SUBMISSION OF THE
INTEGRITY COMMISSION

March 2016

Independent Five Year Review of the functions, powers and operations of the *Integrity Commission Act 2009*

INTEGRITY COMMISSION

The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

This report and further information
about the Commission can be found on the website

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Note: Attachments 2–5 do not conform with the page numbering of this submission

INTRODUCTION

This submission is provided by the Integrity Commission ('the Commission') to contribute to the Independent Review of the *Integrity Commission Act 2009* ('*Integrity Commission Act*'), undertaken in accordance with s 106 of the *Integrity Commission Act*. The submission is that of the Board of the Commission, and has been prepared following close consultation between Board members and Commission officers.

The submission is intended to be a public document, to assist both the Independent Reviewer and the broader public to understand the role and functions of the Commission, and to highlight issues of concern to the Commission.

The Commission has sought to provide further detail to the Independent Reviewer in oral submissions; some of these submissions may require private hearing given the confidential and private nature of some of the Commission's operations.

The *Integrity Commission Act* requires the Independent Reviewer to consider:

- *the operation of the Act in achieving its object and the objectives of the Integrity Commission;*
- *the operation of the Integrity Commission, including the exercise of its powers, the investigation of complaints and the conduct of inquiries;*
- *the operation of the Parliamentary Standards Commissioner;*
- *the operation of the Joint Standing Committee;*
- *the effectiveness of orders and regulations made under this Act in furthering the object of this Act and the objectives of the Integrity Commission; and*
- *any other matters relevant to the effect of this Act in improving ethical conduct and public confidence in public authorities.*

The format of this submission conforms with the above terms of reference. Under each term of reference, the submission provides a heading that indicates the relevant issue, and sub-headings relating to:

- the Commission's position on the issue;
- discussion of the issue and the Commission's position; and
- references to the Joint Standing Committee on Integrity's *Three Year Review – Final Report* (finalised in 2015) and the State Government's *Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report*.

This submission references and draws upon the Commission's previous submissions to the Three Year Review. The submissions to the Three Year Review are attached to the current submission, however only in electronic format. The submissions may be obtained from the Joint Standing Committee's website: http://www.parliament.tas.gov.au/ctee/Joint/Integrity.htm

Key reference documents

Integrity Commission, *An investigation into allegations of nepotism and conflict of interest by senior health managers, Report No. 1 of 2014*

Integrity Commission, *An own motion investigation into policies, practices and procedures relating to receiving and declaring of gifts and benefits in the Tasmanian State Service, Report No. 1 of 2015*

Integrity Commission, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania* (2011)

Integrity Commission, *Enhancing accountability mechanisms for members of parliament and ministerial staff* (2015)

Integrity Commission, *Prosecuting serious misconduct in Tasmania: the missing link – Interjurisdictional review of the offence of 'misconduct in public office'* (2014)

Integrity Commission, *Submissions to Three Year Review* (2013, 2014)

Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009)

Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015)

Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015)

1. THE OPERATION OF THE ACT IN ACHIEVING ITS OBJECT AND THE OBJECTIVES OF THE INTEGRITY COMMISSION

1.1. Technical amendments to the Act

Commission position

That the technical amendments identified in Attachment 1 of this submission be endorsed for implementation.

That the technical amendments as previously considered by the Joint Standing Committee on Integrity (JSC) as part of the Three Year Review and contained in Attachment 2 of this submission be endorsed for implementation.

Discussion

[1] The Commission has previously submitted 46 proposed amendments to the *Integrity Commission Act 2009* (*'Integrity Commission Act'*) to the Three Year Review conducted by the JSC (refer Attachment 2). The JSC has recommended that the majority (30) of those amendments be implemented. The JSC also recommended that a further 16 be referred to the Government for further consideration.

[2] As part of the current submission, the Commission has identified a range of further technical amendments. These are provided in Attachment 1 of this submission, and include a general discussion on the issues relating to each amendment.

[3] Amendment to the *Integrity Commission Act* may also be required as a result of issues raised in other sections of this submission.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

There were a number of technical issues identified by the Integrity Commission which needed to be considered.

Recommendations

That:

[The JSC's recommendation on each of the 46 items recommending amendment of the Act, and two items recommending amendment to other legislation, is contained

in Attachment 2 of this submission, and is derived from ch 10 and Schedule 2 of the JSC report][1]

Government response to Three Year Review

The Government notes the matters raised by the Integrity Commission and findings of Three Year Review Report.

The Government will consider these issues in more detail following the completion of the Five Year Independent Review but acknowledges that a number of technical amendments are required to the Act to enable the Integrity commission to operate more effectively.[2]

1.2. Confidentiality

Commission position

That the *Integrity Commission Act* be amended to provide:

- the Commission with the discretion to apply confidentiality to documents other than notices, in appropriate circumstances;
- for persons served with a notice that is a confidential document for the purposes of the *Integrity Commission Act* to have a reasonable excuse to discuss the particular matter with individuals deemed appropriate by the Integrity Commission; and
- the Commission with the discretion to, beyond the notification provisions in the *Integrity Commission Act*, notify relevant public officers and other people of a matter being investigated.

Discussion

[4] The Commission relies on the confidentiality provisions in the *Integrity Commission Act* to assess and investigate misconduct effectively and covertly. This is especially important as the *Integrity Commission Act* provides that investigations are to be conducted in private unless otherwise authorised by the Chief Executive Officer of the Commission ('CEO').[3] Confidential investigations are better placed to gather relevant evidence, particularly when the misconduct is allegedly ongoing and not historical in nature. Confidentiality protects the interests of parties who are the subject of a complaint (particularly where it is ultimately determined to dismiss the complaint following assessment or investigation), as well as public authorities themselves.

[1] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 228–232, Schedule 2.
[2] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 8.
[3] *Integrity Commission Act*, s 48.

Application of confidentiality to documents other than notices

[5] Section 98 of the *Integrity Commission Act* provides for certain notices to be confidential, including notices or notifications given in accordance with ss 35(3), 38(2), 44(2), 45(3) and 47(1). Section 98 may also, among limited other things, apply to draft reports provided to certain people for comment e.g. under s 56(1).

[6] There are, however, actions undertaken pursuant to the *Integrity Commission Act* upon which it is not possible to impose confidentiality obligations but which the Commission considers present a potential risk to the confidentiality of an investigation or an assessment.

[7] In particular, there are difficulties in maintaining confidentiality during the procedural fairness stage of a matter. A draft of the relevant report may be provided to a person who is the subject of adverse comment; however, the *Integrity Commission Act* does not allow for an associated confidentiality requirement. It is important to the Commission and its stakeholders in an assessment or investigation that the Commission provide procedural fairness without risk of compromising confidentiality.

[8] Functions performed under sections of the *Integrity Commission Act* relevant to the Commission's role in relation to police misconduct may also require confidentiality e.g. ss 88(3) and 90. At present, this is not an option to the Commission.

[9] The Commission does seek information without a notice where possible and where there is minimal risk to the integrity of the particular matter.

[10] Nevertheless, the Commission submits that applying confidentiality is not necessarily indicative of a lack of trust in external parties, nor should it necessarily be viewed as onerous. Confidentiality provisions:

- provide certainty and comfort to parties in how they are to deal with an issue;
- can promote better management of potential conflicts of interest;
- deflect loyalty-based issues; and
- can reduce resultant internal pressures that such parties may perceive as a result of being involved in Commission matters.

[11] The Commission is always cognisant of the potential for assessments and investigations to damage the reputation of people and public authorities. Section 98 is a key mechanism for limiting and protecting against this potential damage. The discretion to apply s 98 to documents beyond notices would assist in this protection.

[12] This position is supported by the JSC, with the exception that the Commission submits that the provision apply in 'appropriate circumstances'.

Ability for persons involved in a matter to discuss it with others

[13] The Commission's experience is that persons involved in investigations can, on occasion, be confused as to whom they can discuss the matter with. This can lead to confusion, stress and, at times, discussions with inappropriate

individuals – including other public officers who are the subject of the investigation, and potential witnesses. This can be detrimental to an assessment or an investigation.

[14] The Commission is aware, however, that persons involved in an investigation may need to discuss it with particular individuals, including workplace supervisors, medical practitioners, and counsellors.

[15] The Commission has received legal advice that the purposes for which a person may have a 'reasonable excuse' to legally disclose the existence of a notice listed under s 98(2) of the *Integrity Commission Act* are not exhaustive. This places a consequent responsibility on the person considering discussing the matter to consider whether a disclosure is 'reasonable'.

[16] The Commission agrees with the recommendation of the JSC that the Commission be given the power to determine who is an appropriate person for the purposes of disclosure of each matter. This would reduce confusion and stress for subject officers, witnesses and others involved in an assessment or investigation, while ensuring that inappropriate persons (such as subject officers, potential witnesses, persons with conflicts of interest) are not made aware of the matter.

Notification to persons other than principal officers

[17] The *Integrity Commission Act* provides the Commission with the discretion to advise principal officers of any relevant public authority of either an assessment[4] or an investigation.[5] Principal officers of public authorities are defined in Schedule 1 of the *Integrity Commission Act*.

[18] In some circumstances, there may be a benefit (both to the Commission and the subject public authority) for the Commission to advise and discuss a matter with a person who is not the 'principal officer' e.g. head of public authority, or the chair of a relevant board or council. For example: the Commission undertook an investigation into a State Service employee who worked for an entity governed by a board. The Commission could not give notice to the Chair of the Board. It was suggested by the particular Chair that this put the entity at some risk. Whether or not notification to the Board was in the best interests of the Commission and/or other stakeholders was not a factor the Commission could consider, as the head of the agency (the departmental Secretary) was the only party who could receive the notice under the *Integrity Commission Act*.

[19] The discretion to notify a person other than a principal officer would enable the Commission greater flexibility in its processes. It could promote earlier and improved communication between the Commission and heads of agencies and/or chairs of relevant boards on the investigation and associated themes, and also protect the Commission from being required to notify a head of public authority and/or chair of a relevant Board when it is a risk or inappropriate to do so e.g. when the head of public authority and/or chair of a relevant board is the subject of the investigation.

[4] *Integrity Commission Act*, s 35(3)(a).
[5] *Integrity Commission Act*, ss 44(2)(a), 45(3)(a).

[20] Issues can also arise where there is no clearly nominated principal officer in Schedule 1 of the *Integrity Commission Act*. For instance, where public authorities are amalgamated, created or dissolved, the Commission could be compelled to notify a principal officer of an authority that has no specified principal officer. Further, an amendment to the *Integrity Commission Act* in 2012 inserted the University of Tasmania as a public authority within the Commission's jurisdiction; however the *Integrity Commission Act* does not prescribe a principal officer for the University.

[21] The recommendation of the JSC was that the *Integrity Commission Act* be amended to require the Integrity Commission to notify the head of public authority and/or chair of the relevant board, unless exceptional circumstances apply. The Commission respectfully submits that the recommendation sets an inappropriate threshold, and that any notification should remain at the discretion of the Commission. The Commission is concerned that, if particular circumstances do not fit a prescribed definition of 'exceptional circumstances', then matters could be unnecessarily complicated by mandatory notifications. This may include, for example, politically sensitive matters and matters involving personal issues.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

There is no discretion for the Integrity Commission to allow a person involved in an investigation to discuss the matter with any other person (other than legal advice in section 98 of the Act).

There is no discretion for the Integrity Commission to notify the Head of Agency and/or Chair of the relevant Board of an investigation in their agency in appropriate circumstances.

Recommendations

That:

The Act be amended to allow for persons involved in investigations to discuss the matter with individuals deemed appropriate by the Integrity Commission.

The Act be amended to require the Integrity Commission to notify the Head of Agency and/or Chair of a relevant Board of a matter being investigated, unless exceptional circumstances apply which mean that it would be inappropriate to do so.

Section 98 of the Act be amended to allow for confidentiality to apply to documents other than Notices, in exceptional circumstances.[6]

[6] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 201.

1.3. Procedural fairness

Commission position

The Commission is satisfied with the existing requirements for procedural fairness under the *Integrity Commission Act* for investigation reports.

The *Integrity Commission Act* should be amended to provide that, where an assessment is not recommended for further investigation, assessment reports prepared in accordance with s 37(1) of the *Integrity Commission Act* be subject to procedural fairness.

Discussion

[22] The background to this issue was provided in the Commission's submission to the Three Year Review.[7] The issue was discussed by the JSC as detailed in the report of the Three Year Review.[8]

[23] In essence, the actions undertaken to comply with procedural fairness obligations will depend upon the facts of the matter. Generally, the practice of the Commission is that, where there is an adverse factual finding[9] by an investigator, the subject person be given the opportunity to respond to the adverse material or finding. Any response is considered and attached to the investigator's report to the CEO. This process is not mandated in the *Integrity Commission Act*, but rather is the practice of the Commission.

[24] Separately, the CEO is required to consider whether a draft of his or her report to the Board (which must include the investigator's report) is provided to relevant parties for comment.[10]

[25] Only the relevant sections of the reports are provided to the person being provided procedural fairness, given that the report may contain material from, or adverse comments on, other persons.

[26] Where it is tabled in Parliament, the Commission will generally anonymise a report to minimise the chance of identification of individuals who have provided information to the investigation. A recent own motion investigation is an example: the public report did not include references to the gender of persons interviewed, and in some instances State Service agencies were also de-identified.[11]

[27] However the Commission notes the recommendation of the Joint Select Committee on Ethical Conduct in its 2009 report, *Public Office is Public Trust,* that, in the interests of public accountability:

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[7] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 87.
[8] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 171–177.
[9] There appears to be a lack of understanding of the final purpose of the Commission's reports. The Commission's assessments and investigations may result in findings of fact. It is only the determination of an Integrity Tribunal that may make a finding that misconduct or serious misconduct has occurred: *Integrity Commission Act*, s 78(2)(b).
[10] *Integrity Commission Act*, s 56(1).
[11] Integrity Commission, *An own motion investigation into policies, practices and procedures relating to receiving and declaring of gifts and benefits in the Tasmanian State Service, Report No. 1 of 2015* ('Operation Kilo').

> *Where such complaints [of alleged breaches of standards and codes of conduct] are proved but do not amount to criminal conduct, a 'name and shame' process may occur.*[12]

[28] The Commission's view is that such public naming is appropriate only in very specific circumstances. Such was the case in the tabled report into Investigation Delta,[13] where the subject individuals were, by their positions, immediately identifiable. For several reasons – including their seniority and the egregious nature of their conduct – it was considered to be in the public interest to publicly name the subject individuals in that report, whereas witnesses were de-identified.

[29] In relation to the Three Year Review report of the JSC, the Commission respectfully submits that the committee's recommendation (see below) is unclear. The *Integrity Commission Act* provides for two different reports (the investigator's report and the report of the CEO to the Board) both of which are confidential. However any subsequent report tabled in Parliament becomes public, and thus it may not be appropriate to include a person's procedural fairness response. Further, as noted above, the Commission does not generally provide the full report to a person who is the subject of an investigation given that the report may include names of witnesses and other information that is inappropriate for that person to see.

[30] It is unclear whether assessments undertaken in accordance with s 35 of the *Integrity Commission Act* must observe the rules of procedural fairness. This includes the general principle that persons be given an opportunity to respond to adverse findings. The Commission does currently adhere to procedural fairness requirements during assessments. However, the Commission considers that this issue needs to be addressed via a technical amendment to the *Integrity Commission Act* (refer Attachment 2, item 17).

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

Concerns were raised regarding lack of natural justice and procedural fairness, particularly regarding reports tabled in Parliament.

Identification of persons in Integrity Commission reports has the capacity to compromise that person's reputation and/or privacy.

[12] Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009), 67.
[13] Integrity Commission, *An investigation into allegations of nepotism and conflict of interest by senior health managers, Report No. 1 of 2014.*

Recommendations

That:

The Committee recommends that the Act be amended to provide that the response (if any) of person(s) that has been investigated is included in a report on request of that person, such report to be provided within 20 working days.[14]

Government response to Three Year Review

That:

The Government notes the findings and comments of Three Year Review Report and agrees that procedural integrity and preservation of a person's reputation are key considerations in any investigation process. The Government expects these issues will be considered in the Five Year Independent Review.[15]

1.4. Publishing reports

Commission position

The Commission seeks the power to table reports if either or both Houses of Parliament are not sitting. This would be done by giving a copy of the report to the clerk of each House, and enable the Commission to immediately publish the report. Reports tabled in this manner would require the protections provided by the current tabling process.

Discussion

[31] This issue has previously been raised in the Commission's submission to the Three Year Review.[16] The Commission's position is supported by the JSC (see below).

[32] The Commission notes that the Auditor-General is able to publish reports outside of parliamentary sitting dates, in the same manner as that suggested by the Commission and recommended by the JSC.[17] Separately, the Ombudsman is able to publish a special report without tabling in Parliament.[18]

[14] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 177.
[15] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 8.
[16] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 17.
[17] *Audit Act 2008* s 30(4).
[18] *Ombudsman Act 1978* s 31.

Reference information

Report of Joint Standing Committee on Three Year Review

Recommendations

That:

The Committee recommends that the Act be amended to enable the Integrity Commission to table its reports outside of Parliamentary sitting times, by providing copies to the Clerk of the House of Assembly and the Clerk of the Legislative Council.[19]

1.5. Particular functions of Chief Executive Officer in relation to Members of Parliament

Commission position

The Commission does not consider its functions under s 30 of the *Integrity Commission Act* to be sufficiently clear. In particular, the meaning of the phrase 'monitor the operation' in ss 30(a) and (c) requires clarification. The Commission considers that the meaning and extent of 'monitor the operation' be clarified via amendment to the *Integrity Commission Act* and other relevant legislation.

Discussion

[33] Section 30 of the *Integrity Commission Act* provides for the Chief Executive Officer (CEO) to:

> *(a) monitor the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament;*

[34] This was raised by the Commission in its submission to the Three Year Review,[20] and has been noted in subsequent reports by the Commission.[21] The issue was addressed by the JSC, with the JSC recommending that the Commission's proposed amendment of s 30(a) be implemented.[22]

[35] 'Monitor' is not defined in the *Integrity Commission Act*, and the Commission has, to date, interpreted the word narrowly.[23] This has resulted in its role being limited to critically observing whether the returns under the *Parliamentary (Disclosure of Interests) Act 1996* (Tas) ('*Parliamentary Disclosure Act*') and other declarations comply with prescribed forms.

[36] There is currently no oversight in relation to the accuracy of information provided under the *Parliamentary Disclosure Act*. The Commission submits

[19] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 189.
[20] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 27.
[21] Integrity Commission, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania* (2011); *Enhancing accountability mechanisms for members of parliament and ministerial staff* (2015), 8.
[22] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), schedule 2, item 5.
[23] Integrity Commission, *Enhancing accountability mechanisms for members of parliament and ministerial staff: a progress update* (2015), 8.

that the term 'monitor the operation' requires clarification as to whether it relates only to ensuring that returns are completed correctly, or if it extends to reviewing whether all interests are appropriately declared.

[37] The Commission is concerned that the full potential of the disclosure regime under the *Parliamentary Disclosure Act*, as a means of enhancing accountability and trust, has not been realised. To date, the Commission has not sought to effect greater transparency of the disclosure process, or to make any recommendations in that regard.

[38] It stands to reason that, when the *Integrity Commission Act* was drafted, the term 'monitor the operation' pertained to the objects of ensuring integrity and public confidence in the various registers and information contained within the *Integrity Commission Act*. The Commission submits that, despite the previous narrow interpretation of its role, a more contemporary and robust interpretation would ensure that its monitoring functions are commensurate with the high level of accountability required of Members of Parliament.

[39] At least in respect of the parliamentary disclosure of interests registers, an option may be to specify the Commission's role in the *Parliamentary Disclosure Act* itself. This would require an amendment to that *Parliamentary Disclosure Act*; however, it would clarify the Commission's oversight role, and provide greater transparency about that role for the benefit of all parties (the public, the Commission, and Members of Parliament).

[40] The term 'monitor the operation' is also used in s 30(c) of the *Integrity Commission Act*, in relation to codes of conduct and guidelines applying to Members of Parliament:

> *30(c) review, develop and monitor the operation of any codes of conduct and guidelines that apply to Members of Parliament;*

[41] This provision also requires clarification, and may be of particular concern given the definition of misconduct in s 4(1) of the *Integrity Commission Act*, which exempts conduct 'in connection with a proceeding of Parliament'. While the Commission has power under s 30(c) to 'review, develop and monitor' such codes, if the codes are implemented via Parliamentary Standing Orders, a breach of the code may be beyond the Commission's jurisdiction.

Reference information

Report of Joint Standing Committee on Three Year Review

[Note: this issue was considered by the Joint Standing Committee as part of a range of technical amendments presented by the Commission.]

Findings

That:

There were a number of technical issues identified by the Integrity Commission which needed to be considered.

Recommendations

That:

The Committee recommends that, in respect of the technical amendments proposed by the Integrity Commission (as set out in the Table at Schedule 2 to this Report):

> *Amend s 30(a) so that the actual returns and declarations are monitored rather than just the register itself, and to enable the CEO to make recommendations to either or both the individual Members and to the Clerk of each House of Parliament.*

2. THE OPERATION OF THE INTEGRITY COMMISSION, INCLUDING THE EXERCISE OF ITS POWERS, THE INVESTIGATION OF COMPLAINTS AND THE CONDUCT OF INQUIRIES

2.1 Governance

Commission position

The governing body of the Commission should continue to be a Board.

The Board should comprise of a Chief Commissioner and two or three other members who have a range of skills and expertise which will contribute to the deliberations of the Board (similar to those in the current *Integrity Commission Act*). However the Board should not include *ex officio* members from other integrity entities.

The Commission recognises that its relationship with other integrity entities and investigatory bodies in regard to their respective roles and responsibilities is important to ensuring that the highest levels of cooperation are achieved and needs to be maintained into the future.

Discussion

[42] The Commission plays an essential role in enhancing public confidence in the oversight of all public bodies and public officials in relation to integrity and ethics.

[43] The governance structure of the Commission is somewhat different to other Australian integrity entities.[24] However it is an appropriate model for the administration of the organisation given the intent of Parliament in establishing the Commission in 2009, and the objectives of the *Integrity Commission Act*.

[44] The object and objectives of the *Integrity Commission Act* are primarily concerned with promoting and enhancing standards of ethical conduct by public officers. Ethical conduct is not easy to define and the Commission must operate differently to similar organisations in other jurisdictions, where the requirement may be to deal with crime and corruption. In Tasmania, the Commission's jurisdiction includes over 44,000 public officers who inevitably have different interpretations, knowledge and understanding of the concept of ethical conduct.

[45] Any entity which is established to deal with the integrity of public officers must be independent of government and be seen to be independent by the public.

[46] As provided under the *Integrity Commission Act*, the Board is made up of a senior legal practitioner as Chief Commissioner, the Auditor-General, the Ombudsman and three persons with significant and specific expertise and

[24] See: Integrity Commission, *Third written submission to Three Year Review* (2014).

experience at a senior public sector policy development and decision making level.[25] The Chief Commissioner and the three expert appointments are appointed following consultation with the JSC. The Board has undertaken its role in accordance with the *Integrity Commission Act*,[26] and made decisions with a general collegiate view based on a sound understanding of public administration practices and the principles of procedural fairness.

[47] The current governance of the Commission in Tasmania has worked well, and has provided a platform for robust discussion about the role of the Board; its relationship with management; its interactions with other integrity, regulatory and parliamentary bodies; and its capabilities to increase the awareness of the community and adherence of public servants to integrity and ethics best practice.

