

# CORRECTED TRANSCRIPT

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into legislative framework for statutory independent officers of Parliament

Melbourne — 21 February 2005

#### Members

Mr W. R. Baxter

Ms C. M. Campbell

Mr R. W. Clark

Mr L. A. Donnellan

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Executive Officer: Ms M. Cornwell

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#### Witnesses

Mr G. Brouwer, Ombudsman; and

Mr J. Taylor, Deputy Ombudsman, Ombudsman Victoria.

**The CHAIR** — I declare open the committee's public hearing on the legislative framework for independent statutory officers of Parliament. I welcome Mr George Brouwer, the Victorian Ombudsman, and the Deputy Ombudsman, John Taylor. All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act and is protected from judicial review. However, any comments made outside the precincts of this hearing are not protected by parliamentary privilege. All evidence given today is being recorded and witnesses will be provided with proof versions of the transcript shortly.

Mr Brouwer, we appreciate you making the time available to attend this public hearing, along with your deputy. As outlined in our correspondence, this inquiry arose as a result of representations from the Victorian Auditor-General that a specific legislative framework be developed for officers of the Parliament. He suggested that the framework establish the characteristics of an officer of the Parliament; define the appointment process; outline the operational autonomy for the office; and outline the accountability obligations of officers of Parliament. For a number of reasons this inquiry was delayed, but we are now keen to finalise our report; but before we do that, it is most appropriate that we welcome your views on the key issues to be addressed by the committee. Before we proceed with questions, would you like to make any opening comments?

**Mr BROUWER** — Thank you very much for inviting me to address you here and put some views. They may depart in part from perhaps what many people have said and in many ways they will also coincide. I think when you start looking at this question you need to be very careful that the definitions which are presupposed in the way the question is put do not mislead the considerations in terms of what we are really trying to achieve. Thinking about it, what I think is absolutely first and foremost in my mind is the independence of the office. As you know, I have followed and I have been part of government service for over 30 years, both at the federal level and at the state level, and at this stage of my life I thought it was very important — and the only thing that attracted me to the job, otherwise I would not have taken it — was its independence. I think I had had enough of all the other things I had done in the past, and I wanted something different. So for me the independence is very important. You have the theoretical status and you have the practical implications of how this works out. It is all very well to talk about theoretical independence, but it is pretty meaningless unless you really look at the practicalities of it. One of the things which is vital — and it is also important from the Parliament's points of view in terms of its budget — is what kinds of pressures can be put on individuals, notwithstanding theoretical independence.

I think we are fortunate in this country, or particularly perhaps in this state, that generally speaking once the independence of an office such as the Auditor-General's or the Ombudsman's has been recognised, there do not seem to be any instances, from what I have been able to read, of the executive of the day trying to influence the operation and independence of the office in any way whatsoever. I think my predecessors had this experience, and to date I must say that there has been no attempt whatsoever to influence my decision-making or the way I go about my business by anyone of the executive or by anyone in the Parliament. That is a very important point too, because when you talk about the independence of the office and when you talk about the officer being an officer of the Parliament, I want to point out that the independence of this office can be as much affected potentially by the executive as by members of Parliament. So the mere fact of making an office an independent office of Parliament will not necessarily deal with the fundamental issue. What is more important to really work out is how the status of being an independent officer of the Parliament can be worked out to the extent that any possible conflict or compromise by the executive or by members of Parliament can be minimised. We might explore some of those things in questioning later on, but my feeling is probably that rather than such an office establishing a relationship with parliamentary committees, perhaps the relationship should be with the presiding officers of the Parliament — the President and the Speaker.

There are many ways that you can deal with the issue, but that is something that occurred to me. The reason why I am a bit hesitant to advocate too much of a relationship with parliamentary committees and members of Parliament generally is that, after all, a conflict of interest could arise by the mere fact that under my whistleblowers and ombudsman's legislation I can investigate members of Parliament if Parliament choses to refer matters to me. Members of Parliament are also customers of my office; they are complainants to my office and they are often participants in the kind of work I do. Here again one needs to be very careful that any hidden agendas that might be played out — as it would be played out with anyone else — do not impinge on the independence of the functioning of the office. The question then arises, to what extent do you need to enshrine some accountability measures? I am fully in favour of being accountable, but again accountability measures can bring compromise in train unless those accountability measures are carefully calibrated to make sure that independence is guaranteed. That can probably be achieved in lots of different ways. One option might be that if it is a question of looking at the efficiency of the

office periodically — say every three or five years, or whatever it is — that outside experts should be engaged to have a look at it and prepare a report that can be tabled in the Parliament.

