

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

CLOSED PROCEEDINGS

Brisbane — 17 November 2015

Members

Hon. Kim Wells — Chair

Hon. Marsha Thomson — Deputy Chair

Mr Sam Hibbins

Mr Danny O'Brien

Mr Simon Ramsay

Mr Tim Richardson

Ms Jaclyn Symes

Staff

Executive Officer: Ms. S. Cook

Research Officer: Ms Kirstie Twigg

Witness

Professor Tim Prenzler, Coordinator Bachelor of Criminology and Justice, University of the Sunshine Coast.

The CHAIR — All right. So we will start about 10 minutes early which is terrific. So I declare open the closed hearings of the IBAC Committee of the Parliament in Victoria. I welcome Professor Tim Prenzler.

Prof PRENZLER — Thank you.

The CHAIR — All evidence taken at this hearing is — I should know off this by heart. All evidence taken at this hearing is protected by Parliamentary Privilege in accordance with reciprocal provisions in the defamation statutes in the Australian jurisdiction as if we were given — as if you were giving evidence in Victoria and as provided by the Victorian Defamation Act 2005, section 27 and the Constitution Act 1975 in the Parliamentary Committees Act 2003. Any documents or any comments you make outside the hearing may not be afforded such privilege and the reporting of these proceedings enjoy qualified privilege for fair and accurate reporting as if the proceedings were in Victoria. All evidence given today is being recorded. The witness will be provided with the proof version of the transcript in the next few weeks. Professor, would you care to begin your presentation to the Committee and then we will go into questions and my understanding is that we've sent you a list of questions and you talk to them.

Prof PRENZLER — Thanks for your interest in this area of research that I've been involved in for 25 years. So I've spent a lot of time trying to collect evidence to, in fact, answer these excellent questions that somebody put together here. It would be good if people ask these questions more often. It is actually difficult to find the evidence for effectiveness in anti-corruption work. But there is a growing body of evidence internationally and I think if you look at it objectively, there's a very strong basis in the evidence about what is best practice and what is the best form and best way to structure an anti-corruption agency in particular.

And I prefer the term "public sector integrity agency" because my preferred model is a broader agency beyond just corruption. But certainly it would seem that kind of public sector integrity agency or an anti-corruption commission is considered essential in a proper democratic functioning of Government and holding agencies for accountability, politicians, public servants, police. My particular area of research is related to police, but I have tried to do some broader work across the public sector. And I would just like to emphasise as well that I come to this topic without any prejudice whatsoever, completely open-minded and I've just tried to follow the evidence trail and see where it leads. I am open to what works regardless of my own personal preference. I don't really have any in this area.

I am very much a child of the Fitzgerald Inquiry hearing in Queensland. I was strongly influenced in my interest in my career by the Fitzgerald Inquiry, but I certainly don't hold it up as some sort of biblical tome that must be obeyed. And I think when it was published in 1989, there was much less research done about how an agency like our current corruption commission should function, but I think we've learnt a lot internationally and Australia as well. And it is really exciting to see an anti-corruption commission now in Victoria that is across the whole public sector. I think in the way it operates and in its jurisdiction, it's still some way from the ideal. I think there is considerable scope for improvement. I haven't been able to look in depth at how it has operated over the last few years. I have perused the legislation and perused some of the annual reports. I think it's probably too much like the Queensland Corruption Commission and that it's too limited in what it does. And to some extent, it is, I guess, a pale shadow of an ideal anti-corruption commission.

So look, just to address that first question that you — was given to me about what — what is an effective integrity system and I like to include the question there about legitimacy, how do you ensure legitimacy and effectiveness in public sector integrity systems? I think the two overlap a lot. You can have a system that, kind of, has a lot of legitimacy in the way it's structured in terms of meeting public interest standards, meeting standards of procedural justice, but perhaps is not very effective, perhaps under-resourced, for example, or strategies are inappropriate. Or you can have an agency that

has very good strategies, but perhaps it's overly reliant on, for example, in-house processes and is not as effective as it can be.

