

**INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION
COMMITTEE**

CLOSED HEARING #3

Sydney — 16 May 2016

Members

Mr Kim Wells — Chair

Mr Tim Richardson

Mr Sam Hibbins

Mr Simon Ramsay

Ms Jaelyn Symes

Chair: Mr K. Wells

Staff

Executive officer: Ms Sandy Cook

Research officer: Ms Kirstie Twigg

Witnesses

Prof. John McMillan, New South Wales Ombudsman

Mr Chris Wheeler, New South Wales Deputy Ombudsman

Mr Michael Gleeson, New South Wales Acting Deputy Ombudsman

Ms Prem Aleema, Executive Officer, Office of the New South Wales Ombudsman

The CHAIR — I declare open this closed hearing of the Independent Broad-based Anti-corruption Commission Committee. I will welcome from the Ombudsman's Office, Professor John McMillan, Ombudsman; Chris Wheeler, Michael Gleeson, Deputy Ombudsmen; and Prem Aleema. All evidence taken at this hearing is protected by parliamentary privilege in accordance with reciprocal provisions in defamation statutes in Australian jurisdictions as if they were given evidence in Victoria and as provided by the Defamation Act 2005 (Vic), section 27; Constitution Act 1975, Parliamentary Committees Act 2003. Any comments you make outside the hearing may not be afforded such privilege.

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. Any reporting of these proceedings enjoys qualified privilege for fair and accurate reporting as if the proceedings were in Victoria. We are recording the evidence and will provide you with a proof version of the transcript at the earliest opportunity so you can correct it as appropriate. Mr McMillan, would you care to begin with a presentation to the committee before we ask questions?

Prof McMILLAN — Thank you, Chair. I will make a short opening statement. Thank you to the committee for the invitation to speak to you today about the work of the New South Wales Ombudsman. It may help if I explain that I commenced my term as Acting Ombudsman on 1 August 2015. My predecessor, Bruce Barbour, had led the office for 15 years and during that time the office underwent significant growth and I think became internationally renowned as a progressive, innovative ombudsman's office. We celebrated our 40th anniversary last year.

We are pleased the committee has interest in the work of the office in relation to the Public Interest Disclosures Act (NSW) and our oversight of New South Wales Police. I have brought with me today Deputy Ombudsman Chris Wheeler who leads our Public Administration Division which includes the public interest disclosure unit, and Michael Gleeson, Acting Deputy Ombudsman in charge of our Police and Compliance Division; we are joined by Prem Aleema, my executive officer.

I will speak firstly about the police function. The New South Wales Ombudsman has a long history of police oversight in New South Wales. The jurisdiction commenced in 1978. In 1984, the Ombudsman's powers expanded to enable reinvestigation of complaints about police, and in 1993 we gained the power directly to investigate police complaints. Over time the police work has moved from an adversarial model to what is now described as a managerial remedial model. The current model places primary responsibility on local commanders to manage complaints about officers and other staff and the Ombudsman's focus is upon ensuring that the New South Wales Police Force appropriately responds to complaints.

While we can directly investigate complaints, there are two other features of our role that are probably more prominent. First, we keep under scrutiny the police systems for handling all complaints to ensure compliance and make recommendations for continuous improvement. Secondly, we review the adequacy of police handling of complaints about serious matters. The police are required to notify the Ombudsman of any complaint made about corrupt or criminal behaviour or lack of integrity or unreasonable use of police powers and complaints about incidents leading to death or serious injury. We get this information at the outset and assess the way the police intend handling complaints of that nature. We can monitor the investigation in real time and receive a copy of the report at the conclusion. As far as possible, our focus is upon ensuring that any deficiencies in the police investigation response are remedied.

The Ombudsman also conducts direct investigations and reports to Parliament about systemic

issues such as the use of Tasers, conflicts of interest and the policing of domestic violence. Another important part of our police work is reviewing the operation of legislation that provides police with new and extraordinary powers. Since 1997, we have conducted 28 independent reviews covering the use of drug detection dogs, stop and search powers and terrorism laws. I recently provided the Attorney-General with a report on the operation of the new consulting law. We expect that report to be tabled soon. We are currently working on a further four legislative reviews.