I report to the Parliament in my annual report. I want to report to the Parliament much more frequently on very important issues that are of concern to the Parliament and to the community. This has been a departure in the past where I have triggered off more own-motion projects than have ever been triggered off before. I can understand that causes sensitivity in the bureaucracy and everywhere else, but that is too bad. The advantage of my office is that, together with the Auditor-General, I am probably in a unique position to assist and inform the Parliament and the public about some of the underlying factors and pressure points that throw up the symptoms that often result in political stories and everything else. But I keep on saying to people in the department, to complainants who come to me and people who worry and say, ‘Why are you doing this own-motion project?’: ‘We have it under control’. I would say to departments, for instance, that I do not look at the blue sky and think I am going to do an own-motion project today on this or that; I look at the track record. If I see complaints coming up — be it FOI requests from members of Parliament, from the media or from other people, where despite the best of intentions some FOI is not working properly — then I prepare a discussion paper and eventually a report to the Parliament. When I see sexual assault issues not being handled properly because people fall between stools, again I think, ‘Let us have a look at what are the system failures that produce these kinds of symptoms’. So that is really where I am coming from.

Here again, by making these reports available to the Parliament an accountability measure is put in place. When I make a report available to the Parliament I do not care if people want to criticise it or disagree with it; that is the whole purpose of the report. The report is there to try to at least form an effective basis for informed debate, and if the debate wants to go in all sorts of different directions, that is, after all, the privilege of a democratic process. I do not have a monopoly on wisdom. I am merely trying to expose the issues as I find them with the resources that are given to me in order to at least inform the public debate, because, let us face it, if you look honestly at the way our democratic system has evolved, despite all the rhetoric of the supremacy of Parliament and all the rest of it, things are not that simple. We do not really have a true separation of power in the Anglo-Saxon tradition. America is perhaps closer to it than Britain and we are. After all, members of the judiciary are appointed by the government of the day. Parliament’s budget is heavily dependent on what finally comes out of the annual budget. It is just a fact of life.

When you start looking at the independence of my office as being an independent office of the Parliament, then the question still arises in budgetary terms. Would that independence be more or less because of the fact that Parliament has to decide how much money it will give the office as opposed to the executive? Given the wider dynamics I have just referred to and how budgets and appropriations are determined, I very much doubt if there would be that much difference. I will not hesitate — —

**Mr FORWOOD** — We went to — —

**The CHAIR** — Let the Ombudsman finish.

**Mr BROUWER** — Bill, let me finish and then you can get going. In the final analysis if I were to feel that I was being stifled of funds for what I want to do, I would say so to the Parliament. I would say, ‘I am sorry, I can give you an account of how we are deploying our resources; this is what we are pursuing, we would love to pursue that, but we cannot go any further’. Parliament can then do whatever it feels it wants to do. It might say, ‘Right, that is a good idea to support it’, and go into bat for it, or it might say, ‘No, that will just have to wait’, or whatever it might be. Again, what I am trying to say is that the issue of the actual influence on the budgetary allocation is a problematic one because even the Parliament has limited resources. The Parliament has to decide how it is going to divide up its vote. Anyway, I just throw that open for consideration. In the final analysis the Parliament probably suffers from the same intrinsic problem.

I will stop speaking and you can ask questions, otherwise I will talk too much. However, there is one issue that I want to float with the members of this committee which I suppose is a bit radical and is a bit of a departure from the narrow focus of this topic — that is, whether we should be establishing a fourth arm of government; the so-called integrity arm. The model is used in some European countries. It is also something that goes back to Imperial China where traditionally the integrity function was quite separate from all the other arms of government, so you would have, say, the Auditor-General’s office and the Ombudsman’s office, and also now — which we should not overlook — the Office of Police Integrity together with the electoral commission and maybe another one. These should be encompassed in the concept of an integrity branch which is completely separate from the executive and

from the judiciary, as the judiciary is in many ways, and from the Parliament, but with a nexus to the Parliament through the presiding officers. This integrity branch of government is something which is being explored more and more in the public writings, and it is something which is not without attraction. How the detail would effectively work out is a matter that would have to be looked at a bit more closely in terms of the working out and the dynamics of parliamentary prerogatives and everything else.

I am just picking up a few of the points that I recall from your letter. In terms of the appointment of officers of the Parliament or of these independent statutory things, and whether they should be through the Parliament or in any other way, I think the current system seems to work all right. Although the executive makes the appointment, and given the independence that the office has, it is a bit like appointing judges. Judges are appointed by the executive, but they assert their own independence. The Auditor-General and I, and others, may be appointed by the executive, but we assert our own independence because of the support we get from the Parliament and our stature.

The more important issue is the statutory foundation and the parliamentary protections of this independence. The other way — for instance, if you have parliamentary committees getting involved — you could have the problems of the American system where single issues may dominate the debate about the appointment of people who might otherwise be very well qualified but who might then be targeted or torpedoed on one narrow issue, which I think must be very undesirable. In the end you do not gain very much. I want to leave you with those things, and I am happy to answer any questions that members may have.