[48] There have been issues which have arisen over time which required the Board to review and re-assess its governance and operation; however such issues have been addressed and resolved. In particular, the Commission considers that the regard that Government, public officers and the broader public have for the Commission has been shown to have increased significantly in recent years.

[49] Further detailed discussion relating to the responsibilities and roles of the Board is provided below.

The Board

[50] There are a number of possible governance structures for the Commission, including:

- a single Commissioner;
- a single Commissioner with an Advisory Committee for support and advice; or
- a Board (of varying possible compositions).

[51] The possible outcomes (both positive and negative) of having a single Commissioner can be seen from other jurisdictions. While all actions can be taken to ensure that a single Commissioner will operate effectively, it has been seen that, in fact and in perception, the decisions and actions of that single person can be questioned.

[52] A model that involves a single Commissioner should necessarily consider the range of powers of the Commissioner, including the Commissioner's involvement in the day-to-day operations of the Commission as ultimately provided in the *Integrity Commission Act*. It may also require further consideration of appropriate oversight of the Commission.

[53] The establishment of an advisory committee to support a single Commissioner would provide additional knowledge and expertise to the Commissioner in decision making (similar to that provided by the independent members of the current Board). However, such a committee would be 'advisory' and, while it may have considerable public respect, could be ignored. Additionally, the non-accountability of an advisory

[25] *Integrity Commission Act*, s 14.
[26] *Integrity Commission Act*, s 13.

committee may be problematic given the Commission's involvement in confidential and sensitive matters.

[54] Given the broad range of strategic, operational, budget, risk-related, compliance and communication roles that the Board could and does undertake, the Commission believes that the wisdom and expertise of a small group of persons, headed by a Chief Commissioner, remains the best model for both perception and actual operational reasons. A statutory Board of, say, three or four persons providing a range of input, views and expertise to the Commission's activities has the benefits and accountability of a "board" directed and led organisation.

Constitution of the Board

[55] The current Board is provided with advice from the CEO and staff, plus the views each of the other members, providing a very broad range of views and interpretations on which to make decisions. In addition to the obvious benefits of having the Auditor-General and Ombudsman 'around the table', the Chief Commissioner and independent members of the Board have provided a very broad range of knowledge and expertise (legal skills, State Government, statutory/business enterprises, local government, police and investigations, governance, strategic policy, performance measurement, integrity and "fair play", stakeholder relationships, understanding of the Tasmanian context). This range of input into the Board's deliberations has ensured that there has been a balanced and well-informed response by the Commission to its investigatory, preventative and educational activities.

[56] The independent members have provided expertise and input based on their professional backgrounds which has enabled the Board, Chief Commissioner and CEO to better understand the circumstances surrounding actions/decisions subject to investigation, the ways to implement change, and the impacts of certain decisions and actions proposed to be undertaken by the Commission.

[57] The inclusion of the Auditor-General and Ombudsman on the Board has provided the benefits of their respective activities and experiences, ensuring a sharing of knowledge, reducing duplication of effort and better outcomes, particularly throughout the early years of the Commission's establishment.

[58] The Commission notes that issues relating to information sharing between the Commission and the offices of the Auditor-General and the Ombudsman have now been resolved, given changes to the respective legislation. This allows for the three entities to, subject to the public interest, share and discuss what might otherwise have been confidential information.

[59] The Commission also acknowledges that, on a number of occasions, there has arisen a possible conflict of interest resulting from complaints involving the offices of the Auditor-General and the Ombudsman. While any conflicts have been appropriately managed and the issues resolved, there remain conflicting statutory obligations that suggest that the ongoing involvement of the *ex officio* members may be problematic e.g. the Commission's annual financial statements are subject to audit by the Auditor-General, the Auditor-General may wish to include the Commission in an investigation, or

either of the officers may be required to support policies recommended by the Commission that differ to those implemented by their respective offices.

[60] The direct working relationships between the Auditor-General and Ombudsman in relation to complaints and other matters raised with the Commission have been developed through considered discussion and cooperation. This would, of course, be possible into the future.

[61] Consequently, it is considered that the benefits received from the composition of the original Board have been achieved. Given the legislative and operational activities of the three integrity entities are such that opportunities for cooperative effort are optimised, and the outcome of reducing any risk of future conflicts of interest, it is considered that the Board should no longer include either the Auditor-General or the Ombudsman.

[62] It is therefore considered that a three or four person Board, comprised of a Chief Commissioner and a number of independent members with a range of skills and expertise (similar in aggregate to those specified by the current *Integrity Commission Act*), would provide an optimal context for the application and implications of integrity matters in the Tasmanian public sector.

Relationships with statutory officers, public authorities and other key stakeholders

[63] The Commission values and respects the relationships it has developed with public authorities and officers and other key stakeholders. These relationships ensure that the Commission can achieve the objectives of the *Integrity Commission Act*, and ultimately enhance public confidence that misconduct in the public sector is being dealt with.

[64] The Commission's relationships with both the Parliamentary Standards Commissioner and the JSC are important and need to be maintained in order to achieve the objectives of the *Integrity Commission Act*. The Commission notes that the current review provides for consideration of those entities, and seeks to ensure that they are utilised to enable the fullest benefit possible to their constituent groups.

[65] The Commission seeks to work with, and supplement where necessary, the educational and investigatory roles of other bodies with similar roles and powers.

[66] Entities such as Tasmania Police, heads of public authority, Ombudsman, Auditor-General and the Anti-Discrimination Commissioner all have complementary, and sometimes overlapping, roles. Whilst these relationships have been managed adequately, the need for an integrity commission to pick up issues which 'fall between the cracks' is clear.

[67] As a relatively new integrity oversight body, the Commission acknowledges that there may be doubt as to its necessity and its roles. This has been addressed continually by the Commission through communication and education, and through the Commission's proactive and positive performance. The Commission considers that it now has the support of the vast majority of its constituents (and importantly the Tasmanian public),

partly due to the demonstration of the independence of its determinations and the positivity of the recommendations in relation to future public sector performance.

[68] The Commission notes that significant changes to the *Integrity Commission Act* as a result of the review may mean that some of those positive outcomes could be lost and will need to be re-developed.

Relationships between the Board, Chief Commissioner, CEO and staff of the Commission:

[69] These matters have been addressed through delegations (as provided under s 16 of the *Integrity Commission Act*), and through clear discussion and development of ways to approach such issues. Any future change to the governance structure of the Commission will necessitate further consideration of the nature and extent of powers that may be delegated to either a Chief Commissioner and/or the CEO.

[70] The Commission notes that the Chief Commissioner currently has no legislated power to involve him or herself in the day-to-day operations of the Commission, which has the potential to not allow the full benefit of the Chief Commissioner's expertise and/or experience.

[71] It is also possible that the expertise of individual Board members could be used to a greater extent by providing advice and support to the CEO and staff in particular aspects of the operations, whilst ensuring that they are not being involved in actual investigations, or leading to tainted Board deliberations.

2.2 Investigative functions

Commission position

The Commission must retain its investigative capacity as provided under the *Integrity Commission Act*, subject to the technical amendments to be considered as part of this submission.

The Commission's investigative powers complement its educative and preventative roles, and play an important role in enhancing public confidence that misconduct will be appropriately dealt with.

The Commission seeks to provide an efficient and timely response to complaints recognising that the need to obtain information from external sources and to thoroughly examine all received information takes time, and is ultimately governed by the Commission's available resources.

Discussion

[72] The Commission's ability to investigate allegations of misconduct provides the public with confidence that misconduct will be appropriately dealt with. The Commission has particular powers that enable it to investigate

allegations of misconduct; these powers are not available to other public authorities.

[73] The Commission has a dedicated investigative capability within its Operations team, including investigators with knowledge, expertise and experience to undertake investigations into serious and systemic misconduct. In the Commission's experience, other public authorities generally do not have the expertise or experience to undertake investigations into serious misconduct. This is conveyed to the Commission by public officers via professional support groups such as the Investigator Support Network (facilitated by the Commission). The lack of capacity has also become evident through the Commission's audits of complaint investigations undertaken by public authorities.

[74] The Commission's investigative role complements and is a necessary adjunct to its educative and preventative roles. To a large extent, the functions are symbiotic and naturally complement each other. It is the Commission's contention that prevention and education without the ability to oversee and investigate is ineffective, and that authorities that have been subject to investigation are more proactive about prevention and education.

[75] The Commission's jurisdiction covers approximately 44,000 individual public officers and elected members. Consequently, it is essential that the Commission deals with misconduct, including its prevention of misconduct, using methods that cater for the wide range of human factors and roles across the public sector. General prevention and education measures to deter misconduct are effective for some individuals; however, for others it is only the prospect or reality of the Commission's investigative powers that will have the desired effect.

[76] It is the Commission's experience that:

a. The majority of individuals within the public sector endeavour to act and behave ethically and are not a high risk of engaging in serious misconduct. For these individuals ethics education, general integrity mechanisms, and risk management systems within public authorities are generally appropriate and effective. Knowledge of the Commission's investigative powers and functions, and the consequences of misconduct provide an important and effective deterrent;

b. Although a minority of individuals behave unethically and undermine integrity, they present as a significant misconduct risk, particularly where officers hold more senior and trusted positions. This is especially so in relation to serious and systemic misconduct. Actions by these individuals may be intentional and strategic, or performed in ignorance, or both. For these individuals, prevention and education are generally not effective and it is therefore only the strong deterrence of the Commission's investigation and reporting functions that can potentially prevent misconduct;

c. For some individuals, prevention is entirely irrelevant. Their actions can only be dealt with as and when it occurs through the Commission's investigative functions; and

d. Systemic misconduct, where poor ethical culture exists and integrity is significantly degraded within a sub-sector or public authority, must be addressed both broadly as a cultural issue and specifically as an individual misconduct issue as appropriate. The combined work and effects of the Commission's prevention and investigative functions are critical in such cases.

[77] Investigation and prevention are mutually dependent functions within the Commission. The Operations team and the Misconduct Prevention, Education and Research team (MPER) have developed a range of methods for working together cooperatively; for sharing of communication and intelligence; and for multi-disciplinary work on special projects, investigations and reports. This cooperative working style has developed significantly in the past three years particularly, as the Commission has matured and our staff profile has expanded and stabilised. The benefits of this approach include as follows:

a. the Operations team benefits from MPER's extensive communication and engagement work across the public sector, including each of the sub-sectors, such as local government. MPER provides general input to Operations on current and emerging misconduct and ethical risks, integrity status, ethical health, the prevalence and quality of integrity mechanisms, and the management of misconduct risk. This information forms part of the extensive general intelligence data held by the Operations team, and is used to monitor and manage misconduct risks across the Commission's jurisdiction. The information is then triangulated with other information received by the Commission, including complaints, notifications from public authorities, and the Commission's information gathering activities.

b. the findings and recommendations for actions resulting from investigations and other activities undertaken by Operations are provided to MPER to develop prevention and education resources to directly address ethical risks. Operations and MPER staff work cooperatively to identify needs in misconduct prevention and education, and to develop information, resources, tools and training to address current and emerging issues and risks.

c. the Operations team provides MPER with regular briefings on issues and trends in complaints, notifications from public authorities, and the general progress of assessments and investigations. This information enables MPER to undertake its work in an informed and strategic way.

[78] The Commission undertakes a *Community Perceptions Survey* every two years to evaluate community attitudes to ethics and integrity in the Tasmanian public sector generally, and to measure community awareness of the Commission and of its functions. The conduct of the survey and authoring of report is undertaken by an independent entity. In relation to the Commission's investigative functions, the 2015 survey report[27] revealed:

a. the number of respondents who agreed at some level that *'there is no point reporting corruption or unethical behaviour in the Tasmanian public sector as nothing will be done about it'* has

[27] EMRS, *Integrity Commission Community Perceptions Survey 2015 Research Report*, (2015).

dropped by 8 percentage points in the latest round (22%, compared to 30% in 2013 and 31% in 2011);

b. the level of agreement with respect to whether Tasmania needs a Commission remains high (92%; 2013: 89%); and

c. 88% of respondents agreed that people in Tasmania's public sector are just as likely to behave unethically as people in the public sector anywhere else in Australia.

[79] The Government, in its response to the Three Year Review report of the JSC, supported the retention of the Commission's investigative powers, subject to concerns relating to *'process, timeliness and interaction with existing investigative processes'* being addressed in the Five Year Review.[28] These issues are discussed below. The Commission notes that the recommendation of the JSC relating to the '*the authority to assess, triage and monitor all investigations relating to allegations of serious public sector misconduct*' (see below) is a function and power that already sits with the Commission.

Process

[80] The Commission interprets this term to relate to procedures it follows while undertaking investigations, and particularly the use of coercive notices.

[81] The Commission, in undertaking investigative actions, is bound by the rules of procedural fairness.[29] This provides a platform for subject officers of such actions to be given the opportunity to comment on any adverse findings in a report prepared by the Commission.

[82] The Commission utilises coercive notices only as necessary to achieve the relevant outcome. This may occur where it is necessary in order to obtain confidential information e.g. copies of emails or personnel files, or where it is important for the purposes of gathering evidence to interview a person under oath. The Commission will, where appropriate, generally seek information informally in the first instance, and rely upon the general confidentiality conventions and as provided in employee codes of conduct to protect the integrity of the matter.

[83] The Commission acknowledges the potential impact upon recipients of notices issued pursuant to s 47 of the *Integrity Commission Act*. Recipients of notices to attend to give evidence may reasonably be expected to have a degree of concern about the process to be followed and the possible outcomes of the investigation. For this reason, the Commission provides as much information as possible to recipients (refer Attachment 3) however notes the need to protect the integrity of any investigation and the potential for loss or destruction of evidence, and also the need to ensure that recipients are not mislead regarding their involvement in the matter.

[28] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 4, 7.
[29] *Integrity Commission Act*, s 46(1)(c). Note that the Commission has sought to clarify the need for procedural fairness for reports prepared by an assessor under Part 5 of the *Integrity Commission Act*: see section 1.3 of this submission.

Timeliness

[84] The Commission recognises the need to deliver outcomes on matters that are timely and efficient. The length of time a matter takes has a potential impact upon individuals (complainants, subject officers and witnesses) and on public authorities who may be seeking to take further action.

[85] The issue of timeframes for assessments and investigations is discussed in greater detail in section 2.3 of this submission.

Interaction with existing investigative processes

[86] The Commission interprets this issue to apply on two levels: interaction with processes undertaken by other integrity entities (the Ombudsman and Auditor-General) and Tasmania Police; and interaction with processes undertaken by public authorities which do not otherwise have investigation of misconduct as a primary function.

[87] In relation to the first level, the Commission notes that, *'[i]n establishing the Commission, the Parliament did not simply duplicate the roles of the integrity entities already in existence'*.[30] While sharing similar interests in relation to policy and practice, and noting that it does refer matters to the Auditor-General or the Ombudsman if the matter is more appropriately within their jurisdiction, the Commission's jurisdiction extends beyond that of those integrity entities.

[88] The differentiation in the Commission's function is particularly relevant in its jurisdiction over police. The Ombudsman has jurisdiction over administrative actions by police and does not address operational matters. Separately, the Office of the DPP is involved only if the conduct might constitute a criminal offence and the matter is referred it by the police.

[89] In relation to interaction with police investigative processes, the Commission provides information to police where it appears that a matter may involve criminal conduct. The Commission and Tasmania Police have established a voluntary memorandum of understanding covering issues such as exchange of information, notification of alleged misconduct, and appointment of Special Constables.[31] The agencies are currently finalising a protocol to establish procedures for the involvement and advice of police in matters before the Commission that may involve criminal conduct.

[90] In terms of interaction between the offices of the integrity entities, the Commission has contact with the Auditor-General and the Ombudsman on a needs basis. It is noted that the previous barriers to sharing intelligence between each entity by reason of confidentiality provisions in other acts (s 46 of the *Audit Act 2008* and s 26 of the *Ombudsman Act 1978*) have been removed and the entities are able to undertake appropriate sharing of information and intelligence.

[91] In relation to the second level (processes undertaken by public authorities), the Commission is concerned that public authorities may not have the capacity or expertise to undertake investigations into serious misconduct or even particular forms of misconduct. A key objective of the Commission

[30] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 13.
[31] *Memorandum of Understanding between Integrity Commission and Tasmania Police*, effective 1 October 2010.

is to assist public authorities to deal with misconduct;[32] however this does not translate to abrogating its investigative role. The Commission has special powers that enable it to obtain information and evidence that are simply not available to public authorities, and a legislated independence that enables it to focus on dealing with misconduct.

[92] Further discussion on the intersection of the Commission's investigative role with investigations undertaken by heads of agencies under Employment Direction No 5 ('ED 5') is provided in section 6.4 of this submission.

[93] The Commission has previously acknowledged its triage role, and the need to refer matters where appropriate. This means public authorities are frequently directly involved in the investigation of allegations of lower-level misconduct, or at least addressing allegations to determine whether there is a suitable explanation for the conduct. This results in a smaller number of matters being accepted by the Commission for assessment and possible investigation. In its oral submission to the Three Year Review the Commission noted:

> *It is not a large number of matters but they are very often those precise matters nobody else does and that wouldn't get done if we didn't exist. Just because they are a small quantity doesn't mean they are not big matters, it doesn't mean that they're not important or complex matters that require a great deal of attention.*[33]

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

There was unanimous support for an ongoing function for the Commission in triage, assessment and monitoring investigations and the power to hold Tribunal hearings in serious cases.

There was not unanimous support on whether other Integrity Commission investigative functions should continue.

Despite numerous allegations and investigations of serious misconduct, the Integrity Commission has not found evidence of systemic corruption.

Recommendations

That:

The question of the investigative powers and functions of the Integrity Commission should be considered as part of the five year review, with all evidence detailed by the Committee in this report to be considered by the independent reviewer. However, until that review, the investigative functions and powers of the Integrity Commission should be retained.

[32] *Integrity Commission Act*, s 3(3)(b).
[33] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 31.

The Integrity Commission be given the authority to assess, triage and monitor all investigations relating to allegations of serious public sector misconduct.[34]

Government response to Three Year Review

The Government's view is that the Integrity Commission should retain the capacity to conduct investigations, but that the concerns which have been raised by various stakeholders around process, timeliness and interaction with existing investigative processes should be addressed. This is a matter which clearly should form part of the Five Year Independent Review.[35]

2.3 Timeframe for assessments

Commission position

The Commission seeks to provide an efficient and timely response to complaints, and considers it neither necessary nor constructive to provide prescribed timeframes for assessments in the *Integrity Commission Act*.

The Commission considers that, should timeframes be prescribed under the *Integrity Commission Act*, the timeframes must recognise the need for, and the process involved in, obtaining material and information from external sources under notice or otherwise, and the effect this has on the Commission's operations and timeframes. Any such prescribed timeframe must also provide a mechanism for extensions to the timeframe, as suggested by the JSC.

Discussion

[94] The Commission recognises the need to deliver outcomes on matters that are timely and efficient. The length of time a matter takes to complete has a potential impact upon individuals (complainants, subject officers and witnesses), on public authorities who may be seeking to take further action, and on the Commission's own resources.

[95] The process of obtaining evidence and information for assessments and investigations (under notice or otherwise) can be slow, and is not always under the Commission's control. The Commission's requirement for information may affect individuals in positions that are entirely unrelated to the matter in question e.g. the provision of emails or banking details or personnel records or files pertaining to a particular issue of interest, and consequently recipients of notices to produce such information expect a reasonable time to comply with the notice and to minimise the impact upon the recipient's workplace. Other delays occur where subject officers of a complaint are given the opportunity to respond to adverse findings in an investigation report or may require legal advice. Further, given the Commission's available resources,[36] the periodic absence of key staff can directly affect the timeliness of completion of matters.

[34] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 72.
[35] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 7.
[36] Refer section 2.12 of this submission.

[96] The Commission seeks to ensure it has all relevant information before making any decisions relevant to the progression of a matter in accordance with the *Integrity Commission Act*. The framework of the *Integrity Commission Act* means that every complaint ultimately retained by the Commission for investigation will always go through an assessment phase first.[37]

[97] Once a matter has been accepted into assessment, a determination must be made to either progress the matter to investigation, dismiss the matter, or refer the matter to a relevant public authority for investigation and action.[38] Decisions to dismiss a complaint or accept a matter for investigation should not be, and are not, taken lightly. This phase can be complex and time consuming.

[98] The Commission's practice has been to hold matters in the assessment phase to enable a greater understanding of the alleged misconduct before making this determination, given an assessor (as appointed by the CEO) can exercise all of the investigative powers of an investigator in carrying out the assessment i.e. the Commission's coercive powers are available to the assessor.[39]

[99] More recently, the Commission has sought to minimise the period of time that any given matter is held within the assessment phase. The aim of assessments is to ensure the assessor has sufficient information to recommend an appropriate course of action to the CEO (via an assessment report)[40] and for the CEO to accordingly make an informed determination. This may result in a larger number of matters being progressed to investigation which otherwise may have been held in assessment; however it is considered that this was the intent of Parliament in structuring the *Integrity Commission Act* as it is.

[100] While the Commission has always had the capacity to monitor timeframes via its case management system, the Commission also creates individual time logs for each matter. This enables a clear understanding of the length of time it takes to complete respective tasks, and the differentiation within each task of 'active' time spent by a Commission officer (e.g. analysing data) and 'inactive' time (e.g. time spent waiting for information to be received as a result of a notice). Time logs are maintained throughout each matter, and reviewed at their conclusion in order to identify and eliminate timeliness barriers in future matters.

[101] The standard period for production of documents and other information required by the Commission under notice is ten working days. The Commission also aims to provide witnesses with at least five working days' notice if they are required to give evidence. The Commission recognises that, while its work is important to stakeholders, an assessment or investigation is rarely the only important or pressing issue facing recipients of notices. The Commission also seeks to work with other agencies where relevant to obtain information in a more timely manner i.e. information may be obtained without the use of coercive notices where relevant.

[37] *Integrity Commission Act*, Part 5.
[38] *Integrity Commission Act*, s 38.
[39] *Integrity Commission Act*, s 35(4).
[40] *Integrity Commission Act*, s 37(2).

[102] Many factors can cause delays in the process of obtaining evidence and information for assessments and investigations beyond the control of the Commission. For example: some financial institutions have very lengthy standard response times when responding to notices to produce basic (yet essential) financial records. Since 2013, the average waiting period for production of financial records under notice from banks has been 23 working days (almost five weeks). The banks are required to produce records to a number of agencies Australia-wide. Eight of the nine notices on banks since 2013 have been served during assessments.

[103] By way of example of 'inactive' time in assessments:

- In a particular 2014–2015 assessment, which was subsequently accepted into investigation, production of required material was delayed by over six weeks due to the absence from work of the person best placed within the relevant public authority to covertly facilitate the production of that material.
- In a particular 2013 assessment, production of required material was delayed for nearly 10 weeks due to the recipient of the notice encountering difficulty in locating relevant materials for production.

[104] It is unlikely that the need for all notices required for a matter will be apparent at the same time, particularly at the start of an assessment or an investigation. The need for a notice will often result from analysis of evidence, material or information produced from a previous notice. This inevitably results in a cumulative impact of 'inactive' time during assessments and investigations.

[105] Other delays occur where subject officers of an investigation may be given the opportunity to respond to adverse findings in an assessment or investigation report (the Commission rarely denies a request for extension of time) or, given the Commission's limited resources, the absence of key Commission staff involved in the matter.

[106] The Commission has considered the timeliness of assessments and investigations undertaken since 2013, and particularly the impact of 'inactive' time resulting from the delivery of notices to produce information or documents. The Commission considers that its assessment and investigations have been completed within a timeframe that was proportionate to the seriousness of the matter involved and the delays arising from the number of notices served.