The committee may be aware that in November 2015, the New South Wales Government announced its intention to establish a new statutory body, the Law Enforcement Conduct Commission. It will take over the Ombudsman's police jurisdiction from 1 January 2017 as well as the functions of the Police Integrity Commission. Essentially, the Ombudsman's police jurisdiction and the corruption work of the Police Integrity Commission are to be combined in this new body, the Law Enforcement Conduct Commission. The bill establishing the Law Enforcement Conduct Commission has yet to be introduced to the Parliament. The Ombudsman's Office and others are working with government at the moment to ensure a smooth transition of the police oversight function.

I will comment briefly on a specific investigation that has gained some publicity, Operation Prospect, and it was principally Operation Prospect which was the investigation I was appointed as Acting Ombudsman for a two-year period to ensure the finalisation of that investigation. It's a long-running investigation which commenced in 2014 into allegations of serious misconduct occurring in the New South Wales Police Force, the New South Wales Crime Commission and the Police Integrity Commission, principally in a four-year period from 1998 to 2002. It's an issue which has been investigated a number of times but not to the satisfaction of people and, hence, the Ombudsman's Office was given a special role in conducting this investigation.

We are committed to finalising the investigation this year. It has been an exhaustive process; collecting over a million pages of records, conducting over 80 days of private hearings and going through an exhaustive process of providing affected parties with access to records as part of the procedural fairness process. As I say, we will wrap up that investigation this year and it will result in a public report. I have undertaken to provide a progress report to a committee similar to your own by June 2016, namely, to the Joint Parliamentary Committee that reviews the Office of the Ombudsman, the Police Integrity Commission and the Crime Commission.

Lastly, I will now just comment on public interest disclosures. The NSW Public Interest Disclosure scheme commenced on 1 March 1995 and its now 20 years old. The legislation establishing the scheme has been progressively amended, including a title change from protected disclosures to public interest disclosures to better reflect the actual objective of the legislation to facilitate the making of disclosures in the public interest. The Act provides for disclosures to be made to investigating authorities, including the Ombudsman's Office, and the agencies individually. Public authorities individually have a responsibility to develop and implement internal policies and procedures for receiving and assessing complaints. There are now nine external investigating authorities under the PID Act, including the Ombudsman, the Independent Commission Against Corruption, the Police Integrity Commission, and the Information Commissioner. Investigating authorities may individually assess and deal with disclosures about conduct that falls within their jurisdiction.

Since 2011, the Ombudsman's Office has had a strengthened role in relation to the Public Interest Disclosure Scheme and elements of that role include the office I chair and the office provides secretariat support for a steering committee that includes representatives of many other investigating authorities. We're responsible for promoting public awareness and understanding of the Act and its objectives. We provide information, advice and training to

public officials and other investigating authorities about matters relevant to the PID Act. We issue guidelines and other publications to inform public officials and authorities about their responsibilities under the Act. We audit, monitor and provide reports to Parliament about the way public authorities exercise their functions under the Act and we also provide reports and recommendations to the Minister. Our last annual report, the fourth annual report from the Ombudsman's Office, was tabled in March 2016.

This committee has helpfully provided a number of questions that might be addressed in today's hearing relating to the PID Act and the police oversight function. My excellent office has helpfully prepared quite focused, detailed responses on many of those and I thought it would be simpler if I will formally table those responses and I think each of the members has a copy before you.

Now, having said that, I'm very happy for you to ask a question in the same terms and we can either summarise or direct attention or, otherwise, we're happy to conduct the hearing in the committee's choice. My deputies are very experienced in both of the areas that they oversight and so they will actively participate in addressing any questions that you have. Thank you for the opportunity to make those opening remarks.