**The CHAIR** — Is Mr Taylor here to make a comment?

**Mr BROUWER** — If he wishes to.

**Mr TAYLOR** — Firstly, it is worth noting that the Ombudsman is the sixth ombudsman I have worked for. I have worked for five commonwealth ombudsmen, and perhaps we are a little out of step with our commonwealth colleagues. If you look at the recent publications, particularly by Professor Dennis Pearce and Professor John McMillan, who is the current Commonwealth Ombudsman — Professor Pearce is a former Commonwealth Ombudsman; I have worked for them both — they have argued that the ombudsman should be an officer of Parliament answering to a parliamentary committee. But I think the practical issue is that if an ombudsman is to be seen as successful, it is not who he or she answers to, but it is based on how you persuade others as to your success — that is, whether your decisions and reports are reasonable and well balanced and whether your arguments sensible and well received. It is not about who you report to. I agree with the Ombudsman. The most recent article on the issue of an integrity branch you will find was at a recent address by the Chief Justice of the New South Wales Supreme Court, who argued that the ombudsman should be a separate arm of government.

**Mr BROUWER** — And, of course, you should also bring in the Auditor-General and the Office of Police Integrity, seeing that they are both equally important in terms of integrity functions.

**The CHAIR** — My question originally was going to be about parliamentary committees. We have had the privilege of working very closely with our Auditor-General, and I would like to think that we have each enhanced the other's work. You are very clear in your view that your preference would be that if the Ombudsman were to answer to any component of the Parliament it would be through the President or the Speaker — the presiding officers.

**Mr BROUWER** — Yes, that is very much my view in terms of the conflict of interest that could otherwise arise. It is the nature of the office. Our office is a bit different from the Auditor-General's office. We get complaints; we get over 15 000 complaints a year. A lot of them are from members of Parliament acting on behalf of complainants, and you get complaints direct. In the Office of Police Integrity there is another danger that now, with the powers that we have been given — and this is another thing that we should not overlook — when we start looking at corrupt police, as we are doing now, we will find that some traces lead to people in the immediate penumbra of those police. They could be bankers, business people or anybody else, which also could possibly involve friendships with people who may happen to be members of Parliament. We just do not know where the thing finishes sometimes because it is a fairly intensive and more developmental investigation. Again, if you have too many people in terms of being part of the accountability framework, then you multiply the chances of conflict-of-interest issues, whereas if at least you can have the presiding officers of the Parliament — —

After all, qualitatively and historically they should be different; they have got certain responsibilities. I think when the British system was transferred to the then colonies and then subsequently evolved into the commonwealth, even

the concept of the Attorney-General in the traditional system in Britain was a bit different from the concept the way it has evolved here. I would hope that one could look at the presiding officers making sure that they can guarantee integrity. The presiding officers may want to involve others, but there should be some filter. What I am trying to avoid is an automatic acceptance that just because you deal with the Parliament your independence may not be affected.

**The CHAIR** — You made it clear, but I thought it would be good to expand upon it during questions if you wished.

**Mr BROUWER** — Yes.

**Mr CLARK** — Could I explore further the issue of how a relationship between the Ombudsman and a parliamentary committee would work if we were to go down that path, and perhaps cite the precedent of the working relationship between the Auditor-General and this committee? There are clearly some differences. In particular I think you are right in saying that there are more sensitivities in some of your investigations — for example, the Auditor-General presents to this committee his draft annual plan, other planning documents, his draft budget and his draft performance audit program, and we have an exchange of views on those various components. I suppose the role of this committee would be to assist him in determining priorities in terms of getting the views of members of the committee as to which performance audits might be more valuable, and possibly suggesting new topics et cetera, and I suppose also to some extent an oversight of the efficiency and effectiveness with which the Auditor-General is operating, including the appointing of a performance audit to be conducted periodically. What would you think about the same sort of role being followed between a parliamentary committee and your office whereby you brief that committee on your annual work plan and you inform the committee about the ebb and flow of complaints and the pressures of work on your office without going into any of the detail about particular investigations. Do you think that has a potential to add value, as an adjunct to that? It seems to me that in part we are talking about the old conundrum of who guards the guardians themselves and to what extent should there be oversight and explanation to people of decisions that statutory officers take.

**Mr BROUWER** — Of course the oversight issue can be done at a number of phases. It can be done pre phase, during something and post phase. You have oversight anyway because the annual reports extensively report on where we have been and what we intend to be doing. Most of my reports will become parliamentary reports — immediately or shortly thereafter — or public reports, which would be subject to anybody who wants to make a comment on them and can be examined by Parliament. The difficulty is that if parliamentary committees were to start having a kind of interference in what I think needs to be done, it would be a lessening of the independence that the office has at present. If that is the will of the Parliament, then fine — so be it — but I would say it is a lessening of the office's independence. There is already provision in the Ombudsman legislation that the Parliament can refer to me any matter that the Parliament feels I should investigate, in which case I have to give it priority. The mechanism is already there in the Ombudsman legislation, and I think that is an excellent one. I do not think it has been used, but it can be used and perhaps it should be used if there are sufficient important issues that the Parliament feels should be explored.