I think one of the big challenges in the effectiveness area is moving beyond investigations — after there has been an event or allegation — to the area of primary prevention, one of the biggest challenges for anti-corruption agencies. We know from, for example, public surveys in New South Wales that people can see in New South Wales that the ICAC there is quite effective in exposing corruption and to some extent, bringing corrupt persons to justice, but is not very good at preventing corruption. So we've got almost a constant cycle across Australia of recurring scandals, exposés, very complex, expensive investigations and hearings, often very controversial. But the problems keep recurring, so the biggest challenge, I think, is to move into the area of prevention, and I think that's the big test of effectiveness. In terms of legitimacy, I think, really, the key requirement is independence. We know from research from procedural justice and due process that people want a matter to be investigated by an agency or a person who is independent of the accused person.

Generally speaking, if you look across Australia, despite the existence of these very powerful, ostensibly independent, agencies, the large majority of investigations are actually in-house, and most of the anti-corruption agencies or police oversight agencies that we see operate largely as a clearing house for complaints. They come in and they refer them back to the agencies. I mean, the IBAC is actually worse than the CCC here in Queensland. I think it actually investigates less than one per cent of allegations and claims that are submitted to it or that it receives. In Queensland it's under two per cent. So that's not what the public expect.

That's not what people who have a complaint expect. The example that I like to use is, if you were a victim of an assault and you went to the police and claimed that you were the victim of an assault, you would expect the police to independently investigate that allegation. In reality, if — what happens in Australia is you — if you accuse a police officer of an assault, it's actually investigated by other police officers. So, it's equivalent to you as a citizen making a complaint to police of assault, and they just simply flick-pass the allegation back to the colleagues, or even the friends, of the person who committed the assault against you, or who you believe committed the assault against you.

And so the basic principle of procedural justice is just constantly breached, and complainants can see through it. People who are the subject of complaints and investigations can see through it, and the public can see through it. So, here in Queensland we've had some really excellent public opinion surveys carried out by the Anti-Corruption Commission here over many years. Very, very consistent findings. 90 — over 90 per cent of the population want complaints against police independently investigated. They believe that is the fair and the right thing to do. Recently they include questions about local government and public servants — same result. Over 90 per cent say they want them independently investigated.

The reality is less than two per cent are investigated. Consequently, complaints are investigated and adjudicated in-house, where they essentially disappear. Who knows what happens to them, or if the accused person is held to account or if there's anything done systematically to reduce any kind of patterns or problems that are associated with that behaviour, or if there's anything done to close off the opportunities that allowed any misconduct to occur.

The second aspect of legitimacy and effectiveness that I would like to emphasise is the importance of restorative justice principles. Various forms of reconciliation between complainants and accused persons.

This is what we have in various parts of the criminal courts. We have it available in the civil courts. The research on it is absolutely fantastic in terms of the positive outcomes. If you can bring a complainant and an accused person together, say, a police officer and someone who says that a police officer used excessive force against them, if you have a formal investigation you will probably find

there's insufficient evidence, and there will be a finding of 'not substantiated'. So, even under these fairly sophisticated, advanced, powerful agencies that we have now, we still have substantiation rates of only around 10 per cent — because of the evidence problem, the he said/she said.

There does appear to be an increase in substantiation rates around the world, because of CCTV and phone cameras and the increase of evidence. And that adds to the weight of the fact that often complainants did have some kind of legitimacy to their grievance, but it couldn't be proved through an adversarial investigative process. So, one of the best things you can do is to try to mediate the complaint. The — that can be done through an informal dispute resolution process. In many places, like, say, in Queensland it's often simply done through an apology from a (indistinct), a senior officer to a complainant. But we know again from the research evidence that what people — what complainants want, what the public support, is mediation.

And often the accused person, they may be reluctant to go into mediation, but in other cases they see it as an opportunity to have a say. If they do go to mediation, even if they're reluctant, they come out feeling very good about it. And so there's a process by which, governments can run mediation programs in this corruption/misconduct space and they can improve public confidence in the system, they can reconcile complainants back to the system, they can allow them to have a voice. And — but again, the crucial point here is mediation is conducted by an independent person, there's no biases and no affiliations to either side.