The CHAIR — Thanks for the presentation. Why — why has the government taken the step of setting up a Law Enforcement Conduct Commission to replace what you have been currently doing? What was the reasoning behind that?

Prof McMILLAN — I will provide a brief answer and then others may add. Obviously, government can best explain what its intention was. I suppose it has to be said that the model around Australia has been to either have those functions discharged by an office other than an Ombudsman's Office or, in some instances, to have the oversight and the integrity or corruption investigation function discharged within the one agency. Indeed, there is now only one jurisdiction that has a system where the Ombudsman is responsible for complaints about police and there's a separate integrity commission. That's in the Commonwealth, where the Commonwealth Ombudsman does the complaint function, and the Australian Commission for Law Enforcement Integrity investigates corruption allegations. I might say I headed both organisations in an earlier phase of my career.

This office put in a submission that supported the retention of the police oversight function within the Ombudsman's Office and, in addition, we said that if government was to establish a new organisation, it was important to separate the functions within the organisation. Pleasingly, the model the government has announced — is a Law Enforcement Conduct Commission with a commissioner, two deputy commissioners, one responsible for an integrity division and the other responsible for an oversight division. I'm sure there are other explanations, not all necessarily consistent, that explain the direction the government has taken but I will probably stop at that point. I will see if either of my colleagues want to comment.

Mr GLEESON — The only thing I would note on the transfer question is the terms of reference announced by the government for the review were how to establish a single agency. It wasn't about whether the current model should be retained or modified and the government already formed a view that it was time for a new model, so.

The CHAIR — So will there — these — there will be an inspector over the top of the Law Enforcement Conduct Commission? Is that the —

Mr McMILLAN — Yes.

The CHAIR — The new body will have an inspector as well?

Prof McMILLAN — Yes, that's right. The model we've announced will have an independent inspector, under an independent statutory position.

The CHAIR — Right. Okay. All right. Questions? Tim?

Mr RICHARDSON — I will — I will open the batting. Thank you very much for coming in, Ombudsman, and I just wanted to — I'm just going through and digesting a bit of the protected disclosure information that you have provided to us but it might come as no surprise that Commissioner Latham in our discussions this morning talked about how complex the legislation is. It's a similar — it's a similar challenge that we face in Victoria. And I note some of the points about simplifying the legislation as it currently stands under, I think, question 2, it might be. But what does — and I have got a couple of questions to that but what does that actually — in terms of simplifying, how — how is that best achieved in simplifying what are some of the key — the key areas? And then I've got a couple of questions about some of the agencies themselves.

Prof McMILLAN — It's an open question at the moment because the Public Interest Disclosures Act requires a review to be undertaken. Under the Act it should have started already — a review to be undertaken by a parliamentary committee. So a review will be undertaken this year and both our office, but also the steering committee that I chair, are likely to make submissions recommending amendment of the legislation.

Now, one element, one example, of a proposal that we're likely to make is to introduce a little more flexibility in how a public interest disclosure can be made. At the moment, the quite rigid procedures in the Act for making a disclosure can have the unintended consequence that something which, in truth, we would regard as a public interest disclosure is not classified as such because it's made to the wrong person. And it has the further consequence that agencies, in dealing with potential disclosures, don't focus on the fact that it may come within the Act and manage the relationship with the person that well. But I might get Chris Wheeler to expand on legislative amendments that can be desirable.

Mr RICHARDSON — Thank you.

Mr WHEELER — As John has mentioned, one of the key issues is the complexity of the obligations as to where a disclosure is made. A significant number of the provisions of this — of our Act are about precisely who you can make a disclosure to and it doesn't really reflect reality. In reality, the research shows that people prefer to go their supervisors and generally they will raise a concern. If somebody goes to a supervisor in New South Wales, and most supervisors are not disclosure officers, they haven't made a public interest disclosure. If the supervisor passes it on to a disclosure officer, then the supervisor may have made a disclosure but not the person who gave it to them. So it's unduly complicated.