I think our legislation is a bit different from the Auditor-General's. Of course, the Auditor-General's status has been as the kind of financial watchdog which underpins the parliamentary appropriation process, which is one of the most powerful weapons the Parliament has in its armoury, and that is how it developed traditionally in terms of the notion of parliamentary supremacy. It is not something that really affects my office. My office is different qualitatively from the Auditor-General's. They are doing two different things, but they are equally important in terms of preserving the independence of those activities. I agree with you. I have no problem with accountability, but I am saying the accountability needs to be struck on the basis that I do not get contentious pressures forcing me into one or other field of inquiry which I or anybody in my position feels should be exposed for public scrutiny and comment. That is where I would come from.

**Mr TAYLOR** — I think there is a practical consideration too in that often the performance audits of the Auditor-General are not time critical; they are programmed ahead on existing programs that are continuing regardless. Much of our work can be time critical — take, for example, the own-motion review of the Victoria Police LEAP program which will soon be a public report; that is time critical and cannot wait until the committee considers it in June after having looked at a draft list of priorities.

**Mr MERLINO** — I follow up on the issue of an integrity arm. In jurisdictions that do have in place an integrity arm, the fourth arm of government, how does it work practically in terms of determining budgets and funding? How does that work as opposed to how it works here?

**Mr BROUWER** — That is an interesting point. There is a more general issue. It varies depending on the bureaucratic and political culture of countries. France has a different culture politically, although perhaps not so different. One of the great issues that will confront this community at some stage is, for instance, whether our legal system should just continue to be adversarial, or whether we should have some inquisitorial elements built into it and have a more a sensible balance — and I will be saying something like that at some stage to the law institute. When you look at the fragility of our evidentiary processes under the adversary system, you get a witness killed and everything falls over. So culturally there are quite different structures surrounding it.

What I think — and it may seem a fairly simplistic approach — is that if you wanted to enshrine some of the budgetary independence of an office, you could take as a given, for instance, let me give you a concrete example. Take my current budget. I report to the Parliament and I say, ‘This budget’ — whatever it is — ‘is satisfactory for all the things I want to do’. The only thing that becomes important then is that it is indexed in terms of the normal indexation principles. But it should not just be subject to the whim of the executive to say, ‘We are going to reduce the Ombudsman’s budget this year’, even though I am still doing all the same things. If in fact my functions were to diminish, yes, that is fair enough — then take the money away from me. But build that in as an automatic thing. The same with the salary of the occupant; just link it to a chief administrator’s salary — or a judicial officer or whatever you want to link it to — and no more mucking around with it. It should not become subject to just so-called individual independent assessments, which often are not necessarily so independent or individual. I think an automatic link to certain accepted points will probably ensure a lot of that independence and avoid any suggestion that there is political pressure. It is the same, I think, with the fact that the appointment is non-renewable. It is something I do not have to worry about at my age anymore; nevertheless, I think that is a good point. It is not a question of currying favour when you come close to the end. With human frailty, these pressures are all problematic. It is the same in the executive service now with contracts and so on. These things create more ambiguity sometimes.

**Mr MERLINO** — What about when urgent situations arise and you need extra funding to focus on a particular issue; what do you say about that? Is it outside of the circle?

**Mr BROUWER** — In those matters I consider the Parliament very much an ally. My advantage is that I can go to the Parliament — which I hope I can continue to do — at any time in order to indicate what the problems are, what my difficulties are, and what may happen. But I think it would be very risky for an executive to just arbitrarily refuse a request which is patently important. I must say that this is a point that I have made quite clear. I was just saying to Bill — and I am not very sure why I am doing all of this — that I started with the Ombudsman’s office and then certain things happened and we suddenly found we had to increase drastically. I just said to the government, ‘Look, if we have to do this, at minimum we need this budget; otherwise, forget about it.’ The government responded very promptly and has been very supportive in it. I think an executive has an interest in making certain things work, particularly if they are in the public arena. I think these kinds of things will probably deal with those issues. But I think the automatic linkage is an important one.

**Mr FORWOOD** — George, one of the things this committee does with the Auditor-General is follow up his reports. We go back and revisit issues he has made recommendations about to see whether they have been implemented, and to what extent. To my knowledge, there is at least one case where a recommendation from the Ombudsman has been disregarded by a government department. I remember that for two or three reports in a row this committee took it upon itself to highlight the fact that no action had been taken in regard to a specific recommendation of the Ombudsman, and we believed the situation was untenable. If you do not believe that a parliamentary committee should have some role, how would you propose ensuring that something that you recommend does get support in the battle with individual bureaucrats, or even with the executive?