The third point I want to make, and then I will stop and you can ask questions, is that there needs to be — picking up on an earlier point — a prevention program in place. So, there needs to be some kind of behavioural change process. It can be fairly, kind of hard-nosed and deterrence-oriented. The better ones seem to be based around training and supervision. More sophisticated ones use a battery of strategies. You've probably heard of early intervention or early warning systems that are in place in some police departments. They've been shown to be extremely effective in changing the behaviour of police officers who attract repeat complaints and often blow out the complaint numbers through the numerous complaints they receive.

So, we know from the research that in all organisations, including policing as one example, often a very small number of people can kind of go rogue, or can engage in repeat offenses or breaches of standards. And if you pick them up through an early intervention system and apply the appropriate remedy — training or BES supervision or whatever it is — you can stop that kind of rogue behaviour. You can do the same thing with particular units of administration, not just individuals. There's a wider battery of tests that are available, as well as things like drug and alcohol testing, you should be aware of. Some agencies use integrity tests or customer service-type tests or audits to check on behaviour.

So, these are sort of all kinds of proactive measures to try and get a handle on what's going out there in day-to-day interactions between public servants, in some cases, perhaps, politicians, and the public, which can result in situations where there's some kind of misconduct. So, some kind of strategy for improving conduct, or primary prevention, where possible. And to do that you have to have a battery of measures — social survey methods, behavioural management programs — to improve conduct, close off opportunities where they occur. That particularly applies more in the financial corruption area. So, just as one example, you're probably aware that there's emerging support for the use of body cameras for police officers.

So, that's an excellent, fairly simple exploitation of current technology, new technology. It protects the police from unfounded allegations. It does — the evidence — the limited evidence that's available suggests that it's a very strong deterrent on police from engaging in misconduct, particularly assaults, but also a range of other forms of misconduct such as (indistinct) duty and that sort of thing. So, there's all these strategies available, which are kind of applied in a patchwork manner here and there around Australia. I don't — I'm not aware of any jurisdiction in Australia that really has the

optimal package, based on international current evidence about what is most effective in misconduct prevention integrity management.

The CHAIR — Professor, if we were to wave a magic wand and say, “Right, we want you to redraft the legislation to make CCC the best in the world,” where do you start?

Prof PRENZLER — Yes. I would start by requiring a much larger number of investigations. So there are two ways you can go in that regard. There are some agencies that investigate all complaints. All complaints and allegations are independently investigated. So you would have heard of the Police Ombudsman for Northern Ireland which is probably the stand-out agency in relation to police in that regard and it also has strong adjudicative powers as well, so it basically determines the discipline for the police offer as well. There’s a little bit of a negotiation process with the police chief, but basically it has authority, both in the investigation and the decision, because in a lot of places you have independent investigations, but no adjudicative power. The Police Integrity Commission in New South Wales is an excellent example or the IBAC is an example. So you can have excellent independent investigations.

There are disciplinary or prosecutorial recommendations and then they’re undermined by the in-house processors and that whole independent process is undermined. The alternative is some kind of hierarchy where you — say in Queensland we’ve had three levels of matters; more serious matters, intermediate matters and then disciplinary matters. If you’re not willing to go the whole way with 100 per cent independent investigations you can perhaps set level 1 and 2 as being required of the investigator by the agency. Certainly that’s where I would start. The next thing I would do is I would de-centralise the agency. I would get it out of an office building in the city. I would make it much more accessible to the general public and whistleblowers. I would set up agencies around the state in regional centres that, again, were very — shopfront centres that were very easily accessible to members of the public or whistleblowers.

Because when we talk about complainants, a lot of the complainants are actually just making disclosures from inside an organisation; they’re actually whistleblowers. And then that agency can run investigations. If there’s a police shooting or if there’s some sort of serious matter, they can send (indistinct) squads out to wherever the event occurs and take over the investigation. They can do the mediation. They can do the complaints reception at a local level. They can present a face of government to local, regional areas and say, “We’re taking integrity seriously. We’ve got a big sign up here, Public Sector Integrity Agency, Warrnambool Office,” or whatever it might be. “You are welcome to complain about your local councillor if you think that they’ve been taking bribes or if there has been undue influence or if you think you’ve been assaulted by a police officer, you can drive here or take public transport and come in and you get a friendly reception.”