Our thinking is that it might be more realistic to say that any disclosure made to some person or some body that has the authority to deal with it would make more sense. The idea of this Act is to protect people and therefore to promote, you know, the making of disclosures in the public interest; so the less prescription, probably the better. My view is that the Act would be better drafted on a more principle basis than on a very prescriptive detailed basis, setting out the concepts behind it. I mean, after all, without the commitment of agencies and the CEOs of agencies and the senior staff, an Act is, you know, pretty much a waste of time. With that commitment and an Act working together, then you might be successful in promoting the objects of that sort of legislation.

Now, there are other provisions in there that we also have problems with. It's very focused, for example, on penalty. If something goes wrong, criminal proceedings, disciplinary

proceedings, you can seek compensation, etcetera. Now, our experience in New South Wales is that the criminal proceedings haven't been hugely successful. There has been five or six prosecutions under this Act or the equivalent provision of the Police Act. All have failed.

The Act was amended a few years back to build in disciplinary proceedings as an option; however, taking disciplinary proceedings for alleged detrimental action often isn't going to deal with the conflict situation in that workplace. Unless you can be reasonably certain that one of the parties is going to leave the workplace, they're still both in place afterwards and you've had this process which, if anything, has thrown fuel on the fire. And our experience is also that a lot of disclosures are made in circumstances where there is a pre-existing conflict in a workplace.

Prof McMILLAN — Can I just add, on taking the role as Acting Ombudsman, I had had quite a lot of experience with public interest disclosure schemes including developing the Commonwealth scheme, and I found it very hard to understand the New South Wales Act when I started in this position. Now, some may not regard that as a reflection on the quality of drafting in the Act, The key, ultimately, to understanding it was to realise that it was locked into its antecedents. It was drafted as an Act that defined who could be protected. In that context it's perhaps understandable that, if you wanted the protection of a legal mechanism, is it was a very rigid procedure you had to follow to make the PID complaint. But when you broaden the focus of these laws as they are now broadened to facilitate disclosures and to have them managed in the most informal and least contentious and disputed way, the New South Wales Act is not written with those principles in mind.

Mr WHEELER — One of the other things to bear in mind with this Act, when it was drafted the protections were seen as something special; that they shouldn't be available just to anybody. It had to be something very special. I have never quite understood that, given that any complainant to the Ombudsman gets basically the same protection. So if we have a public official come to us making a complaint, we can either look at it as a public interest disclosure, which we probably have to, so we have got to see whether they've jumped every hurdle, or we could just say, "Well, they're a complainant of the Ombudsman. They get the same protections anyway without jumping any of them."

So I have a problem with that difference, you know. We have had an Act for 40 years that basically says if you make a complaint to the Ombudsman or you're a witness assisting the Ombudsman, you get all these protections. Then all of a sudden this Act comes along where everyone thinks, "This is very special and we've got to limit its applicability." Basically, anybody raising a valid bona fide complaint shouldn't be subject to detrimental action for doing so, whether it's a serious matter or a minor matter, when you get right down to the principle involved.

Mr RICHARDSON — And so how are, in your opinion, are agencies, departments best placed? So they — I understand they're required to report how many — how many such disclosure — public interest disclosures they get. How are they best placed? And I ask that because if some of the — some of the misconduct alleged or, you know, potential serious, you know, corrupt conduct is at the higher levels, and a Victorian example is the Department of Education where the investigation has gone on, how are they placed to investigate that and reporting? What's your views on that?

Mr WHEELER — Okay. We're currently working on a discussion paper about external investigations. A number of agencies have internal investigative resources now. Some of the bigger ones though, because of the amalgamation of agencies, have been reducing the internal capacity to investigate complaints. There has been a lot more contracting out of that role, hiring investigators. This has caused a range of problems, partly because agencies have not been necessarily fantastic at managing those contacts and partly because people who are

putting themselves out as investigators are not top of the range at that role, shall we say. So often reports are received which can't be acted on, which misinterpret the law and various other problems, and we're going to be proposing some ideas for government to think about as ways to improve the standard of investigations across the public sector.