**Mr BROUWER** — I did not quite say parliamentary committees should not have a role; I was really saying that with parliamentary committees, with their involvement, the arrangement needs to be that there cannot be a compromise of the independence of the office. I appreciate that, I think, last year a parliamentary committee just mentioned that the Ombudsman’s office — that is before everything seemed to blow up — should at least have a better budget in order to deal with some of the issues that we needed to tackle. That was very supportive and well received.

It is interesting that you mentioned this point, Bill, because I can recall your suggesting to me — and it is a suggestion we are taking up in the next annual report; I just spoke to John about it — that from now on, where departments and instrumentalities are not implementing my recommendations, I shall report annually to the Parliament about this fact and with an explanation why, if any, these departments have advanced or not on implementation. This is also provided under my legislation, where I have a specific power to report to the Parliament when people have not implemented my recommendations. I am not necessarily saying that they should automatically implement my recommendations. As I said before, I do not hold the control of all wisdom. But at least where there are reasons, consideration by the department and a credible explanation for why they have not been able to implement it, I think the Parliament at least ought to be able to know. That is how I would pick that up from now on. It is another change, a qualitative change, that is being brought about.

**Ms ROMANES** — Mr Brouwer, my question is also about the relationship of the Ombudsman's office with the Parliament. You said before that, for example, if the government had not been responsive to a request that you put for, say, extra resources, you would go to the Parliament, or you could go to the Parliament.

**Mr BROUWER** — Yes.

**Ms ROMANES** — How would you do that? What would be the way in which you might appeal to the Parliament for extra assistance?

**Mr BROUWER** — The act provides that I have to do two things. I must report to the Parliament on the annual report, and this year there will be two annual reports — one on the Office of Police Integrity and one on the Ombudsman, because they have been separated now. The other one is a provision that says that I can report to the Parliament on any matter that affects my function or relates to my duties and functions. I would use that head of power to go to the Parliament and say, 'Look, this is the situation'.

**Mr BAXTER** — I just want to tease out a bit more your view that you would prefer to have a connection with the presiding officers than with a parliamentary committee. I preface that by saying that I am not yet convinced in my own mind that we need to change from where we are. I concur with your analogy that the Auditor-General's office is somewhat different to the Ombudsman's office in terms of its duties and so on, but if we were to change I would have some concerns about your preference for reporting to the presiding officers over and above an all-party committee on the basis that the presiding officers are almost always members of the government. I have served under quite a few presidents in my time here, and — some more than others — one in particular I can think of took no decisions without the nod of the Leader of the Government. It seems to me that if we are trying to talk about maintaining and enhancing the independence of your office, a parliamentary committee — even acknowledging the aspects you raise about some of us dealing with your office on behalf of constituents — seems to me to have a greater safeguard in that it is a committee representing all the parties in the Parliament rather than dealing with a Presiding Officer who may or may not feel a duty of allegiance to the executive.

**Mr BROUWER** — You will recall that I made the comment very strongly earlier in terms of the historical function of presiding officers — or even the function of the Attorney-General — that the Chancellor of the Exchequer, or whatever it may be, had a certain status by virtue of the appointment, and it became a qualitatively different thing than just being a member of the political party of the government of the day. I would hope the office of the presiding officers would develop. You have the experience — you have long experience in the Parliament, longer than anyone else probably, and you have also seen what happens in reality. I am merely saying that we have to assume certain levels of integrity in our senior institutions of this state. If it is not borne out, I think it is probably much of a muchness. As you say, you could have a compromise situation developing in terms of reporting to the presiding officers, just as you could have a compromise developing in terms of reporting to an all-parliamentary committee. It is probably one thing or the other. There could be, I suppose, a middle way. I am not the expert to suggest that. You are probably better placed than I would be to work out a different balance, which might be the presiding officers with some consultative process involving members of all parties. I just do not know how that would work, but at least so there are some checks and balances to try to minimise the possibility of compromise. These things would need to be teased out. I am just saying that, on the one hand, parliamentary committees have problems, and, as you have pointed out, there could also be problems on the other hand. Perhaps you should think of having these offices evolve differently in the future. Why not? It is very important. It has happened in the past in England, except it seems to be going back the other way there in some ways. I do not know; you would be a better judge than I would be of that.

**Mr RICH-PHILLIPS** — Mr Brouwer, can I ask you about your role with the Office of Police Integrity? Obviously there were a lot of changes made last year, and that function was radically escalated. If I understand correctly, that creates a direct reporting relationship between you and the chief commissioner in terms of your investigations.