Probably the next thing I would do would be then — would be to set up a fairly large mediation program to deal with those complaints that don’t have a lot of probative value and that are best dealt with through reconciliation processes. But I would feed all that data — and this is really the crucial point I think — feed all of that data from all the complaints and findings and processes into a prevention program that is using data to try to drive practices that reduce problems, deploying measures of problems. So I’ve mentioned the Police Ombudsman for Northern Ireland, but it’s exclusive to police. If I could take over I would make it public-sector wide for the whole of Northern Ireland; politicians, public servants, local government, police, all treated the same by this ombudsman or whatever you want to call it. So I’m very opposed to treating police differently to other elements of government which, of course, is what the IBAC does.

The other agency I’m very impressed with is the Hong Kong Independent Commission Against Corruption. So it independently investigates all allegations, but it’s entirely limited to classic corruption; bribery and similar types of corruption. The largest sector of problems in the public sector is primarily police, because of the wide range of temptations and pressures that apply to police and the

highly diverse kinds of situations that they're involved in that can involve misconduct. So the ICAC in Hong Kong — it's a little bit odd because it also deals with sort of business corruption. It's a bit like an ASIC. It's a bit like an IBAC and an ASIC combined, but if you've been beaten up by the police you can't go there. You have to go to an organisation down the road called the Independent Police Complaints Commission. It's very weak. It has very limited powers and can't do much, so that aspect of it I wouldn't recommend, but certainly a lot of the work of the ICAC is extremely impressive.

They do public opinion surveys that show very high levels of support and very strong perceptions of integrity in government in Hong Kong. Quite remarkable when you think of the sort of pressure they would be under from a communist government obviously from the Communist Party. But, I mean, it appears they have managed to hold out so far in terms of maintaining their independence. There are a couple of other agencies I would recommend. One is the Police Oversight Agency in the city of Portland in Oregon. They have, I think, the best developed program for trying to improve police conduct. They've got a big program to reduce police shootings and reduce police use of force and to reduce public complaints against police and they've been very successful in working with police. In terms of investigating allegations and adjudicating complaints they're very weak — they're really just a review agency — but they do have this behavioural improvement program that has been very successful and the indicators are very strong in that regard.

Then there are other bits and pieces around the place. The police mediation program in Denver is very good. There's a good mediation program in New York City, but there are some very obvious problems in policing in New York City that haven't really been affected by, that sort of program. So I would take the best of all of those and put them together in a public-sector wide integrity commission that kind of went down the hierarchy of bad behaviours and try to engage in improvement and deal with complaints kind of across the board.

The CHAIR — I guess — and I will open up to questions — I guess the problem I'm struggling with is your measure of one per cent of complaints being investigated — about two per cent here in CCC, whereas the first thing I had thought of when you were talking would be, "Okay, so you've got vexatious, malicious, trivial, grudge complaints coming in that shouldn't be investigated by a CCC. It should be investigated by either local police or an ombudsman or the department itself." So I guess where do we find the balance between what's running through my mind and what you want as an outcome?

Prof PRENZLER — Even the best in-house investigation is tainted because of the perception of potential bias. Australian Law Reform Commission reports into integrity management issues in Australia. You've probably seen some of those reports that they put out in the seventies and eighties and nineties. It just said, "Look, police investigating police puts the investigating officer in a hopeless conflict of interest position." No matter how genuine they are, there's always the potential that someone will say, "Well, you're just looking after your own." It will always appear to favour the accused because it's in-house. It's colleagues investigating colleagues. You know, Caesar investigating Caesar. Someone has to do that investigation, so it should be cost neutral, so why not have it done by specialist external people. The issue of the standing of complaints is quite complex. Some complaints are vexatious and there should be some legislation that will allow for the prosecution of repeat vexatious complainants.

But we know from surveys and interviews with complainants that the large majority feel genuinely aggrieved that something has been done wrong to them. The large majority do not want the accused person punished; what they want is for this not to happen to another person. They want an opportunity to have their say. They would like the person to be held accountable and perhaps reprimanded, but not necessarily punished in terms of losing their job or being demoted or whatever it might be. So most complainants, we know from research with them, are genuine. There are a number of other reasons why we should take complaints very seriously and not just throw them back at the

department that they relate to where they disappear. One is we know from judicial inquiries and review and investigations of corruption cases all around the world that the genesis of the problem is often the failure to take complaints seriously and investigate them properly.