[107] In terms of any prescribed timeframe, the Commission submits that this would need to provide for a 'stop-the-clock' provision to cater for the delays outlined above. This would necessarily need to apply to both assessments and investigations given the specific provision of coercive powers at the assessment stage.

[108] The Commission concurs with the JSC recommendation that the Board have the capacity to extend any timeframe imposed on assessments under the *Integrity Commission Act*.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

The Committee finds that some of the evidence supports that in some cases there has been an unduly long time taken for assessments to be conducted.

Recommendations

That:

The Act be amended to require assessments to be completed within 20 working days, and matters referred on as appropriate.

In cases where the assessment cannot be completed within 20 working days, the assessment may be referred to the Integrity Commission Board, which may extend the timeline for a further 20 working days for the assessment.[41]

Government response to Three Year Review

That:

The Government notes the findings and comments of Three Year Review Report and considers that the timeliness of, or introducing a time limit for, assessments be considered as part of the Five Year Independent Review.[42]

2.4 Mandatory notifications of serious misconduct and misconduct by designated public officers

Commission position

Notification of serious misconduct by public authorities to the Integrity Commission is an essential element of the Commission's capacity to monitor the integrity landscape of Tasmania.

The Commission endorses the recommendation of the JSC that the *Integrity Commission Act* be amended to require mandatory notification by public officers and public authorities of serious misconduct. The Commission further submits that this should be extended to include any misconduct by designated public officers (DPOs).

Discussion

[109] At present, notifications may be optionally made by public authorities to the Commission about allegations of misconduct that are being dealt with

[41] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 100.
[42] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 7.

in the authority. Notifications may be received at the beginning of a matter (allowing the Commission to monitor the type of misconduct that occurs throughout the state) and again at finalisation of the process (allowing the Commission to monitor the way misconduct is being addressed by public authorities).

[110] Notifications are not complaints and do not trigger a Commission investigation. Rather they provide valuable intelligence to the Commission to help staff better understand misconduct risk in the Tasmanian public sector and enable the Commission to assist public authorities to respond to misconduct as it arises and to improve their ethical framework.

[111] The Commission currently receives a small number of optional notifications, usually relating to the investigation of public officers under ED 5 or similar processes. However it is not possible to rely only on complaints and ad hoc notifications from a small number of public authorities to build a picture of the level and types of misconduct in Tasmania. In order to comprehensively measure the misconduct risks associated with the state public sector, compulsory notification of serious misconduct by all public authorities is essential.

[112] Since 1 October 2010 the Commission has received 275 notifications from 16 different public authorities. However 90% of all notifications have been received from only three public authorities. This is not sufficient to provide the Commission with an accurate cross-section of the public sector.

[113] Notification to relevant integrity agencies is mandatory in other jurisdictions.[43]

[114] The Commission would not, unless appropriate to the particular circumstances, seek to assume responsibility for investigating matters which are notified. The main role of notifications is to allow the Commission to monitor misconduct across the state, and to provide public authorities with advice and assistance where required.

[115] The Commission's MPER team tailors ethical resources and training to suit the needs of public authorities. Mandatory notification will facilitate the delivery of customised materials of increased relevance to recipients based on the misconduct risks identified in notifications.

[116] Given the important role of DPOs[44] in the management of public authorities, and their seniority within the respective authorities, it is considered that all allegations of misconduct of such officers should be notified to the Commission.

[43] See: Corruption and Crime Commission, *Guidelines for Notification of Serious Misconduct for Principal Officers of Notifying Authorities* (2015), 1.
[44] For definition of DPO, see: *Integrity Commission Act*, s 6.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

The Committee finds that mandatory notifications of serious misconduct is important in assisting the Integrity Commission to achieve both its investigative and educative functions.

Recommendations

That:

The Committee recommends that the Act be amended to require mandatory notifications of serious misconduct to the Integrity Commission in a timely manner. [45]

2.5 Referrals of suspected criminal conduct

Commission position

The Commission should maintain its existing jurisdiction and ability to handle matters that may involve criminal allegations in a discretionary manner.

Discussion

[117] The Commission currently has discretion to either deal with potentially criminal allegations, or to refer them to another entity at various stages in its processes.[46]

[118] The Commission respectfully submits that the JSC recommendations on this matter (see below) have resulted from confusion about this issue.

Background

[119] The second reading speech for the *Integrity Commission Bill 2009* indicates that, in some rare cases, it was intended that the Integrity Commission undertake investigations into conduct that could be characterised as criminal in nature.[47]

[120] As noted during the Three Year Review, the vast majority of matters handled by the Commission do not involve any criminal allegations.[48]

[121] Even serious misconduct such as nepotism and undue influence is not always capable of being characterised as criminal in nature.[49] This is

[45] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015) 185.
[46] *Integrity Commission Act*, s 8(1)(h).
[47] *Integrity Commission Bill 2009*, Tasmania Parliament, Second Reading Speech, 13, 15.
[48] Integrity Commission, *Third written submission to Three Year Review* (2014), 22.
[49] Email from George Brouwer to Sandy Cook, 3 January 2016; Letter from the Hon Murray Kellam AO to Sandy Cook, 5 January 2016.

particularly the case because of the lack of a 'misconduct in public office' offence in Tasmania (refer section 6.5 of this submission).

Case law and abrogation of legal privileges

[122] The confusion on this issue appears to have stemmed from the oral evidence given by the then Acting Director of Public Prosecutions (DPP) during the Three Year Review hearings. The Acting DPP referred to *Lee v The Queen*[50] *('Lee No. 2')*, which he submitted meant that he would have difficulty prosecuting matters that had been investigated by the Integrity Commission.[51]

[123] *Lee No. 2* is one of a series of High Court cases which have had an ongoing impact on integrity and anti-corruption entities throughout Australia. The cases revolve around entities that are able to abrogate legal privileges, and generally involve coercive interviews – in abrogation of the privilege against self-incrimination – of persons that have already been charged with offences.[52] They do not involve other material collected by such entities, such as documentary evidence (even though it is sometimes 'coercively' acquired).

[124] Generally, entities that are able to abrogate the privilege against self-incrimination balance this against a guarantee that any evidence given will not be used in subsequent prosecutions. This can cover both primary and derivative use of that evidence. This can create difficulties when the persons being interviewed have already been charged with relevant offences.

[125] The Commission is aware of these cases. However, unlike most equivalent entities in Australia,[53] the Commission is not able to abrogate privileges, including the privilege against self-incrimination.[54]. The Commission therefore does not consider that these cases pose any imminent threat to the use of its interview (or other) material in the prosecution of offences.

[126] In other jurisdictions, the case law has resulted in substantial legislative amendments, and changes to internal policies and procedures. However it has not prevented the relevant entities from continuing to meet the objectives of their respective Acts, nor has it resulted in police services having to entirely reinvestigate matters to allow them to be prosecuted. These entities continue to collect evidence that is later used in prosecutions.[55] Consequently, even if the Commission did have the power to abrogate privileges, it does not anticipate that the case law would pose an insurmountable barrier to its work.

[127] Further, the Commission has obtained legal advice from the Solicitor-General on the admissibility of evidence obtained under s 47 of the *Integrity Commission Act* i.e. evidence obtained coercively, but not in abrogation of privileges. The advice stated that there is no general rule that

[50] *Lee v The Queen* [2014] HCA 20.
[51] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 80.
[52] The High Court is currently considering a case in which those being compelled to give evidence at a public hearing have not been charged, see *R & Anor v Independent Broad-Based Anti-Corruption Commissioner* [2016] HCATrans 7..
[53] Integrity Commission, *Submission to Three Year Review* (2013), volume 2, appendix 7, 103–105.
[54] *Integrity Commission Act*, s 92.
[55] Integrity Commission, *Third written submission to Three Year Review* (2014), 22.

would prohibit such evidence from being admissible, and that '*each instance will turn on its own facts*'.[56]

Investigation of criminal matters by Tasmania Police and the DPP

[128] The JSC recommended that Commission matters that potentially involve criminal allegations be immediately referred to the police or the DPP.

[129] The DPP is not an investigative body. It would therefore not be appropriate – or possible – for the Commission to refer potential criminal matters to the DPP for investigation.

[130] The Commission respectfully submits that the recommendation of referring potentially criminal complaints to the DPP at the initial triage phase (the initial review of the allegations arising from a complaint), and then having them referred back to it, would be neither practical nor timely. Due to the Commission losing jurisdiction of a complaint on its referral, this process would also restrict the Commission's handling of re-referred complaints. It could not, for example, subject such complaints to an assessment under the *Integrity Commission Act*.

[131] In regard to referring matters to the police, the Commission agrees that, in most instances, Tasmania Police is the most appropriate body to investigate criminal complaints. However, this is not true of all complaints that contain potentially criminal allegations for the following reasons:

- Police do not focus on public sector misconduct as the Commission does – they have other competing priorities. Police simply do not always have the time or resources to prioritise public sector misconduct in the same manner as the Commission. It is not, nor should it be, the core of their focus or objectives.
- It does not necessarily follow that an immediate police investigation is the best option for all complaints that contain potentially criminal conduct. The alleged criminal aspects of some matters are easily dismissed, or they are minor in nature in comparison to the misconduct (and thus it would not be in the public interest to pursue them as criminal complaints). In other jurisdictions, public hearings are often held into serious misconduct cases prior to the consideration of criminal charges by those entities. 'Shining a light' on the conduct, and the culture and policies that allowed it to happen, is seen to be the priority in many of these cases.[57]
- As suggested by the second reading speech for the *Integrity Commission Bill 2009*, Tasmania Police will not always be the most appropriate body to investigate criminal allegations against its own members.[58] This would most notably be the case if those members were very senior within the service.

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[56] Integrity Commission, *Third written submission to Three Year Review* (2014), 22.
[57] See, eg, public hearings held by Victorian Independent Broad-based Anti-Corruption Commission, http://www.ibac.vic.gov.au/investigating-corruption/current-and-past-investigations/operation-ord; http://www.ibac.vic.gov.au/investigating-corruption/current-and-past-investigations/operation-fitzroy; http://www.ibac.vic.gov.au/investigating-corruption/current-and-past-investigations/operation-ross-public-examinations.
[58] *Integrity Commission Bill 2009*, Tasmania Parliament, Second Reading Speech, 15.

Protocols for handling matters that involve potentially criminal conduct

[132] In the past, the Commission has not had a formal process for liaison with Tasmania Police and the DPP on matters that involve potential criminal conduct. The Commission identified that this approach has resulted in some problems and needed improvement.

[133] To address this, the Commission is now working to put in place protocols with both Tasmania Police and the DPP about the handling of Commission matters that include a potential breach of the law. The aim of these protocols is to ensure that such matters are handled in the most appropriate manner, taking into account all of the circumstances of each case.

[134] In line with the protocols, the Commission would seek to liaise with the most appropriate entity, depending on the complaint handling stage at which the criminal allegations emerge. For instance, if they were evident in the initial complaint, it is envisaged that the Commission would initially liaise with Tasmania Police to decide, for example, if the matter should be immediately referred to police. If, however, the criminal allegations were to emerge toward the end of an investigation when all the evidence had been collected, the DPP would likely be the preferred liaison body to determine, for example, whether the Commission should put together a brief of evidence for the DPP's assessment.

[135] The Commission envisages that the protocols will facilitate timely and useful discussions, and allow such matters to be handled in the most appropriate manner possible, taking into account the public interest, and the aims and objectives of each of the three entities.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

The Committee finds that, because of the methods available to the Integrity Commission to gather evidence, the capacity of the Director of Public Prosecutions or Police to subsequently prosecute criminal charges may be compromised.

Recommendations

That:

The Act be amended to require that, if criminality is suspected by the Integrity Commission during its triage of a complaint, the matter must immediately be referred to the Director of Public Prosecutions or Tasmania Police.

If the Director of Public Prosecutions suspects criminality, it can refer it to the Integrity Commission, Tasmania Police or any other appropriate body for investigation.[59]

Government response to Three Year Review

That:

The Government notes the Committee finding that there is capacity for criminal prosecutions to be compromised because of evidence gathering methods utilised in Integrity Commission investigations and these issues will be examined further in the Five Year Independent Review. The Government considers that the Integrity Commission should refer instances of criminal behaviour to Tasmania Police for investigation, as currently provided for by the Act.[60]

2.6 Monitoring progress of referred complaints

Commission position

The *Integrity Commission Act* should be amended to provide for the Commission to retain jurisdiction over matters referred to public authorities where, after action by a public authority (or a failure by the public authority to take appropriate action), it is apparent that further action by the Commission is required.

Discussion

[136] One of the principles of operation of the Commission is to *'improve the capacity of public authorities to prevent and respond to cases of misconduct'*.[61] This principle is achieved, in part, through the referral of complaints to public authorities for action.

[137] When the Commission refers complaints for action the CEO may:

- require the person (to whom the referral is made) to provide a report on what action the person intends to take in relation to the complaint;
- monitor any action taken by the person in relation to the complaint; or
- audit an action taken by the person in relation to the complaint.[62]

[138] It has been the experience of the Commission that public authorities, on occasion, fail to take appropriate action in relation to referred complaints. This arises due to a number of factors, including a lack of capacity to properly investigate a complaint. For example, public authorities do not have any special powers to obtain evidence in the way the Commission does.

[59] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 88.
[60] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 7.
[61] *Integrity Commission Act 2009*, s 9(1)(c).
[62] *Integrity Commission Act 2009*, s 35(6).

[139] Under the *Integrity Commission Act*, the Commission has no capacity to compel action or to assume responsibility for dealing with the complaint where a public authority fails or refuses to take appropriate action.

[140] The *Integrity Commission Act* gives the Commission the ability to '*assume responsibility for, and complete, an investigation into misconduct commenced by a public authority or integrity entity if the Integrity Commission considers that action to be appropriate …*'.[63] However the *Integrity Commission Act* does not provide an adequate mechanism through which the Commission can exercise this function in relation to referred complaints.

[141] As an example: a 2013 complaint relating to, inter alia, an alleged disclosure of confidential information was referred to the principal officer of the relevant State Service agency. The Commission was subsequently advised that, on the basis of the agency's investigation, it was found that the alleged disclosure did not involve misconduct. The Commission exercised its power to audit the action taken, and identified a number of deficiencies in the investigation including a failure to obtain or consider highly relevant evidence. Despite this, the Commission was notified by the agency approximately five months later that no further action was to be taken.

[142] The JSC sought to address this issue by recommending that the Commission be given authority to monitor and request progress reports of referred complaints (see below). The Commission respectfully submits that this recommendation largely replicates the existing powers of s 35(6) which do not sufficiently provide for the Commission to retain jurisdiction over referred complaints.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

In relation to matters referred to other agencies by the Integrity Commission, there is an issue with the Integrity Commission's authority to monitor the progress of the investigation.

Recommendations

That:

The Integrity Commission be given authority to monitor and request progress reports of all complaints referred to other agencies for investigation, and if necessary raise concerns of potential inaction with the Parliamentary Joint Standing Committee on Integrity.[64]

[63] *Integrity Commission Act*, s 8(1)(l).
[64] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 91.

Government response to Three Year Review

That:

The Government notes the findings and comments of Three Year Review Report and considers that the question of complaints referral and monitoring should be considered as part of the Five Year Independent Review.[65]

2.7 Amendments proposed by the Law Society of Tasmania

The Commission has addressed each of the issues raised by the Law Society of Tasmania to the Three Year Review given that each issue is identified in the report of the JSC resulting from that review.

Right to silence

Commission position

Given its legislated focus on misconduct, the Commission considers the *Integrity Commission Act* provides an appropriate balance regarding the right to silence and its concomitant 'group of rights'.[66] The Commission does not support enshrining an absolute right to silence within the *Integrity Commission Act*; the ability of the Commission to use (at least) limited coercive powers must be preserved in order for the Commission to achieve its legislated objectives.

Discussion

[143] While the Commission does have an ability to compel persons to provide information, it cannot abrogate legal privileges, including the privilege against self-incrimination. The Commission's ability to override the right to silence is therefore limited.

[144] In its submission to the JSC, the Law Society of Tasmania outlined its concerns in relation to the lack of an absolute right to silence in Commission investigations.

[145] The Law Society's concerns about this issue were associated with other matters; those matters are dealt with below. The Commission considers that many of the Law Society's concerns about the right to silence would be eliminated if those other matters were addressed – most notably, the right to legal representation.

[146] The ability to compel the production of information and evidence is essential to the Commission's investigative work. It is frequently used to obtain records both from public authorities, where the authority provided by a notice may assist an otherwise reluctant release of the information. Notices are also used to obtain information from the private sector (such as banks), and to compel the production of call charge records.[67]

[65] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 7.
[66] See: Law Society of Tasmania, *Submission to Three Year Review*, submission 1, 6 (quote from NSW Law Reform Commission Report July 2000).
[67] See discussion on *Telecommunications (Interception and Access) Act 1979* (Cth) in section 6.3, [270]–[273].

[147] The Commission's limited coercive powers provide significant motivation for persons subject to interview to cooperate with the Commission (in instances in which that cooperation would not override a legal privilege). It is the Commission's experience that people may be unlikely to cooperate in such circumstances, unless compelled to do so; this is particularly the case where a person knows they have done something wrong. Direct evidence from subject officers and witnesses is far more compelling than any adverse inferences that may be drawn by a refusal to cooperate with interviews.

[148] An inability to compel persons to produce information and attend to give evidence would significantly hamper the Commission's work. It would substantially reduce its ability to:

a. thoroughly and independently investigate misconduct;

b. identify and expose misconduct; and

c. uncover organisational and systemic issues which allowed the conduct to occur.

[149] The preservation of an absolute right to silence within the *Integrity Commission Act* would be analogous to a compete removal of the Commission's coercive powers. This would seriously degrade Commission investigations, and would likely lead to the investigations being less effective than an investigation which an authority could itself conduct. The Commission therefore disagrees with any perceived necessity to strengthen such rights within its *Integrity Commission Act*.

[150] The Commission notes that all integrity entities in other Australian jurisdictions[68] can compel evidence however that evidence is not admissible in court. For example, the powers available to the Australian Securities and Investment Commission allow it to compel evidence. Such a regime requires careful consideration, from both legislative and policy perspectives, of the series of High Court cases discussed elsewhere in this submission.[69]

Coercive notices

Commission position

The Commission submits that it is neither necessary nor constructive to amend the *Integrity Commission Act* in relation to coercive notices.

Discussion

[151] The decision to issue coercive notices is made judiciously and in recognition of the powers provided to the Commission under the *Integrity Commission Act*. The Commission only uses coercive notices where they are necessary to the undertaking of an assessment or investigation.

[152] An assessor or investigator cannot issue a notice without justifying its need and purpose to the CEO. The Commission utilises a number of checks,

[68] Integrity Commission, *Submission to Three Year Review* (2013), volume 2, App 7, 103–105.
[69] Refer to discussion about *Lee v The Queen* [2014] HCA 20, section 2.5, [122]–[123].

including a process that requires the CEO to sign off on the use of all notices.

[153] Issuing a notice is currently the only mechanism with which the Commission can ensure confidentiality over its dealings with witnesses and relevant public officers. Many public authorities prefer to receive coercive notices, as it protects them from any issues relating to the release of information.

[154] All notices are accompanied with detailed information relating to rights and obligations relating to the notice and the recipient's involvement in the Commission's assessment or investigation. Notices to attend to give evidence are generally served in the Commission's offices following a discussion about the notice and the rights of the recipient.

Claims of privilege

Commission position

The Commission is satisfied with the current operation of privilege under the *Integrity Commission Act*, noting that there may be scope to simplify the process if considered appropriate.

Discussion

[155] The Commission has yet to receive a claim of privilege of any kind in relation to its assessments or investigations. It is not possible to determine whether the lack of any claims is associated with the apparent complexity of the process of claiming privilege.

[156] The Commission notes the recent addendum to Employment Direction No 16 (ED 16) relating to the provision of indemnities and legal assistance for public officers who are served with a coercive notice under the *Integrity Commission Act*. Given the change to ED 16 it is possible that legal representation for subject officers and witnesses will become more common. Consequently it is also possible that claims of privilege may increase.

Right to representation

Commission position

The Commission agrees that the current inconsistency between the rights of public officers and witnesses to be represented by a legal practitioner should be addressed.

The Commission must have discretion to prevent certain individuals from representing public officers or witnesses in certain cases. Such a discretion should apply to assessments, investigations and tribunals.

Discussion

[157] Section 49 of the *Integrity Commission Act* provides for a person required or directed to give evidence or answer questions as part of an investigation to be represented by a legal practitioner or other agent.

[158] Similarly, section 66(1) allows for a public officer who is the subject of an inquiry to be represented by a legal practitioner or other agent when appearing before an Integrity Tribunal during an inquiry.

[159] Section 66(2) provides the same right to witnesses appearing before an Integrity Tribunal, except that the exercise of that right must be approved by the Integrity Tribunal.

[160] Issues have been encountered during investigations where a person required to give evidence sought to be represented by an individual whom the Commission considered to have a conflict of interest in relation to that investigation. In such circumstances the Commission should have discretion to require a person to obtain an alternative representative (or if they wish, to not then be represented).

[161] The Commission's discretion in this respect would relate only to the specific representative; not the person's right to be represented. This position should be reflected in ss 49 and 66 consistently.

Certification of costs

Commission position

The Commission is satisfied with the existing provisions in the *Integrity Commission Act* for taxation of costs for financial assistance in Integrity Tribunals.

Discussion

[162] Certification of costs was discussed previously by the Commission before the JSC.[70] There has been no change to the Commission's position on this issue.

Reference information

> Report of Joint Standing Committee on Three Year Review
>
> *Findings*
>
> That:
>
> The Law Society has raised issues in respect of the right to silence, issuing of coercive notice, claims of privilege, right to legal representation and certification of costs that need further consideration.

[70] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 256.

Recommendations

That:

Amendments proposed by the Law Society as detailed in this section of the report (changes to the right to silence, issuing of coercive notices, claims of privilege, right to legal representation and certification of costs) be referred to the Government for consideration.

Amendments proposed by the Law Society detailed in this section of the report (changes to the right to silence, issuing of coercive notices, claims of privilege, right to legal representation and certification of costs) be considered as part of the five year review, and that the evidence obtained by the Committee in relation to this issue be considered as part of that process, and that advice is sought from all relevant experts including the Solicitor-General in relation to these proposed changes.[71]

Government response to Three Year Review

That:

The Government notes the matters raised by the Integrity Commission and findings of the Three Year Review Report. In particular the finding that the Law Society of Tasmania has raised issues in respect of the right to silence, issuing of coercive notice, claims of privilege, rights to legal representation and certification of costs and the Committee found these need further consideration.

The Government believes these matters should be further considered as part of the Five Independent Year Review.[72]

2.8 Integrity Commission reporting on Tasmania Police matters

Commission position

The Commission considers its role in relation to overseeing and auditing complaints of police misconduct to be of fundamental importance to the achievement of its objectives under the *Integrity Commission Act*, and to enhancing public confidence that misconduct will be appropriately investigated and dealt with.

The Commission seeks to work cooperatively with, but with independence from, Tasmania Police. This applies equally to handling of complaints of police misconduct, and to the Commission's annual audits of the way the Commissioner of Police has dealt with misconduct.

[71] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 257.
[72] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 8–9.

Discussion

Background

[163] Over the past several years, the Commission has improved its engagement and cooperation with Tasmania Police. The agencies interact both in accordance with the statutory requirements of their respective legislation, and under a voluntary memorandum of understanding. The memorandum of understanding covers issues such as exchange of information, notification of alleged misconduct, and the appointment of special constables.[73] The agencies are also working on a joint protocol for Commission matters that may involve breaches of the law.