**Mr BROUWER** — No reporting relationship whatsoever.

**Mr RICH-PHILLIPS** — Not reporting, but in terms of the result of your investigations does the chief commissioner have the entitlement to — —

**Mr BROUWER** — No, no entitlement. That was changed. I was very strong on that point. I may provide a report. Under the old legislation and the old police ombudsman legislation I had to give a copy of my report or the fact that I was doing things to the chief commissioner or to the minister whose portfolio it was. That has now become purely optional, and I may or may not. There is one report that will be coming out very shortly, which, for reasons of the nature of the report, has not gone anywhere, not even to the chief commissioner. There will be other reports, which will in fact go to the chief commissioner or to the Premier. The choices is there in the police integrity area: I may make a copy available to the Premier, the minister whose portfolio it is — in this case the police minister — and the chief commissioner, but I do not have to anymore. I felt that was really a limitation on my independence. I said I found it very difficult to live with that provision and wanted that completely loosened up. I do not have to consult anyone on the own-motion investigations. I can just trigger it off and do it. I do not have to seek the government's permission. I do not have to seek anyone else's permission. That is a very important thing too, because the moment any other filtering goes into it, it becomes very awkward.

**Mr RICH-PHILLIPS** — The area I was going to explore — which your answer makes slightly redundant — is: do you see any conflict or compromise in having both hats as Ombudsman and your role in the Office of Policy Integrity? Is there a conflict between the two roles? Should they be with separate individuals?

**Mr BROUWER** — They can be as far as I am concerned. I am completely relaxed about it. You can either have two separate individuals in two separate organisations, or you can have two separate organisations on the current basis whereby I am doing both functions. What I have done is completely separate the two offices. John, for instance, is the deputy ombudsman, and I have someone who is the deputy director of police integrity. The staffing is different, the oaths they take are different, the confidentiality provisions are different, and I have separated them by putting them on different floors. Ombudsman people do not have automatic access to the floor on which — which is the third floor of the building we are in — these people are. So there is more and more of a rigid separation to the extent that the legislation allows it between the two offices. It is again a question of gains and losses. For instance, in the New South Wales set-up you have three different bodies — or really four different bodies — very much doing the work that the one body does here. In New South Wales you have the ICAC, the New South Wales Crimes Commission, the PIC and the Ombudsman's office. That total staffing runs into the hundreds. New South Wales obviously has a lot of money to invest in the bureaucracy!

**Mr FORWOOD** — Or crime!

**Mr BROUWER** — I did not say that! What you have in Victoria — arguments on both sides are equally valid; I do not really want to take any particular side, nor should I. I am merely pointing out that what Victoria has ended up with is probably — whether it is intentional or not — not a bad formula. Let me give you an example. The sexual assault issue is in the police area but also in the Ombudsman's area, because you have the education department, the human services department and the police. In New South Wales where you have a separation between two or three different bodies you have demarcation problems. We are trying to knock heads together by saying that this project is a joint project between the Office of Police Integrity and the Ombudsman's office, which are working under different delegations to try to produce a result which will hopefully make more sense at the end of the day. On the complaints function, sometimes when we get complaints coming in to the Ombudsman we can say, 'That's interesting. I can make that judgment because I am aligned across both, and there looks as if there could be a problem with a particular police officer or officers. We are getting a lot of complaints on the Ombudsman side about certain things that seem to involve that part of the police force at that station'. You might then say, 'What we will do is make sure that it gets transferred into the police area for more intensive investigation', rather than being dealt with just as an Ombudsman issue.



Again, you can have synergy advantages in the way the thing operates. It is a novel model, because everywhere else you have these separations at work. But as I said to you before, I do not think there is a perfect answer to any of this. I think each community will have to determine what suits it best, but the current set-up is not bad as far as I can gather. When I talk to former royal commissioners and former QCs who have been involved in previous royal commissions, the Wood royal commission, Fitzgerald and others, I must say they have been very encouraging — a number of them have been involved in developing the legislative framework — in saying that what Victoria now has is a pretty good set-up. I would like to see a few more things — I will probably get into trouble for this — just to streamline it and create a neatness around the whole thing, and that would be dealt with separately, but I think that in a lot of the projects we are doing there are advantages.

**Mr RICH-PHILLIPS** — In your own relatively short experience, in both roles, have you not encountered circumstances where you would like to see separation?