You will be aware of all sorts of scandals in — involving police, for example, in Victoria where complaints were ignored or went back to the police. The armed robbery squad is a good example. You will be aware of the Nassia Bare case currently that is still going on. They just can't handle it in-house. There's just this natural bias. Or even some public servants or police will think that there is bias against them from their own organisation, so they may prefer an independent hearing. Another reason why we should take complaints very seriously is we know, again, from public perception and experience surveys that for basically every — say, every nine people who want to make a complaint — let's say every 10 persons who want to make a complaint against a public servant or a police officer, only one of them actually does.

There are all sorts of reasons people don't make complaints and one of them is they don't trust the system. They don't think it will be effectively and independently investigated so they're cynical about the system, so they don't complain. So the complaints that do come in are actually just the tip of the iceberg of public dissatisfaction and negative experiences with public servants. Another reason to take complaints seriously is the point I made before. We now have better technology that provides better evidence, so in the past police, for example, could say, allegation of bias or allegation of sexual harassment against a police officer or assault, "No independent witnesses; unsubstantiated; case forgotten," and these problems continue on. Now, you just have to go to YouTube and you can see it, so we can look back and say probably a much larger proportion of those allegations from the past were actually genuine. So, I mean, that just adds to the case for an independent process.

The CHAIR — Questions for Tim?

Mr RICHARDSON — Yes. Thanks, Tim. Just touching on the removal of the prevention and education element of CCC —

Prof PRENZLER — Right.

Mr RICHARDSON — That's something that we've learnt today and something that's quite interesting. I just wanted to get your thoughts on that, Professor, and whether, in hindsight, they should remain a proactive entity for that prevention work.

Prof PRENZLER — Yes. Look, one of the strong, positive features of anti-corruption agencies as they've developed in Australia and some other jurisdictions is this research and prevention function. And so there have been a lot of cases from Queensland, for example, where there has been this highly competent research carried out based on standard research procedures in risk areas. Just some examples include — controversial areas — police use of tasers, high-speed vehicle pursuits, strip-searching, a whole range of other kinds of problem areas where research has been done, improvement strategies have been recommended to the police. Some type of cases they kind of work together. And there has been evidence of improvement. Generally speaking when organisations deal with misconduct issues in-house, you don't have the transparency as well.

So with the research function comes the transparency, so there's just a lot more information in annual reports, in special inquiry reports, on websites, a lot more statistics that you get from these agencies than agencies will publish or communicate if they're left to themselves. So I think research and prevention is absolutely essential. I think there's some fairly transparent reasons why the previous state government here in Queensland cut away that function. They had a bit of a — they've got a long history of antagonism to the Anti-Corruption Commission going back to the Fitzgerald Inquiry. It's very unfortunate. There's a cultural attitude there of hostility which needs to be overcome and —

The CHAIR — Do you think that's still there today?

Prof PRENZLER — Yes, yes. For sure.

The CHAIR — Okay.

Prof PRENZLER — It's strong. It's palpable, yes.

The CHAIR — 26 years later.

Prof PRENZLER — Yes, that's right. It goes back to the early days as well of the CJC as it was then; Criminal Justice Commission. The travel rorts inquiry saw a number of very senior politicians on both sides actually, but especially amongst the conservatives, lose their positions. There's also the influence of the Police Union here in Queensland, which seems to have the ear of the conservatives for some reason. They have a vendetta against the Anti-Corruption Commission, for their own particular reasons. So it's a very unfortunate, sort of, politicised environment here. People often describe the Commission here as a political football. And that certainly has been the case. Both sides have been at fault, I think, in the way they've made changes for various reasons that are not based on science or public interest at all.

The CHAIR — Thank you, Simon.

Mr RAMSAY — Thank you. Well, my question perhaps leads in from that discussion. I noticed the structure in your paper, which is somewhat different to the Queensland current structure, where you've got the Oversight Committee, which is similar to Victoria, and then you've got a inspector that plays a role.

Prof PRENZLER — Right.

