to deal with them internally.

Mr MARSHALL — That is right, yes.

Ms BEECHER — There is no mandatory reporting regime in Victoria. Some of the interstate regimes have a requirement that if they become aware of an allegation — it is a quite low threshold that they have for the definition of corrupt conduct — they must stop acting and refer it to their IBAC equivalent and they will then decide what, if anything, happens about that. There is then an organisational inertia, I would suggest, because you have actually taken away all that responsibility. Unless the person is coming to us and saying, 'I am a whistleblower', in which case if they say they are a whistleblower we will say, 'Well, if you want the protections from that regime, you need to go to IBAC or the Ombudsman', and we would explain the process that we use to try to resolve it so that it does not end up that nothing happens because if they do not go to IBAC and we told them to go to IBAC and then we do nothing. We have a practical regime to make sure that does not end up as a consequence.

If we become aware of what we would call 'misconduct' — whether you call it 'corrupt conduct' or the like — we would just deal with it through our usual regime. We would deal it with that way, and it is only when someone is claiming, 'I want to be a whistleblower' that we will alert them to the protections in the legislation. Someone using that phraseology is clearly looking for some sort of special protections, beyond the normal protections that we apply to people who come forward as complainants in our workplace. We have protections in our workplace for that, but they are not these statutory protections because they are not ones that we can give to people. When they do claim the word 'whistleblower', then we will say, 'It sounds like you're looking for some statutory protections. We can't give that to you so you have to stop talking to us. While you're talking to us you are not protected. You need to go and talk to these agencies'. That is that referral process.

Mr HIBBINS — I just want to ask: subsequent to the Ombudsman and IBAC, or in this case it has only been the Ombudsman finding that it is a protected disclosure, and they subsequently take on the investigation, what is the communication and the relationship like with that agency, because obviously it could be a serious matter that affects the integrity of your organisation and your bottom line? I just want to know how your organisation communicates or how the communication and the relationship then goes subsequent to that investigation.

Mr MARSHALL — We get notified — or I do as the disclosure person and our chief executive gets notified — and then there is often a delay and then we will get specific requests — they might be verbal requests from the investigator; they may be in writing — for us to furnish certain material to them to assist their investigation. We try to do that obviously as covertly as we are required to do without alerting people.

I think, in examples we have had in the past, one of the frustrations we have had — and, as I said, we do not have many of these — is if in gathering that material we actually find, 'Yeah, hey, something is going on; there is a prima facie case here', we still cannot do anything because the Ombudsman is doing the investigation. The person who probably will end up being dismissed, often continues to be employed for months and months, whereas if we had found out and were able to do it ourselves, we could immediately put them on 'suspended without pay'. Because we do not have the control of the person for whom, when we have gathered that initial evidence, we say, 'Hang on, something is going on here', we have to keep paying them, often for months and months and months so the Ombudsman has time to complete their investigation.

Ms BEECHER — And the direction from the Ombudsman will be, 'You are not to disclose this to anybody'.

Mr MARSHALL — Yes.

Ms BEECHER — 'You cannot act independently of this investigation' — presumably so that we do not interfere with the investigation, which has very good purpose, but the consequence we see and which typifies the one that Peter is talking about is that we have then seen and had our eyes opened to something that we think is terrible and if we had free hands we would act right now. We have got enough evidence, but we cannot, because we are being told, 'You must not act because we are doing our own investigation'.

Mr MARSHALL — We are not able to go in. We have taken a judgement, we do not want to do anything unless the Ombudsman tells us, so we cannot go into offices and take copies of hard disks of computers to preserve evidence and that sort of stuff. We just do what the Ombudsman tells us to do.

Ms BEECHER — Can I just ask, just from Sam's question, Peter, would you always be informed every time by the Ombudsman?

Mr MARSHALL — I do not know.

Ms BEECHER — You do not know. See, I do not think we know. There might be investigations that we are completely oblivious to that have not involved asking us for anything in particular. Peter is always the point of contact for the Ombudsman or IBAC if there is a matter, so if they have contacted the university, Peter should know. But I do not think we have confidence that we would always know if there is an investigation on the table, so in the last few years there are no statistics as we do not know.

Mr HIBBINS — So it sounds like there is opportunity for the offending behaviour to actually continue —

Ms BEECHER — Yes, potentially.

Mr HIBBINS — whilst the Ombudsman investigates. And subsequent to the investigation, obviously the Ombudsman comes back to you with findings and you act on all of those findings and recommendations? Okay, thank you.

Ms BEECHER — Which we would need to do through our process. So if it is an issue of someone needing to have their employment dealt with, then we would need to do that under our enterprise bargaining agreement, applying our processes of fairness and the like that need to apply in an employment context, but we would use the information to then apply that process at that time.

The CHAIR — We are almost out of time, so just a very quick question from me. Under the old regime you said that you spent a significant amount of money on external sources to make sure that everything flowed properly. How did you do an investigation into corrupt conduct under the old regime? Did you bring in external sources or was there a unit within the university?

Mr MARSHALL — It depended on the case.

Ms BEECHER — The Ombudsman would tell us. If there was a matter that fell under the regime, we would immediately be alerting the Ombudsman — that is, once we make an assessment that it is definitely under the regime or even if it is marginally under. If we have another look, we would also tell them, and then they second-guess our opinion, but once it is decided that we think it is under the regime and the Ombudsman agrees — 'Yes, it is under the regime; we agree with your opinion' — the Ombudsman would then direct how

the investigation took place, and that would be either whether the Ombudsman said 'No, we will do the investigation of this matter; this is too hard for you to do'; or, 'We will let you do it, but you must engage an external agency to do it because there is so much potential for the process to get corrupted if you did it yourself with your people'; or, 'You can do it with your people'.

In the second two cases, where we have some control — because either we have engaged someone externally or we are doing it ourselves — we would have to do regular reports back to the Ombudsman on a progress basis to say, 'This is where we are up to and this is how it is going'. At any stage if the Ombudsman was not happy with how this was progressing, the Ombudsman could take back control, so there was that very close oversight, and we felt that oversight. So if there were questions, if the Ombudsman had questions like, 'I am not sure how you are handling this issue', we would have to explain, 'Well, this is how it is going and this is why it is happening this way'.

Mr MARSHALL — For straightforward matters we would normally —

Ms BEECHER — Do it ourselves.

Mr MARSHALL — suggest we do it ourselves through our internal audit unit. I have to say, most of them — and there are not a lot — were so significant that we would normally go to an external expert. We have not had one for a while, but STOPline, which is run by some ex-senior — —

Ms BEECHER — WA.

Mr MARSHALL — WA policemen. We have used Deloitte Forensics — those sorts of companies.

The CHAIR — Peter Marshall and Glenda Beecher, thank you very much for your time.

Witnesses withdrew.