**Mr BROUWER** — No, because we are dealing with different things. I have to make a conscious decision. When you deal with things which are a little bit ambiguous, you have to really make a conscious decision on how this should be dealt with and under which heads of power. It forces you to think very carefully on the heads of power under which you are acting, and then make a consequent follow through in that whole process. It is early days. We only came into existence really in November, which is barely two or three months ago. We have gone a long way to set things up. I have been fortunate in that we have recruited some very good people with experience. We have Graham Ashton, the head of the Bali antiterrorist team, who came across from the commonwealth to join me to head up all the surveillance and undercover operations of the Office of Police Integrity, and that works quite separately from anything on the Ombudsman side. We also have John Taylor and others. We have been very fortunate. We have had QCs and ex royal commissioners like Fitzgerald; we have Gary Crooke, former chair of the National Crime Authority, and other QCs from royal commissions have volunteered their services. When I say ‘volunteered’, I mean on payment, I suppose — we are talking about lawyers, don’t forget!

**The CHAIR** — I think that might be a compliment to you, quite frankly.

**Mr BROUWER** — I do not know. I mean it just works. It seems to work. Let us hope it keeps on working, but what I am saying is there is no perfect answer to any of this. Does that answer your question?

**Mr RICH-PHILLIPS** — Yes, thank you.

**The CHAIR** — Can I take you down a different path, given you have just briefly raised it, in terms of recruiting people? When we look at recruiting and appointment of officers of the Parliament, do you have a view on what might be a future role of the Parliament in such recruitment or appointment?

**Mr BROUWER** — Here again, I would make the point I was adverting to earlier. I think we should not go down the American system. Again, it is one of these things that sounds beautiful in theory — you know, ‘Why shouldn’t the Congress or the Senate or the Parliament sit across it?’ — but in practice we have seen what happens, and it is not very nice. Often you get all the lobbying things, the ideological issues come up and it can distort the whole appointment process. My view is, and I think this comes back to Mr Bill Baxter’s view, that when all is said and done, and if I take into account what my predecessors have experienced and what I am experiencing now, there is no interference; there is complete independence, and I feel very comfortable in having direct access to the Parliament and being able to share things with the Parliament. Again, in practical terms, why change things if they are working all right? That is my view.

**Mr FORWOOD** — Firstly, perhaps you could provide the committee with a quick literature search on the integrity function as a separate arm of government. There must be some stuff around on it.

**Mr BROUWER** — Yes, we can probably get some people to have a look at that.

**Mr FORWOOD** — I am not looking for a lot, but maybe two or three examples.

**Mr BROUWER** — No, we will try to be selective.

**Mr FORWOOD** — The second issue I want to touch on quickly is that we now have an energy and water ombudsman; we have a Health Services Commissioner; and there is a proposal for an ombudsman for WorkCover and the TAC. Do you think we are getting to have a proliferation of too many ombudsmen?

**Mr BROUWER** — I think that is silly, to tell you the truth. I think you just create more and more bureaucracies, have greater and greater expense, and you do wonder what you get out of it at the end of the day. To the extent that you can put the functions under the one office it makes for economies of scale and much more efficiency. Do not forget, it is very much a symbiotic relationship also, because you pick up a lot of wisdom. In terms of the people that come into the office, you deal with such a huge variety of things. I want to make a final point on that, if I may. It is a tremendous experience for people to come in and see how in fact dealing with a whole range of the community's life on the civil side and the police corruption side is fascinating and enriching in terms of trying to do something to deal with some of these fundamental issues. If you have too many separate little ombudsman things, and so on, it just becomes terribly messy and very fragmented, and very isolationist. My personal view is where you can combine it in one office, you should combine it in one office. Also, it might mean that if you want to give a special focus to a particular function, you can set up a special section and for a few hundred thousand dollars you have the whole thing serviced with a special emphasis, rather than spending millions on separate appointments and who knows what.

There is another thing which may be of interest to you as members of Parliament and particularly officers working for you. I am a great believer in trying to get secondment of people through the office. I think that is important, because even people working in Parliament, government departments and even in other areas, be it private sector-related instrumentalities, be it WorkCover, the TAC or other things, it is a very good experience because we learn from it as an office, but it is spreads a different dimension right across. Provided people behave professionally and with some integrity, I do not believe there is any problem with it, because if you do not do that, if you are not open to that, you just impoverish the total sum of administration, including parliamentary administration. That brings up the other issue, that by having this medium it is quite interesting.

**Mr TAYLOR** — I think there is a very practical issue with that, too. That is, last year we fielded about 5000 complaints that had nothing to do with the role and function of the Victorian Ombudsman, but they were about the banking industry, energy, transport and so on. We do not get funded for that. We point people in the right direction and we help them, but that is a increasing part of our workload.

**Mr BROUWER** — And some councils now are also calling their complaints officers ombudsmen, so we get people writing to us and saying, 'We spoke to the Ombudsman the other day and she told me that', and I think to myself, 'My goodness, what has happened to me?'

**The CHAIR** — It must be the workload!

**Mr BROUWER** — I know it is the workload. And then we find out it was the ombudsman of the Geelong City Council, or whatever else it may have been. So people get quite confused when dealing with someone called an ombudsman, because there is no legislative restriction on the use of the term 'ombudsman'.