[164] Where the Commission receives complaints about police directly from complainants, it considers whether to take further action, or to refer the matter to police for consideration. Under the memorandum of understanding, Tasmania Police also notify the Commission of certain internally handled complaints on an ongoing basis.[74] Although it has the ability to do so,[75] to date the Commission has not assumed responsibility for a misconduct investigation commenced by the Commissioner of Police.

Audits of complaints about police

[165] The 'dispute between Tasmania Police and the Integrity Commission over the accuracy of an Integrity Commission report allegedly mistaken content in an early Integrity Commission audit report' (see JSC finding, below) was discussed at length during the Three Year Review.[76] The Commission does not intend to revisit the issue.

[166] Since that time, the Commission has significantly improved its audit process. The Commission has learnt a great deal about police processes, both in regard to complaints and more generally. It has also increased its engagement with Tasmania Police throughout the course of the audit.

[167] The Commission seeks to include police in the preparation of the audit plan prior to commencing each audit. For the current audit, police were invited to comment on and select specific issues to be addressed, prior to the drafting of the audit plan. The aim of this additional level of engagement was to enhance the usefulness of the audit to police in improving their internal procedures. Engagement and communication with police is ongoing throughout the audits. Each draft audit report is given to Tasmania Police for four weeks, to allow it time to provide comment. Extensions to this timeframe have, in the past, been provided on request. The previous two audit reports have included the official Tasmania Police response in full. For the last two years, the Commission has also given police a detailed written explanation as to why its comments have or have not impacted on the final version of the audit report.

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[73] *Memorandum of Understanding between Integrity Commission and Tasmania Police*, effective 1 October 2010.
[74] For more information on the memorandum of understanding, see: Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 104.
[75] *Integrity commission Act*, s 88(3).
[76] See: Integrity Commission, *Third written submission to Three Year Review* (2014), 19–20; Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 158–169.

[168] It is the Commission's view that the annual audits are important to assisting police accountability to the public of Tasmania. Police have powers that are far beyond those of the average citizen, such as the ability to legally use force. External oversight and transparency are therefore integral to maintaining public confidence in the suitability of police to be handling complaints against police. The then Chief Commissioner of the Integrity Commission, the Hon Murray Kellam AO, provided the following view during oral hearings to the JSC Three Year Review:

> *As to oversight of police, I won't speak on behalf of the commissioner but a lot of commissioners I have spoken to in other states say they are very pleased to have an independent body saying they are getting it right. Our audits demonstrate some issues. Wouldn't the public be a lot more satisfied about their police force to know that if something arises there is independent oversight? Surely the public is better serviced by that?*[77]

[169] Very little information on complaints against police is released publicly by Tasmania Police, and there is also very limited public information on police policies and procedures. The audits provide an opportunity for the public to better understand police procedures and responses to complaints about misconduct. Importantly, they also facilitate and encourage the adoption of better practice policies and procedures by Tasmania Police. The audit information is also used by the MPER Unit in designing and enhancing its training of police, and the resources it produces for the Police Academy.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

There is a dispute between Tasmania Police and the Integrity Commission over the accuracy of an Integrity Commission report.

Recommendations

That:

Both agencies ensure closer collaboration and communication to avoid or minimise disputes in future reports.

Where agreement cannot be reached, the final report of the Integrity Commission should include a response of the relevant agency.[78]

Government response to Three Year Review

That:

The Government notes the findings and comments of Three Year Review Report in relation to Tasmania Police and considers that the relationship between Tasmania

[77] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 32.
[78] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 169.

Police and the Integrity Commission and the Integrity Commission Reporting on Tasmania Police matters should be considered as part of the Five Year Independent Review.[79]

2.9 Investigation of misconduct and serious misconduct of police

Commission position

The *Integrity Commission Act* should be amended to allow the Commission to investigate 'misconduct' by police officers.

Discussion

[170] In regard to police misconduct, the Commission is restricted to only assessing, investigating or otherwise dealing with complaints of serious misconduct, and complaints against police officers who are DPOs. It cannot assess or investigate complaints of misconduct (that is not serious) against police officers who are not DPOs i.e. a senior sergeant or below.

[171] The Commission may receive complaints about police officers pursuant to s 33 of the *Integrity Commission Act*. Where a complaint of misconduct, serious or otherwise, is made (to the Commission) against a police officer who is a DPO, it is to be dealt with in accordance with s 87.

[172] A complaint that alleges serious misconduct by a police officer who is not a DPO may be dealt with in accordance with s 88(1)(a) which, with s 87, is within Part 8 of the *Integrity Commission Act*. Effectively this means that the complaint of serious misconduct can be processed in accordance with the framework set out under ss 35–59: from triage to dismissal or non-acceptance, assessment or referral and when appropriate, investigation.

[173] However, Part 8 does not stipulate a process by which the Commission might deal with a complaint of misconduct (as opposed to serious misconduct) against a police officer who is not a DPO. In other words, the general framework set out under ss 35–59 has no application, with the effect that the Commission is unable to deal with a complaint of misconduct against a police officer who is not of commissioned rank. (The only recourse for the Commission would be to investigate such a matter via an own motion investigation.)

[174] Section 88(1)(a) therefore prevents the Commission from investigating 'misconduct' by non-DPO police officers, even in circumstances where the alleged misconduct appears to be systemic. The Commission therefore has reduced powers in relation to police misconduct, as opposed to misconduct by other public officers.

[175] It is also to be noted that, by virtue of ss 88(1)(c)–(d), the Commission does have some powers in relation to all police misconduct. This includes to:

- provide advice in relation to the conduct of investigations by the Commissioner of Police (s 88(1)(b)); and

[79] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 8.

- audit the way the Commissioner of Police has dealt with police misconduct, in relation to either a particular complaint or a class of complaint (s 88(1)(c)).

[176] It would appear to be an anomaly that the Commission has the above-mentioned powers in relation to all police misconduct, but is limited in terms of its investigative powers.

2.10 Integrity Commission access to Tasmania Police data

Commission position

The Commission should have live access to Tasmania Police databases for the purposes of its operations under the *Integrity Commission Act*. This is consistent with arrangements for other Australian integrity entities, and would significantly enhance its ability to collate data about, and successfully progress investigations into, serious misconduct. It would also enhance various aspects of its audits of complaints against Tasmania Police. Amendments to the *Personal Information Protection Act 2004* ('*PIP Act*') would facilitate the Commission's ability to access Tasmania Police data.

Discussion

[177] The justification for the Commission's position on this matter was discussed in detail in its submission to the Three Year Review.[80] The Commission does not intend to revisit this issue in depth, except to reiterate that the issues detailed in its earlier submission with respect to issues under the *PIP Act* and online desktop access to Tasmania Police data may be resolved if the Commission were a law enforcement agency for the purposes of the *PIP Act*.[81]

[178] The Commission notes that this issue was raised in the Three Year Review, and may have been seen by some as the Commission seeking the power to go on 'fishing expeditions'. As previously stated by the Commission, its access to such databases would be auditable, and only availed to access records where there was a valid, documented and justifiable authorisation.

[179] In relation to the Commission's annual audits of complaints against police, the Commission anticipates that an ability to actively monitor and run searches on the complaints database (IAPro) would significantly reduce any perceived burden on Professional Standards Command. It would also enhance the Commission's ability to perform targeted and efficient audits, through a focus on specific issues within identified files. It may also reduce the necessity for the Commission to annually undertake complete audits of all police misconduct files finalised in each year.

[80] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 112–115.
[81] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 128; volume 2, 29–30.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

To date, Tasmania Police has not refused any of the Integrity Commission's requests to access Tasmania Police data, and have responded to all such requests promptly.

Recommendations

That:

No changes are made in this area, as the current position is adequate.[82]

2.11 Misconduct prevention and education

The Commission has addressed each of the recommendations of the JSC arising from the Three Year Review.

Compulsory participation in induction programs

Commission position

The Commission supports the recommendation of the JSC for compulsory participation in induction programs in principle, subject to this being implemented in such ways as to:

- minimise resourcing costs on public authorities;
- provide efficient methods for recording and reporting of completions by individual public officers; and
- address information security and privacy of the completion data of individual public officers.

Discussion

[180] Pursuant to s 32 of the *Integrity Commission Act*, principal officers are responsible for ensuring that public officers receive education in ethics and integrity generally. The *Integrity Commission Act* also provides topics that are to be included in this education. The *Integrity Commission Act* does not provide specific requirements as to when principal officers are to fulfil this obligation, nor any details regarding recurrence i.e. if/when follow-up education should be provided, or how compliance with this obligation is to be recorded and reported. This lack of clarity would need to be corrected to support any change to compulsory participation.

[82] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 158.

[181] The Commission has placed significant effort into resources that support the obligations of principal officers pursuant to s 32. The Commission has provided public authorities with a comprehensive range of education resources that enable in-house delivery of training. These resources are regularly reviewed and improved to ensure that they convey contemporary learnings in ethics and integrity, while also fulfilling a compliance role, as per the *Integrity Commission Act*. Codes of conduct are one aspect of this, as required by the *Integrity Commission Act*, but there is also strong educative emphasis on individual behaviour, personal judgement and actions.

[182] An educative emphasis on codes of conduct and compliance with such codes is required by the *Integrity Commission Act*.[83] Codes of conduct are, however, only one aspect of the Commission's approach to prevention and education.[84] The Commission's educational design ethos and pedagogical practice include significant emphasis on individual behaviours and actions, personal judgement and personal decision making by public officers; codes of conduct are but one aspect of this. Any move toward compulsory training across the public sector must be fully cognisant of these issues. The Commission submits that the education of public officers in ethics and integrity should not be driven toward a simplistic 'read and tick' compliance only approach that, by its nature, detracts from the achievement of quality learning outcomes and, in turn, the ability of public officers to make sound ethical judgements.

[183] The Commission has undertaken an extensive needs analysis and design work to increase the flexibility of training for all public authorities and public officers. The Commission, for example, provides a free and centralised e-learning module (which addresses the requirements of s 32) that is adaptive to each public authority and public officer. This training is available 24/7 and fully supported by Commission staff, thus providing a highly flexible and low-cost solution for public authorities to fulfil their obligations under the *Integrity Commission Act*.

[184] The Commission has regularly and widely communicated the availability of resources, and the obligations of principal officers under the *Integrity Commission Act*, to all public authorities under its jurisdiction.

[185] While adoption of training resources across the public sector has generally been pleasing, there are still public authorities that are yet to engage with or request any of the Commission's education resources. Some public authorities have requested the resources but then have not reported on their use – as is a requirement in the terms of use. A minority of public authorities report against their obligations under s 32 in annual reports. Consequently, the Commission cannot quantify with a high degree of confidence the uptake of education and compliance with s 32 across the public sector as a whole.

[186] The Commission considers that, if induction training is to be mandatory, it is imperative that public authorities are provided with low-cost and efficient solutions for delivering training, recording completions and reporting on compliance in general. The Commission's work in this regard is already

[83] *Integrity Commission Act*, ss 8, 32.
[84] For further discussion on this issue, see Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 66–67, 71.

providing a significant level of assistance and efficiencies. However mandatory training, recording and reporting (including recurrency training) across the whole public sector will be a significant extra resourcing load on the Commission and this could not feasibly be managed under current resourcing and staff levels.

[187] The Commission does not seek to perform a centralised data collection and reporting role. This would likely be seen as a significant compliance impost on public authorities and could potentially be counter-productive in the Commission's prevention and education work.

[188] It is the Commission's view that data on training completions should be recorded and held by each public authority and not held centrally by the Commission. The Commission could provide data collection and reporting tools, and provide aggregated reporting only at a sector level. This would provide some protections of the privacy of public officers and the security of information about public officers.

[189] In order to validate the 'compulsory' aspect of this recommendation, public authorities would need to formally and regularly report on completions of induction and refresher training by public officers. This could perhaps become part of each public authority's annual report. This requirement should be made clear under s 32 of the *Integrity Commission Act*.

Contemporary information and refresher training

Commission position

The Commission supports the recommendation of the JSC in principle, subject to the definition and requirements of refresher training being made specific in the *Integrity Commission Act*.

Discussion

[190] There are presently no requirements for recurrent training, or 'refresher training', in the *Integrity Commission Act*. Under current arrangements therefore it is possible that existing public officers never receive any form of training in ethics and integrity, and, even if they do receive training at a point in time, that they never again receive training in the future. This could mean that public officers serve for considerable lengths of time without any training or refresher training. This is a significant flaw in current arrangements.

[191] Without refresher training, public officers are not appropriately informed of emerging and contemporary ethics issues and misconduct risks, and therefore not empowered to handle these issues.

[192] Refresher training would arguably be more appropriate every three years, given the importance of managing ethical risks and being cognisant of emerging risks. However this needs to be balanced against the overall time cost for each public authority, and, the support load on the Commission with approximately 15,000 public officers potentially undertaking refresher training in their respective public authorities each year.

[193] Responsibility to identify when a public officer is due for a refresher course should be with each public authority. Similarly the recording and reporting of completions should rest with each public authority – as per discussion in [187].

[194] The *Integrity Commission Act* should be clear on whether refresher training is compulsory or otherwise.

[195] Use of contemporary information is addressed by the Commission as a matter of course with new materials from time-to-time and with regular reviews and updates to all existing materials. MPER integrates information on emerging and contemporary ethics and integrity issues, and misconduct risks, into training resources. MPER also applies contemporary learning design into resources, including ongoing evaluation and continuous improvement.

Members of Parliament induction and refresher training

Commission position

The Commission supports the recommendation of the JSC in principle that Members of Parliament attend an induction or refresher information session provided by the Integrity Commission after they are elected, subject to dependent clarifications and definitions.

Discussion

[196] The Commission has provided significant induction training opportunities for Members of Parliament with workshops in 2011 and 2014.

[197] The Commission outsources the delivery of training to facilitators with significant parliamentary experience, while carefully managing the logistics and quality of delivery.

[198] Attendance at workshops has been, and is currently, optional for Members of Parliament. Workshops were attended by 24 Members of Parliament in 2011 and 15 Members of Parliament in 2014.

[199] To support the efficient implementation of this recommendation, the Commission suggests the following issues should be addressed:

a. clarity regarding the meaning of '*Members of Parliament attend…*' is needed, i.e. whether induction training for new Members of Parliament is to be compulsory or not; and whether refresher training for returning Members of Parliament is to be compulsory or not. Given the earlier recommendation for compulsory participation in induction and refresher training for all public officers, this would align with that recommendation – given that Members of Parliament are also public officers as defined in the *Integrity Commission Act*; and

b. clarity regarding the meaning of '*after they are elected'* is needed. The Commission suggests a requirement that training be undertaken

within three months of a Member of Parliament being elected or re-elected.

[200] The *Integrity Commission Act*, as it currently stands, takes a strong position with regard to the role of codes of conduct in the prevention of, and investigations into, misconduct. The Commission supports this position and has undertaken extensive work to embed and improve codes of conduct across the public sector. The Commission's broad experience in the training of public officers and local government elected representatives suggests that – where a code of conduct applies to those persons – the design and delivery of training is more efficient, straightforward and supports higher order learning outcomes, such as the role of individual judgment and decision making in ethical situations. Given that a code of conduct does not currently apply to Members of Parliament, the Commission submits that this is a relevant consideration in any improvements in training for Members of Parliament.

Reference information

Report of Joint Standing Committee on Three Year Review

Recommendations

That:

Participation in misconduct prevention workshops provided by the Integrity Commission should be compulsory during induction programs for employees commencing work at public sector agencies, and this participation is recorded on the person's personnel file [Verbatim, or summary if required]

Contemporary information is to be provided to public sector employees as appropriate and refresher courses be undertaken every five years

Members of Parliament attend an induction or refresher information session provided by the Integrity Commission after they are elected.[85]

Government response to Three Year Review

That:

The Government notes the findings and comments of Three Year Review Report and considers that the education and misconduct prevention function of the Integrity Commission should be considered as part of the Five Year Independent Review. However, the Government is of the view that a key focus of the Integrity Commission should continue to be education and misconduct prevention. The Government also acknowledges the work already undertaken by its agencies in induction and other training related to integrity and ethical decision making.[86]

[85] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 121.
[86] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 8.

2.12 Resources

Commission position

On the basis of its current resources, the Commission struggles to meet the objectives of the *Integrity Commission Act* and to adequately address misconduct in the public sector. The Commission's investigative capacity and timeliness in delivering outcomes are limited by its inability to adequately fund its operations area. The Commission's educative and preventative activities are, to a large extent, necessarily limited to the provision of generic and template-based materials that must be delivered and operationalised by public authorities themselves.

Given the Commission's current resources, the Commission has been unable to retain an in-house legal capability. This potentially impacts upon its ability to undertake its operations in accordance with the *Integrity Commission Act* (and particularly to undertake an Integrity Tribunal) and the principles of procedural fairness, and may result in adverse impacts on subject officers of complaints and other persons involved in investigations undertaken by the Commission.

Discussion

[201] This section updates key areas of the Commission's submission to the Three Year Review.[87] Substantial portions of that submission remain relevant and are not repeated here.

Human resources

[202] A chart of the Commission's current organisational structure is provided in Attachment 4. The structure results from the impact of reductions in budget allocations since 2013–14 (see [213] – [221]).

[203] The following table provides a breakdown of the staffing structure (full-time equivalents [FTE]) by business unit since the Commission's establishment. The Commission is continually monitoring its staffing to ensure that the structure best meets its emerging needs within its budgetary capacity.

[87] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, chapter 10.

Actual FTEs – part time arrangements and vacancies

	As at 30 June 2011	As at 30 June 2012	As at 30 June 2013	As at 30 June 2014	As at 30 June 2015	As at 30 June 2016 (est.)
Executive*	2.4	1.4	2.2	1.1	1.1	1.4
Business Support Service	5	5	4	4	3.8	3.8
Misconduct, Prevention and Education	3	3	3	3	3	4
Complaints and Investigation	5	4	3	5	4.6	4.6
Legal	1	1	1	1	0.6	0
Communications	1	1	0.6	0.6	0	0
Graduate	-	1	1	0	0	0
Total	17.4	16.4	14.8	14.7	13.1	13.8

* Includes Chief Commissioner

[204] The Commission has struggled to meet its basic legislative requirements within its annual appropriation. The Commission aims to fully expend its annual appropriation however has returned portions of that allocation due to periodic staff vacancies. Whilst the turnover has lessened since 2012, there are unavoidable delays in filling vacant positions under the State Service Vacancy Control process. In addition, due to budget uncertainty (particularly from 2014–15), there have been intentional delays in filling some positions. The Commission has not been in the position of having a full establishment, apart from briefly in 2015.

[205] As noted, the Commission has the authority to second additional staff from relevant agencies should a short-term increase in workload require it. No specific funding has been allocated for secondment arrangements, however, and any such costs would have to be absorbed from within the current budget allocation which may have an impact on the Commission's ability to meet its costs, and, more importantly, to properly fulfil its functions under the *Integrity Commission Act*, in future years. Should a major new initiative arise such as a significant investigation or an inquiry, there is provision under the *Integrity Commission Act* to submit a request for additional funding to meet those costs.

[206] In addition, the original 2010–11 budget and forward estimates did not include fees or costs for non-*ex officio* members of the Commission's Board or any external legal costs. The Board costs have been absorbed annually from salary savings arising from temporary staff vacancies.

[207] While the Commission has sought to fulfil its statutory requirements with fluctuating staffing levels, there is a clear impact on the activities of the Commission. Impacts may include, but are not limited to:

- consideration of resourcing in determining whether matters should progress to investigation;
- delays in finalisation of matters;

- delays in the rollout of educative initiatives and products; and
- the inability to tailor training to specific public authority needs.

[208] The Commission is continually monitoring its staffing to ensure that the structure best meets its emerging needs within its budgetary capacity.

Staffing reductions

General Counsel

[209] General Counsel provided advice to all business units of the Commission, including: confidential advice on investigative and operational matters to the Operations Unit; policy development and review for Corporate Services; and review and guidance on information to be released to the public by the MPER unit. It is noted that MPER is moving towards a greater consulting and advisory role to the public sector in 2016, where accurate and timely legal advice will be essential. While the Commission may access Crown Law Services for general and legislative advice, it remains vulnerable in relation to confidential Commission matters and to policy matters that require urgent advice, specific to the Commission.

[210] It is unlikely that the Commission would consider undertaking an Integrity Tribunal[88] without in-house legal capability.

Operations

[211] The Operations unit has been reduced by 0.4 FTE (to 3.6 FTE) which impacts on the number and timeliness of assessments and investigations undertaken by the Commission. This has a direct impact upon the public through a potential reduction in the Commission's capacity to accept complaints, and on the timeliness of outcomes of any assessment and/or investigative actions. Delays in such work can also have an adverse effect on subject officers and other witnesses who may be involved in a matter.

Communications/Media Advisor

[212] The position provided expert and crucial support in: the production and finalisation of public reports, including the Annual Report and other research/investigation reports released by the Commission; website development and maintenance; media liaison; communications strategy and facilitation; and general research. The above has been absorbed into the Commission's MPER unit. This has taken time and resources from the core focus of this business unit and is difficult to sustain in the medium to long term without significant impact on the unit's output. There has been a significant loss of expertise in this area.

[88] *Integrity Commission Act*, Part 7.

Financial resources

[213] The Commission's recurrent Consolidated Fund Allocations since establishment are provided in the following table:

	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16*	2016–17 forward estimates	2017–18 forward estimates
Allocation ($,000)	2,909	2,983	3,026	2,934	2,418	2,360	2,290	2,346
% change from 2010–11 allocation		2.0	4.0	8.0	(17.0)	(19.0)	(21.0)	(19.0)
Net change in funding from forward estimates allocations ($,000)		5	(30)[1]	(60)[1] (118)[2]	(100)[1] (120)[2] (500)[3] (32)[4]	(124)[2] (600)[3] (53)[4]	(600)[3] (53)[4] (60)[5]	(600)[3] (53)[4] (60)[5]

*Excludes $60,000 for costs associated with the Five Year Review, administered by the Department of Justice.

[1] Agency saving target; [2] Removal of payroll tax; [3] Commission efficiency; [4] Salary savings; [5] Removal of Board funding

[214] Since 2012–13 the Commission has been required to meet considerable savings targets, which are cumulative through the forward estimates. The reductions have been particularly significant since 2014–15. As indicated in the above table, the Commission was required to achieve a savings target of $500,000 in 2014–15 in addition to a reduction of $100,000 included in the forward estimates in 2012–13 which had already impacted on 2014–15. It can be seen that the Commission's appropriation has been further reduced from 2015–16 onwards due to government identified saving of $600,000 in 2015–16 and over the forward estimates.

[215] The Commission has also been impacted by the wages policy decision where appropriations were reduced for a proposed wages freeze which did not eventuate, so whilst the appropriation was reduced, the salary costs were not decreased. Note the removal of payroll tax funding however had a neutral effect as agencies were also no longer required to pay payroll tax.

[216] Funding was also removed from forward estimates for sitting fees of non-*ex officio* members of the Commission's Board from 2016–17. Depending upon the outcome of the current review, the Commission shall need to request additional funding in future budget submissions.

[217] The 2012–13 budget allocation advice indicated the forward estimates in 2015–16 to be $3,194,000 however the actual allocation in 2015–16 following the cumulative savings targets is $2,360,000, a reduction of $834,000 or 26%.

[218] In order to meet the savings targets, all non-salary items were reviewed, including negotiating cheaper accommodation costs at the Commission's current premises. The Commission has made substantial savings in a number of areas including legal and IT consulting, supplies and consumables and travel. It is difficult to envisage that further savings can be found in non-salary expenditure without significant and far-reaching impacts on the operations of the Commission.