And, certainly, we audit agencies and we will try to get to about one of the major ones a month. We go in there and audit how they've dealt with all internal reports, whether or not they are public interest disclosures or not and when we're there we try to assess the standard of those investigations while we are at it. Often we will get complaints about the standard of investigations being undertaken. So we get to monitor. We get to give advice and guidance about how we expect to see these things investigated. Certainly, we don't have the resources to investigate, you know, all of the public interest disclosures made in New South Wales.

Mr RICHARDSON — Okay.

The CHAIR — Simon, did you have a question?

Mr RAMSAY — I did. Thank you. I just – and we're going to have some discussion with Mr Pink later on but the – I was sort of trying to get an understanding of why ICAC couldn't be the responsible investigative body for police corruption; not so much the inquiry phase but at least the investigative corruption process because we are looking at a model in Victoria where, in fact, IBAC will take that primary role? So can you just tell me why —

Prof McMILLAN — Yes. It wasn't part of the terms of reference. ICAC, in the earlier years, did have jurisdiction but it did not express any wish to have that jurisdiction over police returned to it.

Mr WHEELER — It goes back to 1996. There was a Royal Commission into the Police Service in New South Wales, a very successful Royal Commission. It found an extraordinary matter of, you know, corruption and misconduct across the service and, at the end, the Royal Commissioner recommended that the police jurisdiction of the ICAC be removed and given to a specialised body. That was the Police Integrity Commission. So that has been maintained. There has been discussion off and on about maybe combining the two organisations again but that has never gone anywhere and, certainly, former ICAC commissioners have been very much against having the police jurisdiction put back within that organisation.

Prof McMILLAN — The committee will be aware of the reverse position in the Commonwealth where the only anti-corruption body, independent anti-corruption body, is the Australian Commission for Law Enforcement Integrity that looks at law enforcement corruption. There is no general-jurisdiction anti-corruption body and the debate at the Commonwealth level is whether to expand the jurisdiction of ACLEI so that it becomes an IBAC/ICAC type-body.

Mr RAMSAY — So just if I can get clarification. So the Wood Commission indicated an independent body in relation to investigating police corruption. The public have some caution in police investigating themselves in relation to an internal body. You've indicated the Law Enforcement Conduct Commission which, I think, Mr Pink has indicated as a potential body. There is a lot of bodies, sort of, enshrined around integrity in New South Wales. I'm just still not clear about the argument why ICAC, apart from the fact that it appears from what you're saying it doesn't have much appetite for this sort of investigation into police corruption, why it couldn't handle that task.

Prof McMILLAN — That's probably one of those ones where government and ICAC are, you know, a better position to answer. But from a practical level, it seemed to me asking exactly the same question since I've come to the New South Wales jurisdiction, that the main

factor seems to be that ICAC itself has not expressed any interest and, indeed, has expressed some lack of interest in having jurisdiction over police. And my understanding is that they find it challenging and controversial enough to be dealing with investigating corruption in other areas of government.

Mr RAMSAY — Public servants and MPs, yes.

Prof McMILLAN — And the view that investigation of police corruption may require a separate — a separate agency.

Mr GLEESON — I think, if I might just add, one of the issues in terms of the model in New South Wales — it has two components — being corruption investigation —

Mr RAMSAY — Yes.

Mr GLEESON — which was, as Chris said, was done by ICAC and then by the Police Integrity Commission as well as complaint oversight which is a separate function.

Mr RAMSAY — Yes.

Mr GLEESON — So one of the issues in looking at the models was, I think, ICAC not wanting to have complaint oversight in a corruption body in their agency. That would sit outside of — they don't do complaint oversight generally in the same way that the Ombudsman does. So it was also about accommodating that function of complaint oversight in the model.