**Mr FORWOOD** — It is on the agenda at Banyule tonight.

**Mr BAXTER** — You will have to copyright the term!

**The CHAIR** — In relation to secondment, at this point is there much in the way of secondment of staff? The second supplementary relates to the culture of the Ombudsman's office. You keep talking about integrity and operating professionally. If there have already been secondments, have you had any feedback on how people cope with going back to the public service, which I imagine has a somewhat different culture to yours?

**Mr BROUWER** — Some people do not want to go back to the public service, which of course destroys the idea of the secondment. They really enjoy it and they enjoy the different kinds of culture and everything else, and they prefer to stay, which is not what you intend — you want people to recycle. That is the kind of reaction we get. It is only something we are doing more and more. We really want to make an effort at seconding and inviting people to come. To give you an idea of the interest, for the police integrity positions we advertised recently we had 20 positions and got over 556 applications, including from within Victoria, the whole of Australia and overseas. For the Ombudsman positions we advertised about six months ago. We had 15 Ombudsman positions, and I think we got over 700 applications for those 15 positions. So there is a lot of interest. We were a bit astounded by it, because it meant a helluva lot of work for us to try to sift through it all. There seems to be great interest, because a lot of people are very committed to do something which is a bit different.

**The CHAIR** — What is it about your office that distinguishes it in terms of the culture of integrity and professionalism?

**Mr BROUWER** — I think it is an idealism.

**The CHAIR** — Do you have in-service or training days? Does it permeate everything you do?

**Mr BROUWER** — Yes, we want to. We do not always succeed; we try to. It is one thing I really want to spend a lot of time on. What worries me about the whole concept of integrity — and I say this to the police and others — is that I get really worried when I go into a reception area and I see little placards with ‘Our vision’, ‘Our strategy’, and ‘Our systems of ethics’. When I see that I usually know things are going wrong somewhere, because a lot of people put all that up, but it does not mean a thing. What I think is more difficult is to see how you can make sure that everybody down the line can live the values that you are trying to espouse. It gives boards and management a great feeling to have a statement of ethics, but they abdicate the responsibility after that, which is counterproductive. There is too much of it in our society. We have got all these labels and visions — if I see any more visions I will really despair! Perhaps I am iconoclastic in that. We also try to groom and encourage our people to feel committed to what they are doing. The own-motion aspects are very uncomfortable for the recipients, but intellectually they are very stimulating and attractive to a lot of young people who are idealistic, want to try to contribute something to their society and community and are willing to do it. People are very well qualified generally, with two or three degrees sometimes. Some people we have employed recently in the Ombudsman’s area dropped \$10 000 or \$20 000 from that earned in their previous jobs in legal firms — the establishment has paid them much more — because they are interested in the work. There is idealism. We try to live up to it. As I said, we are far from perfect. I am overhauling the whole system, and John is helping me in this, because, to be quite frank, the Ombudsman’s office practices were not always the best either. I said, ‘If we preach to the world, we should at least have our own house in order’. A lot of effort is being put into it.

**The CHAIR** — If there is anything you wish to share with our committee after this hearing in relation to that culture that obviously attracts people which you might happen to have on paper in spite of all you have said, we would be very curious.

**Mr BROUWER** — I would be happy to be available to committee members at any time, and to other individuals too. I always say that my door is open to anybody, to all members of Parliament; if they want to have a chat about things, they can do so. This is why we are doing discussion papers for the first time. We have never done discussion papers in the past. I think it is probably a first Australia-wide. We just issued a discussion paper on sexual assault handling — and that is on the web site — before we finalise our report. On freedom of information we have worked hard to produce a discussion paper, and that will be circulated to everybody who wants to have it to try to get feedback. We have consulted with members of the government and members of the opposition. We have gone around in order to try to get more wisdom about some of the intrinsic issues. When we get all those things we will produce the final report. What I am saying is that I think it is part of an intricate process, not just a remote one.

**Ms ROMANES** — Are discussions papers focused on complaint handling in those areas or on the issue?

**Mr BROUWER** — It depends. The handling of sexual assault is really based on the complaints we had and how we dealt with them. The freedom of information one is partly based on the complaints and also some of the intrinsic difficulties or dysfunctionalities in terms of the mechanics of the legislation. So it can range right across the board.

**The CHAIR** — I have just tried to check with the committee members. We did ask you to be here for 1 hour, and the hour is now up. Mr Brouwer and Mr Taylor, it has been an absolute pleasure to have you both here this afternoon. By the interest shown in the range of questions that have been covered today it seems you have sparked great thinking from our side. We thank you for the wisdom you have shared. You will be getting a copy of the Hansard transcript, and you will be free to note any typos — should there be any — and you can get that back to the committee. Thank you very much.

**Committee adjourned.**