[219] The Commission has also needed to substantially reduce its salary costs to achieve the savings targets. It has done so by a 1.6 FTE reduction in the establishment costs by not filling the vacant positions of General Counsel and the Communications/Media Advisor (0.6 FTE). The functions performed by these roles have either been absorbed by other staff which has impacted on the Commission's core operational areas, or in some cases are not satisfactory being performed, such as expert in-house legal advice. In addition, all staff were offered the opportunity to enter into part-time arrangements, with three staff members taking this opportunity.

[220] The Chief Commissioner was included in the staff establishment at 0.8 FTE to June 2012, 0.6 FTE in 2013, and 0.2 FTE from 2014 onwards. However the Chief Commissioner's actual hours have been lower than originally included in the establishment with 0.4 FTE to 2013 and less than 0.2 FTE in 2014 and 0.1 FTE in 2015 onwards, which also assisted the Commission to meet its savings targets.

[221] As the Commission is now operating under reduced staff capacity, the magnitude of the reduction in budget and its impact on the Commission's ability to perform its core functions is becoming explicit.

3. THE OPERATION OF THE PARLIAMENTARY STANDARDS COMMISSIONER

Commission position

The Commission supports the office and function of the Parliamentary Standards Commissioner.

The Commission submits that the Parliamentary Standards Commissioner should provide an annual report to Parliament on the activities undertaken by the Parliamentary Standards Commissioner.

The Commission supports amendment of the *Integrity Commission Act* to provide for the possibility for persons over the age of 72 years to be the Parliamentary Standards Commissioner.

Discussion

[222] The office of Parliamentary Standards Commissioner is established pursuant to s 27(1) of the *Integrity Commission Act*. The Parliamentary Standards Commissioner is an independent statutory office and operates independently of the Commission. The current Parliamentary Standards Commissioner was re-appointed to the office in 2015 for a further five year term.

[223] The Parliamentary Standards Commissioner provides assistance to Members of Parliament on ethical issues, and provides advice on parliamentary ethical matters to various entities, including the Commission. This advice may be provided on a confidential basis pursuant to s 28(2) of the *Integrity Commission Act*.

[224] The Commission may consult with the Parliamentary Standards Commissioner on: significant matters relating to the exercise of its powers and functions with the Parliament; matters relating to the operation of Parliamentary registers; and the provision of training for Members of Parliament. The Parliamentary Standards Commissioner and the former Chief Commissioner undertook extensive work to develop draft Codes of Conduct for Members of Parliament in 2010–2011.

[225] The Commission facilitates the payment of a stipend and remuneration for minor costs to the Parliamentary Standards Commissioner under the Commission's budget, in accordance with the Parliamentary Standards Commissioner's instrument of appointment. The allocation for the Parliamentary Standards Commissioner in 2015–16 is $16,462. The Commission provides no other formal administrative assistance to the Parliamentary Standards Commissioner.

[226] The Commission submits that, in the interests of public awareness of the role of the Parliamentary Standards Commissioner, the Parliamentary Standards Commissioner should provide a report to Parliament on the activities of the office each year, subject to the confidentiality provision in s 28(2) of the *Integrity Commission Act*.

[227] The Commission has also suggested a technical amendment relating to the maximum age of the Parliamentary Standards Commissioner as provided in s 27(4) of the *Integrity Commission Act* (refer Attachment 1, item 3).

4. THE OPERATION OF THE JOINT COMMITTEE

Commission position

The Commission supports the role and function of the JSC, and seeks to work with the Committee to achieve the objectives of the *Integrity Commission Act*.

Discussion

[228] The Commission notes the role and functions of the JSC pursuant to the *Integrity Commission Act*. The JSC has undertaken a review of the functions, powers and operations of the Commission pursuant to s 24(1)(e) of the *Integrity Commission Act*.[89]

[229] The Commission seeks to work cooperatively with the JSC to maximise the potential to achieve the objectives of the *Integrity Commission Act*.

[230] Beyond the provisions of the *Integrity Commission Act*, the Commission and the JSC, in 2011, sought to establish a protocol to govern communications between the two entities. The protocol is currently the subject of review by the parties, with the intent of providing a better understanding of how and when relevant issues may be discussed between the parties.

[89] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015).

5. THE EFFECTIVENESS OF ORDERS AND REGULATIONS MADE UNDER THIS ACT IN FURTHERING THE OBJECT OF THIS ACT AND THE OBJECTIVES OF THE INTEGRITY COMMISSION

Orders

[231] To date the only order made in relation to the *Integrity Commission Act* is the *Administrative Arrangements Order 2015* which specifies at Part 3 of Schedule 1 that the Attorney-General/Minister for Justice is responsible for the administration of enactments under the *Integrity Commission Act*.

[232] The *Justice and Related Legislation (Miscellaneous Amendments) Act 2012* amended section 5(1) of the *Integrity Commission Act* to include the University of Tasmania as a public authority under the *Integrity Commission Act*.

[233] Schedule 1 of the *Integrity Commission Act* outlines the principal officers of public authorities. There is currently no reference to the University of Tasmania in the schedule.

[234] It is necessary for an order to be made under s 104(1)(b) to insert the University of Tasmania, and under s 104(2) to insert the Vice Chancellor as principal officer.

Regulations

[235] There have been no regulations made under the *Integrity Commission Act*.

6. ANY OTHER MATTERS RELEVANT TO THE EFFECT OF THIS ACT IN IMPROVING ETHICAL CONDUCT AND PUBLIC CONFIDENCE IN PUBLIC AUTHORITIES

6.1 The Commission's role in relation to corruption

Commission position

The Commission is concerned that there are misconceptions about its role in dealing with corruption in the public sector. As it stands, the Commission deals with misconduct and serious misconduct, both of which have the potential to relate to corrupt conduct; however, 'corruption' and 'corrupt conduct' are not mentioned in the *Integrity Commission Act*.

The Commission believes that there needs to be detailed consideration of whether and how corruption and corrupt conduct should be dealt with in relation to the Commission's functions, particularly in relation to its investigative powers and resourcing. This would include consideration of the interrelationships between the term 'misconduct' in the *Integrity Commission Act* with the terms 'corrupt conduct' and 'improper conduct' in the *Public Interest Disclosures Act 2002* ('*PID Act*').

The Commission takes no further position on whether it should, or should not, have the powers and resourcing to investigate systemic or institutionalised corruption. Ultimately it is for the Government of the day and the Tasmanian community as a whole to debate the issue, and to subsequently ensure that the Commission has the appropriate legislation and resources to achieve the objectives of the *Integrity Commission Act*.

Discussion

[236] The Commission is established to deal with misconduct and serious misconduct, as defined in the *Integrity Commission Act*.[90]

[237] The terms 'corrupt' and 'corruption' are not defined in the *Integrity Commission Act* and are not used in any section of the *Integrity Commission Act*. Consequently, beyond such conduct meeting the definition of 'misconduct and/or 'serious misconduct, the Commission is not empowered to investigate and make findings of corruption, corrupt conduct, institutionalised corruption, or systemic corruption.

[238] The Commission notes that Recommendation 29 of *Public Office is Public Trust*, the report which initiated a raft of open government measures – including the establishment of the Commission – stated (in part) that an objective of the Commission would be to *'enhance public trust that misconduct, including corrupt conduct, will be investigated and brought to*

[90] *Integrity Commission Act*, s 4(1).

account …'.[91] However, the objectives of the Commission as they were subsequently drafted and enacted do not include 'corrupt conduct'.[92]

[239] Submissions made by various parties to the previous Three Year Review include discussion of 'corrupt' and 'corruption', despite these terms not being in the *Integrity Commission Act*. It is apparent that there are disparate understandings of the definition of 'corruption', and how it should or should not relate to the functions of the Commission. The terms 'corrupt' and 'misconduct' appear to have been used interchangeably in some parts of the JSC's report arising from the review, and members of the JSC (at that time) appear to have different interpretations of the meaning of corruption.[93]

[240] The Commission notes that variations in the meaning and understanding of the term 'corruption' are not uncommon. Indeed, there is considerable variation between meanings of 'corruption' and 'corrupt' in use by similar integrity entities in other jurisdictions in Australia.

[241] The apparent lack of a universally accepted definition of corruption is an important issue for the Commission and is more than a mere semantic exercise. Given the absence of the term in its establishing legislation, the apparent use of 'corruption' as a yardstick (as occurred in the JSC report, see [243], below) has the potential to have significant negative impacts on public (and public sector) perceptions of the Commission and its work.

[242] A complicating factor is that, while 'corruption' is not defined or dealt with in the *Integrity Commission Act*, 'corrupt conduct' is defined in the *PID Act*, also stemming from *Public Office is Public Trust*. In the *PID Act*, 'corrupt conduct' is specified as a type of 'improper conduct'. Given that the *Integrity Commission Act* defines and deals with 'misconduct', the potential for confusion in how these multiple terms are applied is obvious. This issue therefore has broader implications for how corruption is defined, understood and dealt with in the Tasmanian public sector, and any consideration under this review should be fully mindful of the multiplicity of terms that are already utilised in Tasmanian legislation.

[243] Despite the jurisdiction of the Commission only extending to 'misconduct' (including serious misconduct), the report of the JSC (in four separate instances) states: *'Despite numerous allegations and investigations of serious misconduct, the Integrity Commission has not found evidence of* ***systemic corruption****'*.[94] While the Commission acknowledges the potential overlap between misconduct and corrupt conduct, as it stands, this is not prescribed in the *Integrity Commission Act*, and the JSC has referenced 'systemic corruption' without the Commission having the power to address it.

[244] Equally, the Commission cannot 'find' instances of a thing for which it has never been resourced to find. Anti-corruption bodies with powers to deal with corruption require a commensurate and significant level of staffing, expertise, and legislative powers for this to be feasible. The Commission currently has 13.8 FTE staff, including business and corporate services

[91] Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009), 16.
[92] *Integrity Commission Act*, s 3(2).
[93] See, eg, Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 1, 7, 72, 137, 218, 258, 260, 262, 265–266.
[94] Joint Standing Committee on Integrity, *Three Year Review – Final Report*, 1, 72, 142, 146. (Emphasis added)

personnel. The Commission notes interstate experiences that show that investigation of systemic corruption requires staff with particular expertise eg forensic accountants, physical and technical surveillance operatives, and intelligence analysts. The Commission does not have access to other important tools used by interstate anti-corruption bodies to detect corruption e.g. telephone interception powers and capacity, access to police databases, ability to abrogate privileges, use of assumed identities, and integrity testing programs. Consequently, under existing resourcing levels and capability, 'finding' and 'dealing' with systemic corruption (beyond that of the Commission's current level of work in dealing with misconduct) is implausible.

[245] The Commission notes that dissenting statements in the report of the Three Year Review from three members of the JSC,[95] and submissions from Tasmania Police and the Police Association of Tasmania, relied in part on a statement made by the Commission in its first annual report in October 2011 that '*the Commission has seen no evidence of any systemic corruption in any part of the public sector*'. At the time this statement was written, the Commission was still in an early stage of formation and had been operating for less than one full year. The Commission considers it unreasonable to continue to rely and put such significant weight upon this early view, particularly given the Commission is neither empowered or resourced to find 'systemic corruption'.

[246] The statement referred to above was made by the then Chief Commissioner, the Hon Murray Kellam AO. Mr Kellam provided a further statement in 2015, some four years after his earlier statement:

> *There appears to be complacency in government and in the bureaucracy that allegations of corruption of the nature that have recently resulted in prosecutions being commenced in New South Wales, Victoria and South Australia, after investigations by their integrity bodies, will not occur in Tasmania … The government assertion that other bodies, such as Tasmania Police, have the capacity to detect and investigate public sector corruption had not proved to be the case anywhere in Australia.*[96]

[247] The statement provides a discernible change in Mr Kellam's views following four years of work as the Chief Commissioner in Tasmania. The Commission submits that any submissions to the current review be taken in context of Mr Kellam's contemporary statements and views.

[248] The Commission has been criticised by some members of the Tasmanian community for not seeking to find and expose corruption as they understand it. This may stem in part from the variation of understandings of the term 'corruption', and/or a misunderstanding as to what constitutes 'misconduct' and how it is dealt with under the *Integrity Commission Act*. The Commission is aware that more effort needs to be made to inform and educate the public on the role and functions of the Commission. Strategic actions have been set by the Commission in order to further this in 2016–17.

[249] Since the Commission commenced operations in 2010, it has received a number of complaints that allege corruption in government and public

[95] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 258, 260, 262.
[96] Integrity Commission, *Statement by the Chief Commissioner 7 August 2015*, 2.

authorities, and in interactions between the private and public sectors. Due to privacy and confidentiality considerations, the Commission can only provide broad discussion on this issue; however notes that it has generally dismissed complaints[97] about such issues on the basis that the complaint does not relate to the functions of the Integrity Commission, given the *Integrity Commission Act* makes no reference to 'corruption'. If a complaint alleges a form of 'corruption' but does not provide sufficient allegations of potential misconduct by a specific public officer/s, then it is likely to be dismissed.

[250] The Commission is aware, through received complaints and enquiries, and through general awareness of local media, that there exists a certain frustration in parts of the community regarding 'corruption'. There is a perception that corruption is not recognised or dealt with in Tasmania, and that the Commission is a 'toothless tiger', on the basis of the perceived inadequacy of its powers.

[251] This frustration is not a new issue for the Tasmanian public. In 2009, in *Public Office is Public Trust*, the Joint Select Committee on Ethical Conduct noted that:

> *It is a matter of history that a number of public proceedings have, in recent times, given rise to a level of disquiet within both the Tasmanian community and the political echelon of the State. Such was the level of dissatisfaction that some form of intervention by the political leadership was, in the view of many, required to address what was perceived by them as the existence of 'institutionalised corruption' which has emerged as a consequence of the failure of the mechanisms currently in place to support ethical and open Government in Tasmania.*[98]

[252] The Joint Select Committee considered two possible models for a commission:

a. an anti-corruption body, similar in style to the New South Wales Independent Commission Against Corruption (ICAC), and Queensland's Crime and Misconduct Commission as it was known at the time; and

b. an ethics commission, which would be largely preventative and educative in scope.[99]

[253] It is apparent that some members of the public were expecting Parliament to create an entity that could, and would, pursue corruption. What was ultimately provided in the *Integrity Commission Act* is an entity that is to prevent and deal with misconduct. Consequently, in the Commission's opinion, there remains a significant disjunct between what was expected by some members of the public (a focus on corruption), and what Parliament delivered (a focus on misconduct). The Commission submits that this disjuncture, and the dissatisfaction and confusion it has caused in the public, should be specifically addressed in this review.

[97] Complaints are considered for dismissal in accordance with s 36 of the *Integrity Commission Act*.
[98] Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009), 17.
[99] Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009), 141–148.

[254] Conversely, some submissions made to the Three Year Review (in 2013–2014) argued that the powers of the Commission should not be increased and are appropriate, or in excess of, the intended role of the Commission. These views conflict with views expressed in other submissions to the Joint Select Committee on Ethical Conduct in 2009. The Committee selected one submission that 'succinctly expresses one view, repeated by a number of witnesses':

> *Many people think that "corruption" only exists when money has changed hands or when the law has been broken. However, integrity specialists and anti-corruption bodies worldwide increasingly use a broader definition of corruption as the abuse of entrusted power for illegitimate goals—goals that may not be limited to financial abuse, but can include enhancing personal or organizational reputation or political power. … I believe that it is important for Tasmanians to recognize that a wide range of bad practice, whether illegal or simply unethical, can and should be called "corrupt".*[100]

[255] In 2009, the Commissioner of Police submitted to the JSC that there were various issues of concern with the *Criminal Code Act 1924* ('*Criminal Code*') in relation to its possible application to Members of Parliament and public officers. He recommended a review of the Code to replace or reword sections to remove ambiguity.[101] The JSC agreed with this view and made recommendations as such, including that the Attorney General and Tasmanian Law Reform Institute lead this review.[102] It appears that no such review has since taken place. The Commission notes that the *Criminal Code* in Tasmania has been largely unchanged in this regard since 1924.

[256] The Commission previously addressed this issue in detail in 2014, when it noted that '*[t]here is no indication that any progress has been made on Recommendation 28.6 and it does not appear to be on the Tasmania Law Reform Institute's agenda at this point in time*'.[103] This and related matters are further discussed in section 6.5 of this submission.

[257] In *Public Office is Public Trust*, the submission of the Police Association of Tasmania also noted that there are distinct issues with police being solely tasked to investigate corruption matters, and especially so in relation to political matters.[104]

[258] The Government's submission to that Committee included the following example in its discussion of the applicability of the *Criminal Code* to matters of corrupt conduct:

> *The most recent opportunity was the case of Tasmania v Green, Nicholson and White [2007] TASSC 54. In that case the then Chief Justice spent considerable time in his judgment dealing with submissions by prosecution and defence lawyers about the proper meaning of section 69 of the Code*

[100] Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009), 20.
[101] Commissioner of Police, *Submission to the Joint Select Committee of the Legislative Council and House of Assembly on ethical conduct, standards and integrity of the elected Parliamentary representatives and servants of the state* (2008), 19.
[102] Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009), 120–121.
[103] Integrity Commission, *Prosecuting serious misconduct in Tasmania: the missing link – Interjurisdictional review of the offence of 'misconduct in public office'* (2014).
[104] Joint Select Committee on Ethical Conduct, Parliament of Tasmania, *Public Office is Public Trust* (2009), 96.

> *(Interference with Governor or Minister). It has been suggested that this complexity contributed to the failure of two juries to reach a verdict.*[105]

[259] The definition of corruption and whether/how corruption can be properly dealt with under the law is currently under review by the Victorian Parliament's Independent Broad-based Anti-corruption Commission (IBAC) Committee. A submission to that review from former Tasmanian Chief Commissioner, the Hon Murray Kellam QC, stated:

> *First, as much as the proposed amendments contain positive changes to the serious corrupt conduct jurisdiction of IBAC, the issue remains as to whether the threshold should be extended beyond criminal offending. My experience in Tasmania was that serious misconduct could arise in circumstances whereby there was no breach of the criminal law. Non-disclosure of serious conflicts of interest or of close relationship with a contractor, or providing preferential treatment to friends or relatives in employment by the provision of questions to be asked at interview, which questions are not provided to other applicants, are examples of serious misconduct by senior members of a Department which may not be in breach of the criminal law, but which on any view are clear examples of misconduct deserving of the description of being corrupt.*[106]

[260] Similarly, the former Victorian Ombudsman, Mr George Brouwer, submitted (in reference to the *Independent Broad-based Anti-corruption Commission Act 2011 [Vic]*):

> *The Act thus fails to recognise that corruption involves abuse of power in a variety of ways that often do not involve criminal offending as such. (eg serious conflicts of interest, nepotism, undue influence etc).*[107]

[261] The Commission's view is that corruption cannot be dealt with by criminal law alone. The referral of potential corruption matters to the police and the DPP can only be effective in cases where a law has been suspected to have been breached. Criminal law, of itself, does not codify and address all of the ways in which corruption can occur, especially where questions of ethical judgment and behaviour are paramount. In matters involving corrupt conduct, potential criminal conduct is a subset of (and extends beyond) corrupt conduct, and not vice-versa, and should be dealt with as such.

[262] The Commission cannot, and does not at this point in time, take a position on whether systemic corruption does or does not exist in Tasmania. Given that the Commission does not have the powers or resources to conduct such investigations, this question is likely to remain unanswered.

[263] Equally, individuals who comment on the work of the Commission and the *Integrity Commission Act*, and say that 'systemic corruption' does or does not exist in Tasmania, have no substantial factual basis for saying so. The lack of proof that something exists does not prove that it does not exist. If there continues to be no entity in Tasmania that is empowered and resourced to investigate systemic corruption, then this question will remain unanswered indefinitely.

[264] The Commission's Board has the power to convene an Integrity Tribunal, and to hold public hearings.[108] A tribunal is a significant response to a

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[105] Tasmanian Government, *Submission to the inquiry of the Joint Select Committee of the Legislative Council and House of Assembly on ethical conduct, standards and integrity of the elected Parliamentary representatives and servants of the State* (2008), 89.
[106] Letter from the Hon Murray Kellam AO to Sandy Cook, 5 January 2016.
[107] Email from George Brouwer to Sandy Cook, 3 January 2016.

complaint and could feasibly be convened where there is a potential case of 'systemic corruption'. No Integrity Tribunals have, however, been held to date. The Commission does not consider that it is currently sufficiently resourced to convene an Integrity Tribunal should it be determined that one is required.

6.2 Legal services

Commission position

The Commission should be excluded from the requirement to comply with Treasurer's Instruction (TI) 1118 with respect to legal services.

Discussion

[265] This issue was canvassed in the Commission's submission to the Three Year Review.[109] The Commission does not intend to revisit the issue in depth, as the statements made in its previous submission still stand in full and its position has not changed.

[266] In regard to the JSC's recommendation on this issue (see below), the Commission wishes to clarify that it was seeking a blanket exemption from TI 1118 in relation to specific misconduct matters (not in relation to constitutional matters or statutory interpretation of the *Integrity Commission Act*). The Commission respectfully submits that, if the JSC recommendation were to be implemented, it appears that the Commission would only be exempted from TI 1118 where a 'conflict of interest' had already been identified. As may be gathered from the Commission's previous submission, such a conflict may not always be immediately apparent, and may only emerge at later stages of the handling of a matter.

[267] The Commission therefore submits that its exemption from TI 1118 should not be restricted to cases in which there is an identified conflict of interest.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

Concerns were raised by the Integrity Commission that the requirement to access Crown Law advice in accordance with TI 1118 could give rise to a conflict of interest.

The Integrity Commission currently can seek an exemption from TI 1118.

[108] *Integrity Commission Act*, Part 7.
[109] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 125–6.

Recommendations

That:

The Committee recommends that TI 1118 be amended such that where a conflict of interest exists, the Integrity Commission should have discretion to brief and retain legal counsel outside of Crown Law, without the need for a specific exemption.[110]

6.3 Classification of Integrity Commission as a Law Enforcement Agency for the purposes of relevant legislation

Commission position

The Commission submits that there be amendments to relevant state and Commonwealth legislation to recognise it as an 'enforcement agency' consistent with all the integrity entities across other jurisdictions, to enable it to share or exchange highly confidential information and to obtain telecommunications information.

Discussion

[268] The background to this issue is covered in some depth in the Commission's submission to the Three Year Review.[111] Although there have been some legislative amendments since that submission, the recommendation made by the Commission – and the basis for that recommendation – still stands.

[269] In this submission, the Commission has addressed only the substantive changes to the operation of the Commonwealth telecommunications interception regime since the Three Year Review, and the specific recommendation made by the JSC in its final report.

Update on the operation of the Telecommunications (Interception and Access) Act 1979 (Cth) ('TIA Act')

[270] Subsequent to the preparation of its first submission to the Three Year Review, in early 2014 the Commission was advised that – contrary to previous advice – it did in fact have 'enforcement agency' status under the then *TIA Act*. This meant, for example, that the Commission was able to request historical telecommunications data (such as call charge records) from telecommunications providers under the *TIA Act*.

[271] However, as part of a suite of new federal data retention laws, on 13 October 2015 significant amendments were made to the *TIA Act*. These amendments essentially caused the Commission to lose its new-found status as an enforcement agency under the *TIA Act*. The agencies that now have such status include the integrity agencies of every state of Australia except Tasmania;[112] along with other agencies, these integrity entities are

[110] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015) 201, 207.
[111] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 127–130.
[112] SA: ICAC; NSW: ICAC; Vic: IBAC; WA: CCC; Qld: CCC.

defined as 'criminal law enforcement agencies' under the *TIA Act* s 110A(1). Agencies not defined as a criminal law enforcement agencies within the *TIA Act* are able to be granted 'enforcement agency' status by way of a legislative instrument under the *TIA Act* s 176A(3). Enforcement agency status also allows an agency to access telecommunications data under the *TIA Act*.