Mr RAMSAY — I get that but the Ombudsman could refer it to the ICAC, couldn't they, if they felt there was grounds for —

Mr GLEESON — Yes.

The CHAIR — a preliminary investigation.

Mr GLEESON — Yes, that's right.

Prof McMILLAN — Yes.

Mr WHEELER — But certainly the role of corruption fighting and the role of complaint handling are very, very different animals.

Mr RAMSAY — Yes.

Mr WHEELER — They have a totally different mindset, a totally different approach. One is about, if you like, almost customer service complaint handling, dealing with people. The other, a complainant is a source of information and after that, really, it is irrelevant to the ongoing issue generally. So, you know, one is very heavily into secrecy; the other is more into communication. They have both got their valid roles and the two don't sit well together unless you can separate them as separate divisions of the one organisation. Even then you've got the resource issue as to, you know, what resources, how they're going to be distributed and whether pressures are going to be to take resources from one to the other.

Prof McMILLAN — In simplistic but perhaps realistic terms, I think the government is really faced with three models in this area. One model is to have all corruption issues, integrity issues, serious misconduct issues handled by one body, an ICAC-type body, and all complaints handled by an Ombudsman, whether it's police or any other area of government.

The second model is the current model; to have a standalone commission to investigate integrity in policing and a standalone commission to investigate integrity in other areas of government and leave complaints with the Ombudsman.

And the third model is to create a new police-specific body with both the integrity and the complaint-handling or oversight function and it's that third model that government has chosen. And, as Michael said, the terms of reference for the Tink Review, essentially, required it to advise on the structure for that third model. Now, clearly, there's a debate publicly and within government that leads up to a process of change of that kind. But across the spectrum of different jurisdictions in Australia and internationally, there are examples of each of those three models having been chosen and there are examples of one of the models being chosen and then replaced at a later stage in government history by another model and then perhaps another model again.

Mr RAMSAY — My apologies to Andrew Tink because I think I call him Andrew Pink twice and it will be picked up in Hansards. Could you please amend?

The CHAIR — To Tink, yes. Can I just ask when you receive a complaint about police, the police notify you that there has been a complaint received. Who decides on who is going to make the investigation? Is it your call?

Prof McMILLAN — Yes, Michael will give a more specialist answer.

Mr GLEESON — You mean within the police or —

The CHAIR — Sorry?

Mr GLEESON — Do you mean who between us and them or who within police?

The CHAIR — Yes, yes. Who is going to — who is going to do the investigation. So the police receive a complaint. It might be from one police officer against another police officer. You're notified of that complaint. Who makes the call on who is going to do the investigation?

Mr GLEESON — Well, the Ombudsman has the power to, at any time, investigate a complaint which means we take it over or we can also require the Commissioner to investigate a complaint but we oversight. In practice, we only use those powers by exception. So, in the main, police receive the bulk of the complaints themselves in the first instance and they assess those at a local level and they notify us of the complaint but also of their decision about whether each one ought to be investigated or not. We receive that material and conduct an independent review about whether we're satisfied, you know, with the reasons for that decision and if we think an investigation is required, we will notify them of that decision. In practice, sometimes we get on the phone and talk to them about it and consult about our views, but the Act provides that we can, at the end of the day, require an investigation.

The CHAIR — And how many complaints would you receive per year from police?

Mr GLEESON — To give you the volume, police themselves would receive about — either directly or from us or other sources — about 5000. They would register about 5000 a year. There's a guideline which is created under the Act which are the notification guidelines and John mentioned some of the matters they must notify. They're the more serious conduct matters and we would receive between three and three and a half thousand of those 5000 complaints. The rest, police would investigate or deal — otherwise deal with themselves without our oversight.

One of the powers we have is to, as John mentioned, is to keep under scrutiny the systems. We also must go and inspect their records at least annually. So we look at — by way of sampling, we will go out to local area commands and look at records of complaints that haven't been notified to us prior or other records relating to conduct that haven't been treated as complaints at all to see that they're complying with those notification requirements and to otherwise see that they're handling those matters appropriately.