Mr RAMSAY — And my question will be what sort of role do you see the inspector playing, whether it's not the Commissioner of the integrity body, whether it be the Anti-Corruption Commission, as in Victoria, or as is now, actually, with the Commission and then you've got a range of departments within the Commission. So the first question is you obviously — the way the current structure is in relation to having the Parliamentary Commissioner, the Parliamentary Committee and then the CCC with the Commissioner sitting on top of that, as to the model that you are proposing, could you just tell me why you see a different structure serving a better purpose than the current structure?

Prof PRENZLER — I think there's this — I've got those three kinds of departments, if you like. I think I've emphasised a standalone police unit within that. And then Local Government, politicians and public servants. You would be aware of the issue in New South Wales about whether police are a special case and should have their own oversight body or whether it should be folded in. And, of course, their experience initially with the ICAC was that it wasn't in the early days, in the eighties, it wasn't effective in dealing with police corruption, hence the Wood Commission Inquiry. So they've kept them separate. Police can feel aggrieved when different standards of evidence or different levels of scrutiny are applied to them. I like the idea of a consistent accountability and investigation standards across the whole public sector, but one way, I think, to manage this issue of police being perhaps a special case is to have a standalone unit within that.

So that's why I've, sort of, got that horizontal structure. But above that I'm thinking in terms of a Parliamentary Commissioner, I'm thinking of an inspector. So I'm just going along with the conventional wisdom. I'm not an expert in this area at all. But there needs to somewhere for people to go who have a complaint against the people who have dealt with their complaint. So I guess there's that third level of scrutiny. So the question is who will guard the guardians, well, who will

guard the guards who guard the guardians, and that will be the inspector or Commissioner or whatever you want to call them, who can receive complaints and allegations against the Commission itself and independently investigate them and exercise powers and make findings. Have I misunderstood your question?

Mr RAMSAY — No. No. Well, we have a Victorian inspector that has some of that responsibility, but we had an IPI too, which was principally for police integrity, wasn't it, and that, sort of, disappeared with the IBAC.

Prof PRENZLER — Yes. It's, kind of, folded into the IBAC, I suppose.

Mr RAMSAY — Yes. So I was just interested in your reasoning why you would separate maybe the Police Integrity Unit, as such. And then the inspector role, is that different to what the current Parliamentary Commissioner's role is?

Prof PRENZLER — No.

Mr RAMSAY — Which it doesn't appear to be; it's an oversight of an oversight.

Prof PRENZLER — Yes. Right.

Mr RAMSAY — Okay.

The CHAIR — Sam?

Mr HIBBINS — I'm just interested, because what you're advocating for in a Corruption Commission, you know, essentially a large body that takes in a high volume number of complaints with a public education function is essentially, kind of, the opposite to the direction that the Queensland Corruption Commission has been heading into.

Prof PRENZLER — Yes.

Mr HIBBINS — And, you know, the arguments or the evidence that we've been hearing, particularly around receiving complaints, is essentially the less complaints you receive, the more targeted their outcomes can be in regards to making whatever findings or recommendations. How do you respond to that?

Prof PRENZLER — I don't see the evidence. I see the evidence going the other way. The surveys of complainants, surveys of the public, the international evidence, the absolute value of independent investigations of even minor matters, which may be indicative of patterns of bad behaviour — I've heard that argument, it goes back to 1990 when the Commission set up and it was flooded with complaints. Part of the problem, I think, is excessive concern about process. So when they do decide to do an investigation, they make it very painstaking in detail, and so it's very resource intensive. And so there's not much left for the thousands of other complaints that are more minor. So they want to get rid of them, cherry pick — well, I would say they want to cherry pick the more interesting or exciting ones; they would say they want to cherry pick the more serious ones. I think you can do both. And I think if you look at the Ombudsman in Northern Ireland, some other agencies, you can do both effectively, and satisfy those procedural justice requirements, satisfy what we know the public want and what complainants want.

The CHAIR — Any further questions?

Mr RICHARDSON — All good.

The CHAIR — All good. Professor Tim, thank you very much for your time.

Prof PRENZLER — I'm done.

The CHAIR — Thank you for your thought-provoking views. We really appreciate it. We've obviously had a full day of meeting people of different views and we really appreciate it.

Prof PRENZLER — Okay. Yes, thanks very much for the opportunity.

Witness withdrew.

Committee adjourned.