[272] During the brief time in which it was able to do so, the Commission did have cause to use its ability to access historical telecommunications data under the *TIA Act*.

[273] The Commission was advised that, despite losing its status under the *TIA Act*, it was still able to request historical telecommunications records utilising its existing notice to produce powers pursuant to s 47 of the *Integrity Commission Act* under s 280(1)(b) of the *Telecommunications Act 1997* (Cth). This does not, however, substantially resolve the issues cited in the Three Year Review relating to auditing and reviewing Tasmania Police files that contain telecommunications data.[113]

Systemic corruption and access to telecommunications data

[274] As discussed in section 6.1 of this submission, the Commission does not consider the alleged absence of 'evidence of systemic corruption in Tasmania' (see finding of JSC, below) to have any relation to the necessity for its status as an agency that is able to access telecommunications data. The word 'corrupt' does not appear anywhere in the *Integrity Commission Act*, and the Commission was not established to uncover 'systemic corruption'.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

As there has been no evidence of systemic corruption in Tasmania, an extension of powers to the Integrity Commission as a law enforcement agency is not required.

The Integrity Commission is not classified as a law enforcement agency in some relevant legislation.

Recommendations

That:

It is unnecessary for the Integrity Commission to be classified as a law enforcement agency in the relevant legislation (save and except for legislation where they are already classified as such).[114]

[113] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 128.
[114] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 217–218.

6.4 Employment Direction No 5

Commission position

The Commission has special powers and capacities to undertake investigations into alleged misconduct that are unavailable to public authorities. The Commission agrees with the recommendation of the JSC that Employment Direction No 5 ('ED 5') should be amended to provide for evidence collected by the Commission to be used by State Service heads of agencies in proceedings relating to breaches of the *State Service Code of Conduct*.

The Commission submits that, in order to minimise risk of duplication of process and/or to impact upon those involved in a matter, ED 5 should be amended to allow a head of agency to delay commencement of an ED 5 investigation where there is a risk that such an investigation may impact on a Commission investigation.

Discussion

[275] This issue relates to the interaction between the Commission's functions and the investigative action which may be undertaken by a State Service head of agency in accordance with the *State Service Act 2000* ('*State Service Act*') and, particularly, ED 5.[115] The issue was raised by the Commission in its written submissions to the Three Year Review,[116] discussed before the JSC,[117] and responded to by the JSC and the State Government (see below).

[276] In essence, the key issue is the potential duplication of processes relating to breaches of the code of conduct under the *State Service Act*. The Commission submits that, firstly, heads of agencies considering action involving breaches of the *State Service Code of Conduct* should not commence or proceed with any investigation of the allegations where they are aware that an investigation of the same or substantially the same matter is also being conducted by the Commission (or Tasmania Police).

[277] Secondly, the Commission submits that, where a head of agency determines that action is to be taken on a matter relating to a breach of the code, ED 5 should provide for the head of agency to rely on the information or evidence obtained by the Commission (or Tasmania Police) without having the appointed investigator gather that information all over again, noting that the Head of Agency, through the appointed investigator, is required to afford the employee procedural fairness. The Commission notes that it has special powers and capacity to undertake investigative work that are unavailable to agencies.[118] The Commission may also assume responsibility for an investigation into misconduct commenced by a public

[115] ED5 was issued by the Employer (the Minister) on 4th February, 2013 pursuant to s 17(1) of the *State Service Act 2000* and had effect from that date.
[116] Integrity Commission, *Submission to Three Year Review* (2013), volume 1, 130, 138; Integrity Commission, *Third written submission to Three Year Review* (2014), 3, 5, 13, 15–16.
[117] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 46–51; 72–79.
[118] See, Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 50.

authority;[119] however is yet to exercise this power in relation to an ED 5 investigation.

[278] As noted above, this issue is canvassed in associated documents, and the discussion is not repeated in this submission. However the Commission's submissions remain the same. The Commission notes that this issue only arises for public officers within the State Service, whereas the Commission's jurisdiction extends well beyond the State Service.

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

The Committee finds that there is currently unnecessary duplication where the Head of a public authority conducting a code of conduct investigation is not able to consider evidence obtained during an Integrity Commission investigation.

Recommendations

That:

The Committee recommends that ED5 be amended to enable material from investigations conducted by the Integrity Commission to be forwarded to the relevant public authority, and that the relevant public authority is able to consider that evidence as part of any code of conduct investigation.[120]

Government response to Three Year Review

That:

The Government notes the findings and comments of the Three Year Review Report and considers that the interaction between *State Service Act 2000* Employment Direction No 5 and the Integrity Commission investigations should be considered as part of the Five Year Independent Review.[121]

6.5 Offence of Misconduct in Public Office

Commission position

The Commission acknowledges that the introduction of an offence of misconduct in public office is a policy decision for the Government of the day.

The Commission's view is that the lack of such an offence in Tasmania amounts to a significant gap in the state's public sector accountability framework. This is a gap found in no other Australian jurisdiction. It leaves the state with less recourse

[119] *Integrity Commission Act*, s 8(1)(l).
[120] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 79.
[121] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 7.

in situations where public office and resources are abused, and reduces the chances that serious abuse of office will be appropriately dealt with.

Discussion

[279] The Commission has explained its position on this matter in detail in its paper, *Prosecuting serious misconduct in Tasmania: The missing link – Interjurisdictional review of the offence of 'misconduct in public office'*.[122]

[280] In releasing that paper, the Commission highlighted a serious gap in the state's *Criminal Code*. The absence of a misconduct in public office offence means that there is significantly less chance of people being prosecuted as a result of Commission investigations and tribunals, and referrals of matters to police to investigate. The introduction of such an offence would not in any way enhance or extend the Commission's jurisdiction or powers, but rather would enhance the state's ability to appropriately handle serious abuse of public office. This includes matters that are investigated by the police, as well as those investigated by the Commission.

[281] As an example, it is of interest to note that, in New South Wales, the only charges laid against former government ministers, Mr Eddie Obeid and Mr Ian MacDonald, arising from their alleged serious corrupt conduct thus far have been for misconduct in public office.[123] This suggests that, were such conduct to occur in Tasmania, the state would be left with few – if any – options for prosecution.

[282] The Office of the DPP has recently released some public information about this matter.[124] In relation to the issues raised in this information, the Commission does not consider that Tasmania's new fraud offence in s 253A of the *Criminal Code*[125] sufficiently covers misconduct in public office. For instance, as stated above, it is unlikely to cover much of the conduct displayed by Mr Obeid and Mr MacDonald in New South Wales. The nexus between the official's position and the intent to abuse that position is missing from the s 253A fraud offence. Misconduct in public office does not necessarily include an intent to deceive, nor is it necessarily 'fraudulent'; it may be a misuse of power or a failure to perform a duty. The fraud offence is in the 'Crimes Relating to Property' chapter of the *Criminal Code*, and is likely to be interpreted in that light.

[283] Examples of misconduct in public office cases which would not necessarily be covered by the *Criminal Code* include (but are not limited to):

- a case in which a uniformed police officer stood by and watched someone get kicked to death;[126]
- nepotism that had been effected through use of position, rather than through lying or deceit;[127] and

[122] Integrity Commission (2014).
[123] http://www.abc.net.au/news/2016-02-24/eddie-obeid-trial-jury-dismissed/7195254; http://www.smh.com.au/nsw/former-labor-minister-ian-macdonald-prosecuted-over-doyles-creek-mine-deal-20141119-11qbch.html
[124] See, Office of the Director of Public Prosecutions, *Annual Report 2014–2014/15*, 3–4 & Annexure A.
[125] *Criminal Code Act 1924* (Tas), schedule 1.
[126] *R v Dytham* [1979] QB 722.
[127] See, eg: Integrity Commission, *An investigation into allegations of nepotism and conflict of interest by senior health managers, Report No. 1* (2014).

- cases where those in positions of power (community workers, police) have preyed on vulnerable people they have come into contact with in their role, and pressured them into sexual acts.[128]

[284] The Commission considers that some of the conduct recounted in its report, *An investigation into allegations of nepotism and conflict of interest by senior health managers*,[129] may have been capable of amounting to misconduct in public office.

[285] The Commission is available to speak further about particular cases which may have amounted to misconduct in public office in camera.

[286] The Commission respectfully rejects the notion that, in its misconduct in public office paper, it was recommending a misconduct in public office offence be formulated in Tasmania without an intent element, nor does it believe that the paper should be read in a way that supports such a proposition. In support of its general position on misconduct in public office, the Commission refers to recent extensive scholarly reviews of the need for such an offence.[130]

Reference information

Report of Joint Standing Committee on Three Year Review

Findings

That:

There is no specific offence of misconduct in public office in Tasmania.

Integrity Commission investigations have not resulted in charges or convictions of any offence or crime.

There is a disconnect in the current legislation in relation to prosecuting serious or serial misconduct and imposing an appropriate penalty due to the absence of an offence of misconduct in public office.

Recommendations

That:

The Committee recommends that the Government review and report upon the recommendations made by the Integrity Commission relating to the *Criminal Code Act 1924* (Tas), including:

- The *Criminal Code Act 1924* (Tas) be amended to create an offence of misconduct in public office.

[128] For recent examples of such behaviour in other jurisdictions, see *Predatory behaviour by Victoria Police officers against vulnerable persons* at http://www.ibac.vic.gov.au/publications-and-resources/article/predatory-behaviour-by-victoria-police-officers-against-vulnerable-persons ; http://www.bbc.com/news/uk-england-34466842 ; http://www.bbc.com/news/uk-england-cornwall-21848519

[129] Integrity Commission, *An investigation into allegations of nepotism and conflict of interest by senior health managers*, Report No. 1 (2014).

[130] See: David Lusty, *Revival of the common law offence of misconduct in public office* (2014) 38 *Crim LJ* 337; Graham McBain, *Modernising the Common Law Offence of Misconduct in a Public or Judicial Office* (2014) *Journal of Politics and Law*, volume 7, no.4.

- The *Criminal Code Act 1924* (Tas) be amended to align the definition of "public officer" with other Tasmanian legislation.

A review be undertaken of the relevant sections of the *Criminal Code Act 1924* (Tas) relating to aiding and abetting misconduct in public office.[131]

Government response to Three Year Review

That:

The Government notes the matters raised by the Integrity Commission and findings of Three Year Review Report.

It is the Government's view that this matter should be considered as part of the Independent Five Year Independent Review.

In the interim, the Government notes that there are many policy and legal issues to consider in making changes to the criminal law and that relevant stakeholders need to be engaged in that process. In the meantime, the Government is satisfied that current Tasmanian law captures a broad range of criminal behaviours which could form the basis of a relevant charge for criminal misconduct.[132]

[131] Joint Standing Committee on Integrity, Parliament of Tasmania, *Three Year Review – Final Report* (2015), 227.
[132] Tasmania Government, *Tasmanian Government Response to the Tasmanian Parliamentary Joint Standing Committee on Integrity Three Year Review Final Report* (2015), 8.

ATTACHMENTS

1. Suggested further technical amendments
2. Previous technical amendments considered by Joint Standing committee on Integrity Three Year Review
3. Template of notice information
4. Organisational chart (1 January 2016)
5. Integrity Commission submissions to Three Year Review

Note: Attachments 2–5 do not conform with the page numbering of this submission

ATTACHMENT 1: Suggested further technical amendments to legislation

Integrity Commission Act 2009

1. Section 4: Definition of public officer

Commission position

Amend the definition of 'public officer' in s 4 to specifically reference volunteers and officers exercising statutory functions or powers

Discussion

[287] There is currently a lack of clarity as to the scope of the definition of 'public officer'. For example, it is unclear whether a person who is a volunteer 'holds any office, employment or position in a public authority'.

[288] The legislation applicable to volunteers varies according to which public authority a person volunteers to. This situation invites inconsistency in relation to whether or not volunteers fall within the definition of 'public officer'.

[289] Given volunteers play a significant role in performing the functions of several public authorities e.g. Tasmania Fire Service or Ambulance Tasmania, it would be appropriate to specifically refer to volunteers within the definition of 'public officer'.

[290] It is similarly unclear whether officers who exercise statutory functions and powers e.g. surveyors or council audit panels, fall within the definition in its current form.

Existing content

> *4(1)* ***Public officer*** *means a person who is a public authority or a person who holds any office, employment or position in a public authority whether the appointment to the office, employment or position is by way of selection or election or by any other manner but does not include a person specified in section 5(2)*

2. Section 8(h): referrals to the DPP

Commission position

The Commission supports clarification of s 8 of the *Integrity Commission Act* to ensure that it cannot be read as imposing any mandatory courses of action upon the Commission.

Discussion

[291] The DPP has suggested that this provision imposes a mandatory obligation on the Commission to refer to his office all complaints concerning a potential breach of the law.[133]

[292] The Commission does not consider this to be an accurate interpretation of the *Integrity Commission Act*. Such an interpretation would create contradictions and insurmountable difficulties in the practical application of the *Integrity Commission Act*.

[293] For instance, s 8(1)(g) states that one of the functions of the Commission is to 'refer complaints to a relevant public authority, integrity entity or Parliamentary integrity entity for action'. The language is the same as s 8(1)(h). If s 8(1)(g) were to be read as a mandatory requirement – as the DPP's suggested interpretation of s 8(1)(h) would require – the Commission would have to refer all complaints it received for action. This would necessarily include, for example, all dismissed, vexatious, trivial and unintelligible complaints. The same problem would apply to s 8(1)(h) itself. If the provision in relation to referring potential breaches of the law were to be read as mandatory, it must follow that the provision in relation to referring complaints is also mandatory. This interpretation would mean that the Commission would be required to refer all complaints to the police, the DPP or other person.

[294] In the opinion of the Commission, s 8(1) does not impose on the Commission an obligation to take any specific action, but rather sets out what is within the Commission's power to do, should it judge the action to be warranted.

[295] The Commission and the DPP have had discussions about developing a memorandum of understanding in relation to Commission matters that involve potential breaches of the law. It is hoped that this agreement will be put in place sometime within 2016.

Existing content

8(1) In addition to any other functions ... the functions of the Integrity Commission are to –

...

(h) refer complaints or any potential breaches of the law to the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate for action;

[133] DPP Annual Report 2014/15, Annexure A.

3. Section 27(4): Maximum age of Parliamentary Standards Commissioner

Commission position

Amend s 27(4) to provide for the possibility for persons over the age of 72 years to be the Parliamentary Standards Commissioner.

Discussion

[296] The *Integrity Commission Act* currently provides a mandatory age limit for the Parliamentary Standards Commissioner. This is based upon age limits in other jurisdictions e.g. Judges of the Supreme Court.

[297] It is submitted that the current age limit potentially restricts the availability of candidates who may be suitable for the role.

Existing content

> *27(4) A person is not eligible to be the Parliamentary Standards Commissioner unless that person is under the age of 72 years.*

4. Sections 44(1) & 46(3): Appointment of investigator

Commission position

Amend s 46 to provide that, where a person has been appointed to assist an investigator, the CEO may also authorise that person to exercise any or all of the powers of the investigator.

Discussion

[298] It is unclear from this section whether more than one investigator may be appointed to investigate a complaint.

[299] On commencement of an investigation the CEO is required by s 44(1) to appoint an investigator. It is only this person who is authorised to exercise powers under ss 47 and 51, even in a situation where the CEO has authorised a person to assist the investigator under s 46(3). If an investigator is unavailable, there is no capacity for the powers under ss 47 or 51 to be exercised.

[300] It would be appropriate for the CEO to be able to authorise the person assisting the investigator (authorised under s 46(3)) to exercise those powers where appropriate

Existing content

44(1) If the chief executive officer makes a determination that the Integrity Commission should investigate a complaint, the chief executive officer is to appoint an investigator to conduct an investigation of the complaint.

46(3) The chief executive officer may authorise any person to assist an investigator

5. Section 46(3): Procedure on investigation

Commission position

Amend Part 6 to provide for the CEO to exercise powers in that Part in relation to an assessor exercising the powers of an investigator.

Discussion

[301] Section 35(4) of the *Integrity Commission Act* allows an assessor to exercise the powers of an investigator under Part 6, if the assessor considers it is reasonable to do so.

[302] It is unclear whether the CEO may exercise powers under Part 6 in relation to the assessor. For example, it is unclear whether the CEO may authorise a person to assist an assessor (see s 46(3)), or whether an assessor exercising the powers of an investigator must observe the rules of procedural fairness (see s 46(1)(c)).

Existing content

46(3) The chief executive officer may authorise any person to assist an investigator.

6. Section 58(2): Dismissals of own-motion investigations by the Board

Commission position

Amend s 58 of the *Integrity Commission Act* to allow the Board to dismiss a matter arising from an own motion investigation.

Discussion

[303] The Board may only determine to dismiss a 'complaint' under s 58. This does not cover the situation where the report provided to the Board for determination relates to an own motion investigation (which is not a complaint).

Existing content

58(2) The Board may –

(a) Dismiss the complaint;

7. Section 87(1): Investigation or dealing with misconduct by designated public officers

Commission position

Amend s 87 of the *Integrity Commission Act* to provide for the Commission to assess a complaint about a DPO under Part 5 of the *Integrity Commission Act*.

Discussion

[304] Pursuant to s 87, the Commission is to 'assess, investigate, inquire into or otherwise deal with' complaints about DPOs.

[305] The assessment of complaints is conducted under Part 5 of the *Integrity Commission Act*; however section 87 makes reference to Parts 6 and 7 only. In order to provide for the required assessment of complaints against DPOs, this section should be amended to make reference to Part 5.

Existing content

87(1) The Integrity Commission is to assess, investigate, inquire into or otherwise deal with, in accordance with Parts 6 and 7, complaints relating to misconduct by a designated public officer.

8. Section 88(1)(a): Investigation or dealing with serious misconduct by police officers

Commission position

Amend s 88(1)(a) to include reference to Part 5.

Discussion

[306] Section (1)(a) provides for the Commission to 'assess' complaints relating to serious misconduct, in accordance with Parts 6 and 7. The Commission's assessment function is in Part 5 of the *Integrity Commission Act.*

Existing content

88(1) The Integrity Commission may, having regard to the principles stated in section 9 –

(a) Assess, investigate, inquire into or otherwise deal with complaints relating to serious misconduct by a police officer in accordance with Parts 6 and 7;

9. Section 94: Protection of confidential information

Commission position

Amend s 94 to include appropriate confidentiality protections relating to the release of information by the Commission for proceedings in court or other proceedings.

Discussion

[307] It is currently possible for confidential information held by the Commission to be obtained under a subpoena for proceedings in a court.

[308] The *Ombudsman Act 1978* protects the Ombudsman from being compelled to produce documents under subpoena (pursuant to s 26(5) of that Act). The Commission does not have such protection – its confidentiality provisions can be over-ridden by the requirements of another law (pursuant to s 94(2) of the *Integrity Commission Act*).

[309] It is inconsistent that documents in the possession of the Ombudsman are protected from production in such circumstances but those of the Commission are not. The Commission notes confidentiality provisions in other Australian jurisdictions:

- *Independent Commission Against Corruption Act 1988* (NSW), s 111*:* no requirement to disclose information unless under proceedings pursuant to that Act
- *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), ss 45–48: no compulsion to produce protected documents or things
- *Independent Commissioner Against Corruption Act 2012* (SA), ss 54(1)(a) & (b): no requirement to disclose information unless for purposes of criminal proceedings or the function of the Commissioner under another Act
- *Corruption, Crime and Misconduct Act 2003* (WA), s 152(7): no requirement to produce or disclose any official information in or to any court except for the purposes of a prosecution or disciplinary action
- *Crime and Corruption Act 2001* (Qld), s 213 (4): no requirement to disclose or produce information unless for investigation underway by commission or proceedings under the *Criminal Organisation Act 2009*

Existing content

> *94(2) A person to whom this subsection applies must preserve confidentiality in respect of all matters that come to the person's knowledge in the course of employment or duties under this Act and if the person discloses, without authorisation from the Board, the chief executive officer or an Integrity Tribunal, any information as to matters of that kind to any person, except –*

...

(a) As may be required in connection with any proceedings under this Act, any other written law or the Criminal Code

10. Section 98: Certain notices to be confidential documents

Commission position

Amend s 98 of the *Integrity Commission Act* as follows:

A. Amend ss 98(1A) and 98(2) so that confidentiality responsibilities are placed on persons to whom the existence, contents and matters relating to or arising from the notice have been disclosed.

B. Include 'assessments' in s 98(1B)(d), and 'assessors' in s 98(1B)(e).

C. Include in s 98(2)(a)(i) a reference to s 98(1A).

D. Redraft s 98(2) to clarify that the list of reasons given is not exhaustive.

E. Redraft s 98(2) to clarify that all persons who disclose on the basis of a reasonable excuse must meet the obligation imposed by s 98(2)(b) – regardless of whether their reasonable excuse was one of the listed examples.

Discussion

[310] The Commission has advice from the Office of the Solicitor-General on s 98 that is relevant to the discussion below.

Position A

[311] Section 98(1A) creates responsibilities on the part of a person to whom the existence of a notice is disclosed (per s 98(1)(a)). It does not currently apply to a person to whom the contents of, or any matters relating to or arising from, the notice, are disclosed (per ss 98(1)(b)–(c)).

[312] Similarly, s 98(2) only mentions the 'existence' of a notice.

Position B

[313] Section 98(1B) includes a list of 'matters relating to or arising from a notice'. The Commission does note that the list is not exhaustive. However, the list contains no reference to assessments or assessors. For the sake of clarity – given that investigations and tribunals are listed – they should be included.

Position C

[314] Section 98(2)(a)(i) includes as a 'reasonable excuse' the 'seeking legal advice in relation to the notice or **an offence against subsection (1)**'. It does not include as a reasonable excuse the seeking of legal advice in relation to an offence against subsection (1A).

Position D

[315] Section 98(2)(a) lists a number of potential 'reasonable excuses'. It would be impractical if the excuses were read to be exhaustive. For instance, it would disallow somebody discussing a notice with their GP or counsellor.

Position E

[316] Section 98(2)(b) imposes on the person making the disclosure – for one of the three listed reasonable excuses – an obligation to inform 'the person to whom the disclosure is made that it is an offence to disclose the existence of the notice to another person unless the person to whom the disclosure was made has a reasonable excuse'. The drafting of the provision suggests that this obligation under s 98(2)(b) would not be imposed on a person if they were to disclose for a reason other than the three listed in s 98(2)(a) (although they would still be subject to s 98(1A)).

Existing content

Certain notices to be confidential documents

98(1) A person on whom a notice that is a confidential document was served or to whom such a notice was given under this Act must not disclose to another person –

(a) the existence of the notice; or
(b) the contents of the notice; or
(c) any matters relating to or arising from the notice –

unless the person on whom the notice was served or to whom the notice was given has a reasonable excuse.

(1A) A person to whom the existence of a notice that is a confidential document was disclosed must not disclose to another person –

(a) the existence of that notice; or
(b) the contents of the notice; or
(c) any matters relating to or arising from the notice –

unless the person to whom the existence of the notice was disclosed has a reasonable excuse.

(1B) For the purposes of subsections (1) and (1A), matters relating to or arising from a notice include but are not limited to –

(a) obligations or duties imposed on any person by the notice; and
(b) any evidence or information produced or provided to the Integrity Commission or an Integrity Tribunal; and
(c) the contents of any document seized under this Act; and
(d) any information that might enable a person who is the subject of an investigation or inquiry to be identified or located; and
(e) the fact that any person has been required or directed by an investigator or an Integrity Tribunal to provide information, attend an inquiry, give evidence or produce anything; and
(f) any other matters that may be prescribed.