We also receive complaints directly, about seven or eight hundred a year, and, of course, they will be the full range of complaints from ones that we will refer back to them which we don't require oversight, that we don't require investigation. They might be minor. They may not — they may lack merit and we will refer those to the Commissioner. Others we will require an investigation by them but, yes, we use our investigation powers really by exception. It tends to be the systemic focus. Or sometimes where a complaint has been under investigation by police but we feel has not been resolved and we haven't been given adequate information, then we have to use the formal powers, essentially, to get to the bottom of the matter.

The CHAIR — So what — what sort of employees of the Ombudsman's office make these investigations and the ones that you choose to investigate? Are they former police? Are they — what sort of people are they?

Mr GLEESON — We have got about 32 in the branch and there are a range of backgrounds and experience. We have had and do have some ex and former police officers, one from New South Wales. We have three teams who have a caseload and they focus their work geographically by the command structure so they can have regular contact with those commanders and talk to them and some build up relationships with them about the work. And they have the delegation from the Ombudsman to make decisions about whether matters should be investigated or not. What I do is encourage commanders, when I meet with them, is if they're ever concerned about those decisions or they want to talk about it, they can ring me and that happens rarely. So commanders understand that, you know, they are aware that we are open to talk to through any of those decisions if they think that they're not properly made.

The CHAIR — So would you ever second New South Wales Police to assist?

Mr GLEESON — We haven't had any seconded police for a while. In the life of the office we have had seconded police. We haven't had any in recent years but most of the positions are filled by merit. We haven't had an active program to go and seek secondments. We do have police apply for those positions like any other members of the public and we have had police working in other areas of our organisation as well; in our child protection area and our disability review area. We've got a number of police working there.

The CHAIR — Questions? Further questions?

Mr HIBBINS — I just wanted to ask about the provisions for making a protected disclosure against MPs because in Victoria we have a — I'm not sure whether it's unique to us or not — where the protected disclosure has to be made to a presiding officer first — that's my understanding; correct me if I'm wrong — before, to be actually classed as a protected disclosure. It can still be investigated by either IBAC if it goes straight to them but for the protected disclosure provisions to occur, it needs to be made to the presiding officer first and I wondered what the provisions were in New South Wales and whether they had a similar arrangement?

Mr WHEELER — Yes. Just trying to — it's not something that comes up that often, let me say. I mean —

Mr HIBBINS — Good to know.

The CHAIR — Yes. That's good to know, yes.

Mr WHEELER — I have only — I have only been involved in overseeing this Act for 20 years and I've got to say I can't recall an occasion where — certainly disclosures can be made to the principal officer of the Department of Parliamentary Services but I'm just trying to remember if they can actually be made about an MP.

The CHAIR — Well, can we – Chris, would you prefer that it's taken on notice.

Mr WHEELER — We would prefer to get back to you on that point.

The CHAIR — Are you happy with that, Sam?

Mr HIBBINS — That's fine.

Mr WHEELER — Because it is a bit complicated about whether MPs can make them and whether they can be made about MPs and there's a difference, so.

The CHAIR — Did you want to explain that a bit more, that — it's more about against the MP.

Mr HIBBINS — Yes.

Mr WHEELER — Yes. Okay. I can get back to you about that.

The CHAIR — All right.

Mr HIBBINS — All right.

Mr WHEELER — But if it is, it would be made to the principal officer of the department of – so it would be to the speaker of the legislative assembly if it's about the Legislative Assembly; The president of the Legislative Council if it's about the council.

The CHAIR — Yes.

Mr WHEELER — But, yes, I would have to check.

The CHAIR — Yes, that's fine. Let's clarify that. If there are no further questions, I would like to close the proceedings and I thank you very much for your time. That was very informative. Thank you, very much.

Mr GLEESON — Thank you.

Prof McMILLAN — Thank you for the opportunity.

Witnesses withdrew.

Committee adjourned.