(2) It is a reasonable excuse for a person to disclose the existence of a notice that is a confidential document if –

(a) The disclosure is made for the purpose of

(i) seeking legal advice in relation to the notice or an offence against subsection (1); or
(ii) obtaining information in order to comply with the notice; or
(iii) the administration of this Act; and
The person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the notice to another person unless the person to whom the disclosure was made has a reasonable excuse.

Local Government Act 1993: Code of Conduct panels

Note: this Act is due to be amended shortly in accordance with the Local Government Amendment (Code of Conduct) Bill 2015

11. Section 28V: Making code of conduct complaint against councillor

Commission Position

The Commission supports amending the *Local Government Act 1993* ('*LG Act*') to provide for referrals from the Commission to be dealt with by a Code of Conduct panel without the requirements of ss 28V(3)(b),(f) or (g) of that Act. Associated amendment of that Act would be required to ensure that such referrals could be made directly to the Executive Officer and for the information received from the Commission to be used by the panel in any Code of Conduct investigation.

Discussion

[317] When the Commission conducts an investigation, the Board may determine to refer the report of the investigation and any information obtained in the conduct of the investigation to the principal officer of the relevant public authority for action.[134]

[318] When an investigation involves a Councillor (or Alderman), the relevant principal officer is the Mayor.

[319] On receipt of such a referral from the Commission, the Mayor has no means of taking action other than to initiate a Code of Conduct process under the *LG Act*. The procedure outlined in the *LG Act* does not align with the *Integrity Commission Act* for a number of reasons:

- Since a Code of Conduct panel is the only mechanism for action to be taken in relation to a referred investigation, the Mayor (in receipt of the referral in their capacity as principal officer) will have to become a 'complainant' in order to initiate the Code of Conduct process.
- There may be issues (particularly concerning confidentiality) arising from the fact that the Mayor, as complainant, is required to submit the complaint to the General Manager for assessment under s 28Y.

[134] *Integrity Commission Act*, s 58(2)(b)(i).

- The Code of Conduct process does not provide for anonymous complaints (s 28V(3)(b)) requires the complaint to state the name and address of the complainant).
- A complaint must be made within six months of the conduct to which the complaint relates (s 28V(3)(f)) which may not be possible if the matter has first been subject to an assessment and investigation by the Integrity Commission. The Commission notes that, given Councillors are DPOs for the purposes of the *Integrity Commission Act*, complaints about them cannot be referred at any stage before a Board determination (following an investigation) pursuant to s 58.
- A complaint, in accordance with s 28V(3)(g), must be accompanied by a prescribed fee. This is not appropriate where a Mayor may, as a result of a Commission referral, incur a pecuniary cost in order to take the required action.

[320] If it is considered that the Mayor is not to become the 'complainant' for the purposes of the *LG Act*, there is a lack of clarity in relation to the officer or person responsible for dealing with the matter.

[321] An alternative to the process outlined above is for referrals made by the Commission under s 58(2) to be made directly to the Executive Officer as if that referral had been made under s 28Z(1)(a). It is considered that, provided such an amendment clearly stipulated that such a referral from the Commission would not need to comply with the requirements of s 28V(3), this approach would alleviate the above issues.

[322] Section 28ZE(2) provides the Code of Conduct Panel with a broad discretion as to the evidence it may consider in relation to a complaint. For the sake of clarity, it may be appropriate to specifically provide for evidence obtained by the Commission to be utilised by the Code of Conduct Panel.

Existing content

28V(1) A person may make a complaint against one councillor in relation to the contravention by the councillor of the relevant council's code of conduct.

(2) A person may make a complaint against more than one councillor in relation to the contravention by the councillors of the relevant council's code of conduct if all the councillors complained against behaved on a particular occasion in such a manner as to commit the same alleged contravention of the code of conduct.

(3) A complaint is to –

(a) Be in writing; and

(b) State the name and address of the complainant; and

(c) State the name of each councillor against whom the complaint is made; and

(d) State the provision of the relevant code of conduct that the councillor has allegedly contravened; and

(e) Contain details of the behaviour of each councillor that constitutes the alleged contravention; and

(f) Be lodged with the general manager of the relevant council within 90 days after the councillor or councillors against whom the complaint is made allegedly committed the contravention of the code of conduct; and

(g) Be accompanied by any prescribed fee.

ATTACHMENT 2: Previous technical amendments considered by Joint Standing Committee on Integrity Three Year Review

Identified technical issues, *Integrity Commission Act 2009*

	Section	Content	Technical issue	Recommendation	Committee Determination
1	S 4(1)	***'premises of a public authority*** means premises at which the business or operations of the public authority are conducted' [and see s 50 and s 72]	***premises of a public authority*** is used in s 50(1) in relation to an investigator's power to enter premises and in s 72(1) in relation to an inquiry officer's power to enter premises. Premises as defined in the *Search Warrants Act 1997* specifically refer to 'a place and a conveyance'. The failure of the Act to include in the definition of 'premises of a public authority' any reference to a vehicle, makes it uncertain whether a conveyance (vehicle) owned, leased or used by a public authority could be entered under s 50 or s 72. Business records, for example vehicle log books, can be held in a vehicle, and some public officers will use their agencies vehicle like an office – for example field officers.	Amend the definition of ***premises of a public authority***, s 4(1) to be consistent with the *Search Warrants Act 1997*, such that a conveyance (vehicle) owned, leased or used by a public authority could be entered under s 50 or s 72.	Recommended that the amendment be implemented.
2	s 16(3)	Delegations by the Board – ' Section 23AA(2), (3), (4), (5) and (8) of the *Acts Interpretation Act 1931* apply to a delegation made under subsection (1)'	The reference to particular sections of the power to delegate in the *Acts Interpretation Act 1931*, provides uncertainty as to whether other sections of the *Acts Interpretation Act 1931*in relation to delegations apply – eg s 23AA(1), (6) and (7). It is not clear why only the sections referred to would be applicable. For example, s 23AA(6) of the *Acts Interpretation Act* permits a delegator to exercise a function or power notwithstanding the delegation. Currently the wording of s 16(3) of the Act makes it uncertain whether a delegator can rely on s 23AA(6).	Amend s 16 to make it clear that all of s23AA of the *Acts Interpretation Act 1931* applies.	Recommend that the amendment be referred to the Government for further consideration.
3	S 21	**Authorised persons** **(1)** The chief executive officer may	The Commission has used s 21 Authorisations for a number of personnel undertaking work for the Commission, both within and outside of Tasmania. Initially it was thought that Authorisations should be made for Department of Justice IT	Amend s 21(1) and (2) so that persons undertaking any work for the Commission, irrespective of whether they are exercising a power or function, can be Authorised.	Recommended that the amendment be implemented.

		make arrangements with the principal officer of any public authority for a public officer of that authority to be made available to undertake work on behalf of the Integrity Commission. **(2)** If a person is to be made available under subsection (1), the chief executive officer is to, by written notice, authorise the person to perform the functions or exercise the powers under this Act that are specified in the notice. **(3)** An arrangement made under subsection (1) may allow the authorised person to remain an employee of the public authority, but to report to the chief executive officer or other person nominated by the chief executive officer in relation to the work being undertaken on behalf of the Integrity Commission. **(4)** At the request of the chief executive officer, the Commissioner of Police is to make available, in accordance with an agreement referred to in	staff and Supreme Court transcription staff, both of whom provide a service to the Commission [IT staff under a Service Level Agreement, and transcription staff on a fee for service basis]. Both IT and transcription staff have access to confidential material created or used by the Commission. The Department of Justice and the Commission have received advice that an Authorisation under s 21 can only be for the exercise of the Commission's functions or powers and that transcription of recordings or proceedings or the maintenance of the Commission's computer network is not in the performance or exercise of any statutory power or function. The issue that arises is the inability of the Commission to ensure that administrative work undertaken by persons who are not designated officers and employees [see s 20] and which supports the functions or powers of the Commission are not adequately able to retain appropriate confidentiality given the sensitive nature of the work undertaken. Section 21(1) refers to 'work' but s 21(2) effectively means the work is restricted to work undertaken by a person performing or exercising powers or functions of the Commission. Other jurisdictions have overcome this issue by requiring those undertaking work for the agency to swear an oath, which binds the person to the confidentiality obligations under the particular act. This should be read in conjunction with the limitations under s 94 & 95. See for example: S 35, 36 & 37 of the *Independent Broad-Based Anti-Corruption Act 2011* (Vic) Section 21(4) and (5) limits the arrangements with either the Commissioner of Police or a law enforcement authority to	Amend s 21(4) and (5) so that arrangements can be made with the Commissioner of Police or a law enforcement authority (in and outside of Tasmania) for officers or employees to be made available irrespective of whether the complaint is in assessment, or an own motion investigation, or an investigation, or an inquiry.	

		subsection (10), police officers to undertake investigations and assist with inquiries on behalf of the Integrity Commission. **(5)** The chief executive officer may make arrangements with a law enforcement authority (however described) of the Commonwealth or another State or a Territory for officers or employees of that authority to be made available to undertake investigations and assist with inquiries on behalf of the Integrity Commission. **(6)** If a person is to be made available under subsection (4) or (5), the chief executive officer is to, by written notice, authorise the person to perform the functions or exercise the powers of an investigator or inquiry officer under this Act. **(7)** While undertaking work on behalf of the Integrity Commission, an authorised person who is a police officer continues to have the functions	complaints which are in investigation or before an Integrity Tribunal. This means that a s 21 Authorisation cannot be made under s 21(4) or (5) if a complaint is in the assessment phase nor if there is an own motion investigation pursuant to s45 or 89. While s 21(1) might be used by 'making arrangements', it does not have the same force as s 21(4), which is directory to the Commissioner of Police and further, is limited to public authorities within Tasmania, so cannot be used in place of s 21(5). This is contrasted to interstate integrity entities who are not so limited, for example – ○ Ability to engage persons or bodies to perform services – s 17, *Police Integrity Act 2008* (Vic) ○ Ability to second or otherwise engage persons to assist the Commission – s181, *Corruption and Crime Commission Act 2003* (WA) ○ Ability to second persons – s 255 *Crime and Misconduct Act 2001*		

		and powers of a police officer but reports to the chief executive officer, or other person nominated by the chief executive officer, in relation to the work being undertaken on behalf of the Integrity Commission. **(8)** Nothing in this section or the *Police Service Act 2003* requires a police officer who is made available under subsection (4) to report to, provide information to or take direction from the Commissioner of Police or any senior officer within the meaning of that Act. **(9)** The Commissioner of Police is to appoint, with or without restrictions, as a special constable any person made available under subsection (5) unless the Commissioner of Police lodges a written objection with the Chief Commissioner stating the grounds of the objection. **(10)** The Commissioner of Police and the chief executive			

		officer are to enter into a written agreement concerning the provision of police officers to undertake investigations and assist with inquiries on behalf of the Integrity Commission.			
4	S 26	**Report to Parliament** **(1)** By 30 November in each year the Joint Committee is to make a report of its proceedings under this Act and cause a copy of the report to be laid before both Houses of Parliament. **(2)** If the Joint Committee is unable to comply with subsection (1) because a House of Parliament is not sitting on 30 November in any year, the Joint Committee is to on or before that day, provide a copy of the report to the Clerk of the Legislative Council and the Clerk of the House of Assembly. **(3)** Upon presentation to the Clerk of the Legislative Council and the Clerk of the House of Assembly the	The Act requires the JSC to report under the Act by 30 November each year. However, by s 11, the Commission is required to report on or before 31 October each year. The Commission's report is also a report under s 36 of the *State Service Act 2000*, so it is unlikely to be laid before Parliament much before that date. The one month turn-around is insufficient for the Committee to properly consider the Commission report (and any other report from an integrity entity) and then prepare its own. Amending this section to a later date (say, by 30 March in the following year) will permit the JSC to report in a more fulsome manner.	Amend either or both s 11 and s 26 so that there is sufficient time for the JSC to consider the report of each integrity entity before having to prepare its own report.	Recommended that the amendment be implemented.

		report is taken to have been laid before each House of Parliament and ordered to be printed. **(4)** The Clerk of the Legislative Council and the Clerk of the House of Assembly are to cause a copy of the report to be laid before each House of Parliament within the first 3 sitting-days after receipt of the report.			
5	S 30 (a)	The chief executive officer is to – (a) monitor the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament; and (b) …	The Parliamentary disclosure of interests register is prescribed under Part 4 of the *Parliamentary (Disclosure of Interests) Act 1996*. The form of the register itself is the returns (both primary and ordinary) lodged by Members within the previous 8 years, filed in alphabetical order. Effectively it would appear that the obligation under the Act to monitor is an obligation to monitor the primary and ordinary returns of Members and the actual declarations of interest rather than the registers themselves. 'Monitor' is not defined in the Act, and in the absence of any other legislative mandate, the Commission is merely limited to observing critically whether the returns and other declarations comply with prescribed forms. Currently there is no mandate for the Commission to make any recommendations or to effect greater transparency if that is required.	Amend s 30(a) so that the actual returns and declarations are monitored rather than just the register itself, and to enable the CEO to make recommendations to either or both the individual Members and to the Clerk of each House of Parliament.	Recommended that the amendment be implemented.
6	S 32	**Public officers to be given education and training relating to ethical conduct**	Although the Act directs public authorities to given appropriate education and training on ethical conduct to public officers, there are no provisions requiring a public authority to report on whether this obligation is being undertaken. This is in direct contrast to other obligations on	Amend s 32 to require public authorities to report each year on education and training in relation to ethical conduct.	Recommended that the amendment be implemented.

		(1) The principal officer of a public authority is to ensure that public officers of the public authority are given appropriate education and training relating to ethical conduct. **(2)** In particular, the education and training must relate to – **(a)** the operation of this Act and any Act that relates to the conduct of the public officer; and **(b)** the application of ethical principles and obligations to public officers; and **(c)** the content of any code of conduct that applies to the public authority; and **(d)** the rights and obligations of public officers in relation to contraventions of any code of conduct that applies to public officers.	public authorities pursuant to legislation or Employer/Ministerial directions (noting that Employer/Ministerial directions may not apply to all public authorities as defined by the Act). See for example: *Right to Information Act 2009* s 53 – Reporting *Public Interest Disclosures Act 2006* s 86 – Annual reports by public body Employment Direction No 28 – Family Violence – Workplace arrangements and requirements. Reports to SSMO each year.		
7	S 35(1)(d) & s 38(1)	'Recommend to the Board that the Board recommend to the Premier that a commission of inquiry be established under the	The recommendation to the Board that there be a Commission of Inquiry can occur on receipt of a complaint (refer also to s 57(3) which was inserted in the last miscellaneous amendment to enable the Board to receive a recommendation under s 35(1)(d)), but if a complaint is accepted for assessment under s 35(1)(b), a	Amend the Act so that the CEO can recommend to the Board that a commission of inquiry be established at any stage of the complaint process, rather than wait until completion of the process. This may involve consequential amendments to s35, 38, 57 and 58.	Recommended that the amendment be implemented.

		Commissions of Inquiry Act 1995 in relation to the matter' _____ **S 38(1)** **Actions of chief executive officer on receipt of assessment** **(1)** On receipt of a report from an assessor prepared under section 37, the chief executive officer is to make a determination – ….	recommendation to the Board about a commission of inquiry can only occur after the complaint has been assessed and then investigated. There is no apparent ability to recommend a commission of inquiry other than on immediate receipt and consideration of a complaint under s 35, or following a final investigation. However information may be uncovered during an assessment which would indicate that a Commission of Inquiry be immediately recommended to the Board.		
8	S 35(2)	**'**If the chief executive officer accepts a complaint for assessment, the chief executive officer is to appoint an assessor to assess the complaint as to whether the complaint should be accepted for investigation'	This appears inconsistent with and to limit the activities of the assessor when contrasted with s 37, where an assessor prepares a report with recommendations which include dismissal, referral or accepting for investigation. In making the recommendations to the CEO under s 37, the assessor is not confined to assessing a complaint to determine whether it should be investigated.	Amend s 35(2) to remove the inconsistency with s 37, and the limitation on an assessor to only assess a complaint for determination of accepting for investigation.	Recommended that the amendment be referred to the Government for further consideration.
9	S 35(1)(c) & s 38(1)(b) – (f) inclusive & ss 39 – 43	**Referral of complaints** **S 35(1)** On receipt of a complaint, the chief executive officer may – …	The Commission is able to exercise its powers under Part 6 (ie the power to produce documents in s 47) when a complaint is retained for assessment or investigation. However, the Commission has formed the view, that once a complaint is referred to a person or other entity for action, the Commission exhausts its powers with respect to that complaint. This means that if action taken by the referred	Amend Part 5 and Part 6 so that the Commission retains jurisdiction over a complaint, even after referral to an appropriate person or entity for action, such jurisdiction to include the use of powers.	n/a This issue is already covered in the Report.

	inclusive	**(c)** refer the complaint to an appropriate person for action; or … **S 38(1)** On receipt of a report from an assessor prepared under section 37, the chief executive officer is to make a determination – … (b) to refer the complaint to which the report relates, any relevant material and the report to any relevant public authority with recommendations for investigation and action; or (c) to refer the complaint to which the report relates, any relevant material and the report to an appropriate integrity entity with recommendations for investigation and action; or (d) to refer the complaint to which the report relates, any relevant material and the report to an appropriate Parliamentary integrity entity; or (e) to refer the complaint	person/entity is inadequate, or uncovers other matters which should be investigated by the Commission, the Commission has no jurisdiction to deal with the complaint again. The Commission can seek progress reports, monitor or audit the referred complaint, but in doing so, cannot use its powers under Part 6. By way of example, in the past, the Commission has audited the investigation of a referred complaint, and made recommendations of further action which should occur, which recommendations include obtaining further evidence by the use of powers. However the Commission is reliant on the agency to make a new complaint, or must seek an own motion from the Board in order to enliven its jurisdiction again, all of which delays resolution of the complaint. It is preferable that the Commission retain jurisdiction throughout the referral, until resolution of the complaint.		

		to which the report relates, any relevant material and the report to the Commissioner of Police with a recommendation for investigation; or (f) to refer the complaint to which the report relates, any relevant material and the report to any person who the chief executive officer considers appropriate for action; or			
10	S 37(1)	'On completion of an assessment or review of a complaint, the assessor is to prepare a report of his or her assessment and forward that report to the chief executive officer'	The reference to a 'review' by an assessor in s 37 is the only time a review is mentioned, in the context of an assessment of a complaint. It is confusing having regard to the use of the term 'review' in the definition of 'audit' in s 4(1), and the further use of the term 'review' in s 88(2)(a) which refers to the Commissioner of Police giving reasonable assistance to the Commission to undertake a review. Further, it is noted that s 35(2) confines the actions of the CEO to accepting a complaint for assessment and the appointment of an assessor to an assessment, both actions without reference to a 'review of a complaint'.	Amend s 35 to enable the CEO, on receipt of a complaint to 'review a complaint', and to appoint an assessor to 'review a complaint', or alternatively amend the reference to 'review' in s 37, and include a definition to reduce confusion as to an assessor's functions and powers.	Recommended that the amendment be referred to the Government for further consideration.
11	S 37(2)(e)	**'**The report of the assessor is to recommend that the complaint – … **(e)** be referred to the Commissioner of Police for investigation if the assessor considers a crime or other offence may have been	This section is inconsistent with s 38(1)(e) in that it appears to limit a recommendation by the assessor to refer a complaint to the Commissioner of Police to a situation where a crime or offence may have been committed. However, a referral to the Commissioner of Police may need to be recommended where a complaint involves a police officer, but no crime or other offence is apparent. The wording also appears inconsistent with the outcome of a referral under s 42.	Amend s37(2)(e) to enable a referral to the Commissioner of Police may also be recommended where a complaint involves a police officer, but no crime or other offence is apparent.	Recommend that the amendment be implemented.

		committed; or …'			
12	S 38 (1) (b)(c)(d)(e) & (f)	'to refer the complaint to which the report relates, any relevant material and the report…'	'The report' referred to is s 38 is the report prepared by an assessor under s 37. It is an internally generated document which frequently contains sensitive information. Providing a copy of the assessor's report may compromise the evidence referred to in the report, particularly if the misconduct is ongoing. The reference material provided by the Commission should be discretionary such that a copy of the actual written complaint, and the assessor's report can be withheld if deemed appropriate by the CEO. Accordingly only relevant material should be referred by the Commission.	Amend s 38 to make it clear that the CEO does not have to refer the assessor's report to the agency but, rather, is only required to refer material relevant to the misconduct allegations and the Commission's assessment of those allegations.	Recommend that the amendment not be implemented.
13	S 38(2)	'The chief executive officer is to give written notice of his or her determination under subsection (1) to the principal officer of any relevant public authority and may…'	The CEO's determination under subsection (1) includes dismissal of a complaint, or that the Commission investigate the complaint. While the dismissal of a complaint may be information which assists a public authority to build capacity, written notification of a determination to investigate may prejudice or compromise the investigation, notwithstanding the ability to treat the notice as a confidential document. However the use of the word 'is' is directory, instead of enabling the CEO to use discretion. This section should be contrasted with s 44(2) where written notice of the determination to investigate is discretionary.	Amend s 38 so that it is consistent with s 44 such that written notice of the CEO's determination is discretionary.	Recommended that the amendment be referred to the Government for further consideration.
14	S 39(2)	'If a complaint is referred to a relevant public authority under section 38(1)(b), the chief executive officer is to notify the principal officer of that public authority in writing that the chief executive officer is to be informed of the outcome of the investigation, including	On referral the Commission is entitled to seek progress reports, or monitor the conduct of the investigation, or audit a completed investigation conducted by the public authority. 'Audit' includes to examine, investigate, inspect and review [s 4(1)]. The use of the word 'or' may have the effect of restricting the Commission to one function after referral, however there are complaints where the Commission may require progress reports and monitor the investigation while it is ongoing, and also seek to audit the investigation once completed. Section 39(2) only enables the Commission to monitor the	Amend s39 so that the language is consistent with s 42 & 43, to enable the Commission to monitor the investigation rather than the 'conduct of the investigation'. In addition an amendment to s 39 should remove any possible limitations imposed by the use of the word 'or' on the actions of the CEO to only obtain progress reports or monitor or audit.	Recommend that the amendment be implemented.

		any action taken, or to be taken, by the public authority. **(2)** The chief executive officer may also – **(a)** require the relevant public authority to provide progress reports on the investigation at such times as the chief executive officer considers necessary; or **(b)** monitor the conduct of the investigation; or **(c)** audit the investigation after it has been completed'	'conduct of the investigation' – contrasted with s 42 and s 43 which enable the Commission to monitor the investigation, rather than the conduct.		
15	S 42(2) & 43(2)	The chief executive officer may also – **(a)** require the Commissioner of Police [or the person] to provide progress reports on the investigation at such times as the chief executive officer considers necessary; or **(b)** monitor the investigation; or **(c)** audit the investigation after it has been completed.	See previous point – the same issues with the use of the word 'or' arise, in that it may have the effect of restricting the power of the CEO to one function after referral, rather than a combination of actions from the referral.	See previous point – amend s 42 and 43 to remove any possible limitations imposed by the use of the word 'or' on the actions of the CEO. .	Recommend that the amendment be implemented.

16	S 44(2)	'If a determination to investigate a complaint is made, the chief executive officer may, if he or she considers it appropriate, give written notice to – **(a)** the principal officer of any relevant public authority; and **(b)** the complainant; and **(c)** any public officer who is the subject of the complaint – that an investigator has been appointed to investigate the complaint'	This section, although discretionary, appears unnecessary given the obligations (both directory and discretionary) under s 38(2) [noting the recommendations in relation to s 38]. An investigator must be appointed under s 44(1) but it serves no purpose to advise that 'an investigator has been appointed to investigate the complaint', given that notification has been given of the determination to conduct an investigation. As per the observations regarding s 38, notice of a determination to move to an investigation should be discretionary, as there may be good reasons why the Commission's activities around a complaint should be kept confidential – particularly if the misconduct alleged is systemic or ongoing.	Amend s 44 so that it is consistent with s 38 and that any discretionary notice by the Commission about a determination is comprised of relevant material.	Recommended that the amendment be referred to the Government for further consideration.
17	S 46(1)(c) S 55(1)	**S 46 Procedure on investigation** **(1)** Subject to this Act and any directions issued by the chief executive officer under subsection (4), an investigator – **(a)** may conduct an investigation in any lawful manner he or she considers appropriate; and **(b)** may obtain information from any persons in any lawful manner he or she	In conducting an investigation, an investigator and an assessor exercising the powers of an investigator pursuant to s 35(4), are required to observe the rules of procedural fairness. What is required to comply with this obligation will depend on the facts of each matter. However, the investigator/assessor must have observed the rules of procedural fairness by the time s/he reports on the findings to the chief executive officer. This means that where this is an adverse factual finding by the investigator/assessor, the person must have been given the opportunity to respond to the adverse material or finding. The time for doing this will generally be at the time the investigator/assessor is finalising the report of findings under s 55(1). Where a person is being given an opportunity to respond, the investigator/assessor has no means of attaching confidentiality obligations over the information forwarded to a person for the purposes of procedural fairness. The obligation to observe the rules of procedural fairness at	Amend s 46 with respect to the mandatory obligations to observe the rules of procedural fairness during the investigation/assessment stage of a complaint.	Recommend that the amendment be implemented.

		considers appropriate; and **(c)** must observe the rules of procedural fairness; and **(d)** may make any investigations he or she considers appropriate. **55. Investigator's report** **(1)** On completion of an investigation, the investigator is to prepare a report of his or her findings for the chief executive officer. **(2)** The chief executive officer is to submit a report of the investigation to the Board.	the investigator stage means that adverse factual material gathered by the Commission will be put to the relevant person. As soon as that is done, the opportunity to maintain a covert investigation is lost. This may compromise the ability of the Commission to gather further evidence, particularly if the Board makes a decision under s 58(2)(d) to require further investigation. In that event, any further adverse material or findings must again be put to the person concerned. The chief executive officer provides a person with further opportunity to comment, by reason of s 56, but a s 98 confidentiality notice can apply to the draft report, thereby maintaining confidentiality. The obligations for procedural fairness during the investigation/assessment stage can be contrasted with other integrity agencies. See for example: *Law Enforcement Integrity Commissioner Act 2006* (Cwth) s 51 – Opportunity to be heard prior to publishing a report with a critical finding, but not if it will compromise the effectiveness of the investigation or action to be taken. *Independent Commission Against Corruption Act 1988* (NSW) ss 30 – 39 Compulsory examinations and public inquiries. The Commission may, but is not required to advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed. *Corruption and Crime Commission Act 2003* (WA) s 36 Person investigated can be advised of the outcome of the investigation, if amongst other things, the Commission considers that giving the information to the person is in the public interest; s 86 where the person who is subject to an adverse report is entitled to make representations before the report is tabled.		

18	S 47	'In conducting an investigation under section 46(1), the investigator, by written notice given to a person, may require or direct the person to do any or all of the following…'	A notice under s 47 is a coercive notice with significant implications for a person who is served with that notice. Whilst the Commission has developed internal procedures around the issue of coercive notices, it is considered that legislative amendment should occur such that the notices are issued by the CEO, rather than an investigator (who may or may not be an employee of the Commission). This seems to be a sensible safeguard of the use of significant powers, consistent with the issue of coercive notices in other integrity jurisdictions. See for example: *Corruption and Crime Commission Act 2003* (WA) s95 ('The Commission') *Crime and Misconduct Act 2001*(Qld) s72 (The chairperson) *Law Enforcement Integrity Commissioner Act 2006* (Cwth) ('The Integrity Commissioner')	Amend s 47 so that notices are issued by the CEO consistent with s 50 where an authorisation must be from the CEO. Having s 47 notices issued by the CEO is consistent with the exercise of similar powers in other integrity jurisdictions.	Recommend that the amendment be implemented.
19	S 49	'A person required or directed to give evidence or answer questions as part of an investigation may be represented by a legal practitioner or other agent'	The wording of s 49 fails to take into account that an agent (or a legal practitioner) representing the person under direction, may themselves be the subject of a complaint or investigation. The Commission has had direct experience where two people who were served with notices each requested representation by the same agent, who was implicated in the original complaint. Other integrity jurisdictions enable the agency to refuse representation by someone who is involved or otherwise compromised. See for example: *Corruption and Crime Commission Act 2003* (WA) s142(4) *Police Integrity Act 2008* s76(2)	Amend s 49 in line with other integrity entities, so the Commission can refuse representation by a particular person (whether as a legal practitioner or other agent) who is already involved or suspected of being involved in an investigation.	Recommend that the amendment be implemented.

20	S 51	**(1)** For the purpose of conducting an investigation, an investigator may apply to a magistrate for a warrant to enter premises. **(2)** The magistrate may, on application made under this section, issue a search warrant to an investigator if the investigator satisfies the magistrate that there are reasonable grounds to suspect that material relevant to the investigation is located at the premises. **(3)** A search warrant authorises an investigator and any person assisting an investigator – **(a)** to enter the premises specified in the warrant at the time or within the period specified in the warrant; and **(b)** to exercise the powers in section 52. **(4)** The warrant must state – **(a)** that the investigator and any person assisting the investigator may, with any necessary	Inconsistent language has been used between s 51(3)(b) and s 51(4)(a) as the powers under the Part are not limited to the powers of an investigator under s 52. And see: *Search Warrants Act 1997* s6	Amend s 51 so that the powers authorised by a search warrant are consistent with those stated in the warrant.	Recommend that the amendment be implemented.

		force, enter the premises and exercise the investigator's powers under this Part; and **(b)** the reason for which the warrant is issued; and **(c)** the hours when the premises may be entered; and **(d)** the date, within 28 days after the day of the warrant's issue, of the warrant's expiry. **(5)** . . . . . . **(6)** Except as provided in this section, the provisions in respect of search warrants under the *Search Warrants Act 1997* extend and apply to warrants issued under this section.			
21	S 52	**(1)** An investigator or any person assisting an investigator who enters premises under this Part may exercise any or all of the following powers: …	Section 98 of the Act imposes obligations of confidentiality on persons to whom certain notices under the Act have been served (for example, notices under s 47). The obligations of confidentiality are a means of not only keeping a complaint confidential, but of protecting a person required or directed to respond to the Commission. The s 98 confidentiality provisions do not extend to persons on premises if those premises are entered under s 50 or s 51. Although a search of premises would usually be an overt stage of an investigation process, it can occur during a covert stage. Persons at the premises who are directed or required to respond to an investigator, or person assisting	Amend s 52 so that the confidentiality provisions under s 98 will extend to persons on premises and afford them the protection associated with confidentiality if they are required or directed to respond to a Commission officer.	Recommend that the amendment be referred to the Government for further consideration.

		(j) to require or direct any person who is on the premises to do any of the following: (i) to state his or her full name, date of birth and address; (ii) to answer (orally or in writing) questions asked by the investigator relevant to the investigation; (iii) to produce any record, information, material or thing; (iv) to operate equipment or facilities on the premises for a purpose relevant to the investigation; …	an investigator, should have the protections afforded by the confidentiality provisions of s 98.		
22	S 52(3)	**Powers of investigator while on premises**	The requirement to issue a receipt in a form approved by the Board seems inconsistent with Part 6 of the Act. For	Amend s 52 to be consistent with the remainder of Part 6, such that the form of a receipt is approved by the chief	Recommend that the amendment be referred

		… **(3)** If an investigator takes anything away from the premises, the investigator must <u>issue a receipt in a form approved by the Board</u> and – **(a)** if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or **(b)** otherwise, leave it on the premises in an envelope addressed to the occupier.	example during an investigation the power to enter premises under s 50 is only available with a written notice of authorisation from the chief executive officer and similarly, the chief executive officer must approve an application for use of a surveillance device under s 53. Furthermore, the form of a receipt is an operational matter, with such matters properly vested in the chief executive officer, in accordance with s 18 of the Act.	executive officer.	to the Government for further consideration.
23	S 52(4) [and s 51(4)(a)]	**52. Powers of investigator while on premises** **(4)**An investigator and any assistants authorised to enter premises under a search warrant <u>may use such force as is reasonably necessary for the purpose of entering the premises and conducting the search.</u> …… **51. Search warrants** **(4)** The warrant must	The wording of s 52(4) is inconsistent with s 51(4)(a), which on its face indicates that necessary force can be used to exercise powers under Part 6.	Amend s 52 with respect to the use of force so that the language of the force necessary and its purpose is consistent with the use of force in s 51 for the exercise of powers under Part 6.	Recommend that this amendment be referred to the Government for further consideration.

		state – **(a)** that the investigator and any person assisting the investigator may, with any necessary force, enter the premises and exercise the investigator's powers under this Part;			
24	S 53(1)	In the case of a complaint of serious misconduct, an investigator with the approval of the chief executive officer may apply for a warrant under Part 2 of the *Police Powers (Surveillance Devices) Act 2006* …	A warrant can only be applied for if a complaint under s 33 has been received, which means that the Commission would be unable to apply for a warrant under s 53 if there was an own motion investigation, either under s 45 or s 89, even if the misconduct was serious.	Amend s 53 to enable a warrant to be applied for under Part 2 of the *Police Powers (Surveillance Devices) Act 2006* where there is a complaint, as well as an own motion investigation under s 45 or s 89, subject to the own motion investigation concerning serious misconduct.	Recommend that the amendment be implemented.
25	S 53(2)	Division 3 of Part 5 of the *Police Powers (Surveillance Devices) Act 2006* applies to the Integrity Commission as if the Integrity Commission were a law enforcement agency within the meaning of that Act.	Section 53(2) of the Act makes the Commission's records in relation to surveillance devices warrants subject to inspection by the Ombudsman as if the Commission was a law enforcement agency under the Police Powers Act, but does not impose any obligation on the Commission to maintain the same records as law enforcement agencies are required to do. The Commission, having consulted with the Ombudsman, has written to the Minister for Justice raising the issue. The same issue is replicated in s 75, which enables an application for a surveillance device during an inquiry.	The issue of appropriate amendments to s 53 and/ or the *Police Powers (Surveillance Devices) Act 2006* was raised with the Department of Justice for consideration in September 2012. Consider similar amendments to s 75.	Recommend that the amendment be implemented.
26	S 54	**Offences relating to investigations** **(1)** A person who, without reasonable excuse, fails to comply with a requirement or	Subsections (1) and (3) are restricted to s 47 matters involving an investigator – the Commission considers that those subsections would be more appropriately situated within section 47, consistent with other provisions within the Act – see s 52. Subsection (2) does not protect a person from being	Amend s 54 to make it clear that the threat of violence or other detriment is included as an offence. In addition the offences should extend to any matter related to a complaint, be it during an investigation or assessment (where an assessor may exercise the powers of an investigator), and irrespective of whether it involves	Recommend that the amendment be referred to the Government for further consideration.

		direction under section 47 within 14 days of receiving it commits an offence. Penalty: Fine not exceeding 5 000 penalty units. **(2)** A person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to another person for or on account of that other person having given evidence to an investigator or produced or surrendered any record, information, material or thing to an investigator. Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year. **(3)** A person must not obstruct or hinder an investigator or any person assisting an investigator in the performance of a function or the exercise of a power under section 47. Penalty:	threatened (by violence or other way) on account of providing information to an investigator. Further, it restricts protection to matters concerning an investigator, rather than production to a person assisting an investigator, or to the Commission itself. For example, if a person is directed by a person assisting an investigator under s 52, to answer questions, and is subsequently threatened by another person (who may or may not be a public officer) for complying with that direction, there is no applicable offence in the Act. In the current format, it would not create an offence relating to an assessment, notwithstanding that an assessor can exercise the powers of an investigator pursuant to s 35(4). And see: *Independent Commission Against Corruption Act 1988* (NSW) s50 ('…because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment…') *Public Interest Disclosures Act 2002* s19 ('…the person takes or threatens to take the action…') *Corruption and Crime Commission Act 2003* (WA) s175 - ('…threaten to prejudice the safety…')	an investigator or a person assisting an investigator or assessor (including a person authorised under s 21).	

		Fine not exceeding 2 000 penalty units.			
27	s 55(1)	On completion of an investigation, the investigator is to prepare a report of his or her findings for the chief executive officer.	The investigator should prepare a report of the investigation, which sets out the factual material obtained by the investigation, rather than findings (which suggests that judgments and decisions arising from factual material). The investigator is not the appropriate person to be making such decisions or judgments.	Amend s 55 to provide that the investigator should prepare a report of the investigation to the CEO.	Recommend that the amendment be implemented.
28	S 56(1) & 57(1)	**56. Opportunity to provide comment on report** **(1)** Before finalising any report for submission to the Board, the chief executive officer may, if he or she considers it appropriate, give a draft of the report to – **(a)** the principal officer of the relevant public authority; and **(b)** the public officer who is the subject of the investigation; and **(c)** any other person who in the chief executive officer's opinion has a special interest in the report. **(2)** A notice may be attached to a draft of a report specifying that the draft of the report is a	Under s 57(1), the 'report of the investigation' includes the investigator's report under s 55. Accordingly, a draft report of the CEO referred to in s 56(1) will include the investigator's report. It may not be appropriate for the entirety of the investigator's report to go to the relevant public authority – for example the report may cover the actions of a number of authorities and may not be appropriate to reveal the contents of matters concerning one agency (before it has had a chance to comment) to another agency. Similarly with respect to any public officer or officers, there could be privacy concerns. There may also be a range of confidential material in the investigator's report that need not be seen by the public authority or public officer concerned (eg evidence of collateral misconduct by others outside of authority/ongoing investigations). The investigator's report is one piece of material that will be relevant to the CEO's recommendation to the Board. It is however most accurately described as a working or operational document and may be of considerable length and detail. As the CEO has responsibility for making the recommendation to the Board, the CEO should only be legislatively required to report to the Board on the outcome of the investigation (the Board can always require the CEO to produce the full investigation report if it wants it) and any submissions in response to the draft and a	Amend s 56(1) so that the CEO need only provide relevant information on the outcome of the investigation to public authorities etc & 57 so that the CEO is required to provide to the Board a report on the outcome of the investigation (rather than the investigator's report itself) and has capacity to make observations and recommendations on the investigation and future action..	Recommend that the amendment be implemented.

		confidential document. **(3)** A person referred to in subsection (1)(a), (b) or (c) may give the chief executive officer written submissions or comments in relation to the draft of the report within such time and in such a manner as the chief executive officer directs. **(4)** The chief executive officer must include in his or her report prepared under section 57 any submissions or comments given to the chief executive officer under subsection (3) or a fair summary of those submissions or comments. **(5)** Section 98 applies to a notice under subsection (2) if the notice provides that the draft of the report is a confidential document. ……. **57. Report by chief executive officer** **(1)**The chief executive officer is to give to the Board a report of the	recommendation. The report of the chief executive officer under s 57 appears limited when compared with the investigator's report under s 55, which refers to a report of findings. The chief executive officer is not empowered to make any findings nor observations beyond the recommendations under ss 57(2).		

		investigation that includes – (a) the investigator's report; and (b) submissions or comments given under section 56; and (c) a recommendation referred to in subsection (2).			
29	S 56(2) & (5)	**(2)** A notice may be attached to a draft of a report specifying that the draft of the report is a confidential document. **(5)** Section 98 applies to a notice under subsection (2) if the notice provides that the draft of the report is a confidential document.	Although the notice in subsection (2) provides that the draft report is confidential, the provisions of s 98 only apply to the notice – not to the draft report, or to any relevant material accompanying the report. By way of contrast, s 47 documents are themselves notices, such that s 98 provisions re confidentiality actually apply to the notice to produce, or attend or to give evidence [and see also s 35(5) which has similar wording].	Amend s 56 to make it clear that the obligations of confidentiality imposed by s 98 apply to the draft report, not just the notice accompanying the report. Consequential amendment may need to be considered for s 98 so that it applies not just to the notice, but to any relevant documentation the notice is attached to. (And see the discussion re s 98)	Recommend that the amendment be referred to the Government for further consideration.
30	S 57(2)(b) & s 58(2)(b)	**57. Report by chief executive officer** **(2)** The chief executive officer is to recommend – **(b)** that the report of any findings and any other information obtained in the conduct of the investigation be referred	The 'report of any findings' is the investigator's report under s 55(1). The investigator's report is an internal working document (see discussion above at point 24). The material accompanying a referral should be limited to any allegations of misconduct (either from the complaint or the investigation process) and other relevant material (transcripts, other documents, etc). It also appears inconsistent with the fact the CEO has a discretion to seek comment on the CEO draft report prior to submission to the Board (s 56(1)). This comment may lead to changes to findings or recommendations that are inevitably matters for the Board's	Amend s 57 and 58 so that the recommendation which can be made by the CEO to the Board and any decision by the Board, about what material is referred is discretionary (for example, that only certain material arising from the investigation is referred for action to some agencies but not to others). In particular, the investigator's report should not automatically be referred nor should any recommendation by the CEO to the Board form part of the material that might be referred.	Recommend that the amendment be referred to the Government for further consideration.

		to – …… **58. Determination of Board** **(2)** The Board may – **(b)** refer the report of the investigation and any information obtained in the conduct of the investigation to –	decision. The current reference to the CEO recommending the referral of the 'investigator's report' is also inconsistent with s 58(2)(b) by which the Board may refer 'report of the investigation' which is the CEO's report under s 57, for referral. Any determination of the Board to refer that is therefore immediately contrary to the CEO's recommendation for a referral to include the investigator's report. There may be an issue if the recommendation by the chief executive officer is not the same as the determination of the Board. In that circumstance, it may be inappropriate for the Board to refer the CEO report of the investigation to a public officer, or authority when it has a different recommendation to the Board.		
31	S 58(2)(a)	**(2)** The Board may – **(a)** dismiss the complaint; or	The investigation considered by the Board may be an own motion investigation commenced under s 45 or 89 – the inconsistent language means that an own motion investigation can't be dismissed after consideration by the Board, but it also provides no other closure for an own motion investigation if the outcome is not to continue – that is, if the own motion investigation will not be referred or further investigated, nor proceed to an inquiry.	Amend s 58(2) to enable the Board to both dismiss a complaint and/or cease an own motion investigation where further referral, investigation or an inquiry is not appropriate.	Recommend that the amendment be implemented.
32	S 68	**Directions conference** (1) Before an inquiry is held, an Integrity Tribunal may conduct a directions conference in relation to the inquiry. (2) An Integrity Tribunal, by written notice, may require or direct any person to – (a) attend a directions	Substantial fines apply to all other offences under the Act, accordingly, the 10 penalty units applicable here, seems inconsistent with the remainder of the Act – see for example: o S 52(5) – 2 000 penalty units o S 54(1) – 5 000 penalty units o S 74(5) – 2 000 penalty units o S 80(5) – 5 000 penalty units	Amend s 68 so that the penalty is consistent with other penalties in the Act.	Recommend that the amendment be referred to the Government for further consideration.

		conference; and (b) provide and produce any specified record, information, material or thing at a directions conference. (3) A person, without reasonable excuse, must not fail to comply with a requirement or direction notified under subsection (2). Penalty: Fine not exceeding 10 penalty units. (4) A directions conference is to be held in private. (5) An Integrity Tribunal may give any directions it considers necessary to ensure that the inquiry is conducted fairly and expeditiously. (6) An Integrity Tribunal may adjourn a directions conference from place to place and from time to time.			
33	S 74(1)	**Powers of inquiry officer while on premises** **(1)** An inquiry officer	Section 74 replicates the powers of an investigator while on premises under s 52, but limits the powers to an inquiry officer (an inquiry officer is defined under s 4). However s 73 which permits an inquiry officer to apply to a magistrate for a warrant to enter premises refers to the inquiry officer	Amend s 74(1) and (2) to enable persons assisting an inquiry officer to exercise the relevant powers, in accordance with the terms of the warrant applied for under s 73.	Recommend that the amendment be implemented.

		who enters premises under this Part may exercise any or all of the following powers: …	'and any person assisting the inquiry officer' – s 73(4)(a). In particular, s 73 (4)(a) requires the warrant to state that a person assisting the inquiry officer may exercise the inquiry officer's powers. This is consistent with the language in s 52 which also refers to a person assisting. For consistency, a person named in the warrant under s 73 as assisting an inquiry officer should also have the ability to exercise the powers under s 74, noting that they are authorised to use reasonable force under s 74(4) as an 'assistant'.		
34	S 74(3)	**Powers of inquiry officer while on premises** … (3) If an inquiry officer takes anything away from the premises, the inquiry officer must issue a receipt in a form approved by the Integrity Commission and – …	Under Part 7 of the Act, it is the Board that has the power to convene an Integrity Tribunal and the Chief Commissioner who issues directions as to the procedure for conducting the inquiry. The power to enter premises and apply for search warrants requires authorisation or approval from the Chief Commissioner. However, the Integrity Commission, as referred to in s 74 is defined by s 7 to include the staff, and the chief executive officer amongst others. For consistency with this Part, the form should be approved by the chief executive officer (who has responsibility for operational matters pursuant to s 18), or the Chief Commissioner or an Integrity Tribunal.	Amend s 74(3) so that the receipt is in a form approved by the chief executive officer, or the Chief Commissioner or the relevant Integrity Tribunal.	Recommend that the amendment be implemented.
35	S 74(1)	**(j)** require or direct any person who is on the premises to do any or all of the following: **(i)** to state his or her full name, date of birth and address; **(ii)** to answer (orally or in writing) questions asked by the inquiry officer	Section 98 of the Act imposes obligations of confidentiality on persons to whom certain notices under the Act have been served (for example, notices under s 47 and 65). The obligations of confidentiality are a means of not only keeping a complaint confidential, but of protecting a person required or directed to respond to the Commission or to a Tribunal. The s 98 confidentiality provisions do not extend to persons on premises if those premises are entered under s 74. Although a search of premises would usually be an overt stage of an inquiry process, it can occur during a covert stage. Persons at the premises who are directed or required to respond to an investigator, or person assisting an investigator, should have the protections afforded by the	Amend s 74 so that the confidentiality provisions under s 98 will extend to persons on premises and afford them the protection associated with confidentiality if they are required or directed to respond to an inquiry officer.	Recommend that the amendment be referred to the Government for further consideration.

		relevant to the inquiry; **(iii)** to produce any record, information, material or thing; **(iv)** to operate equipment or facilities on the premises for a purpose relevant to the inquiry; **(v)** to provide access (free of charge) to photocopying equipment on the premises the inquiry officer reasonably requires to enable the copying of any record, information, material or thing; **(vi)** to give other assistance the inquiry officer reasonably requires to conduct the inquiry; …	confidentiality provisions of s 98 when considered necessary.		

36	S 78(1) &(2)	**(1)** At the conclusion of an inquiry, an Integrity Tribunal may make a determination in relation to the complaint or matter that was the subject of the inquiry. **(2)** An Integrity Tribunal may do any one or more of the following: **(a)** dismiss the complaint;	See s 65 which refers to the 'allegation of misconduct'. It is clear from s 61 that the function of the Integrity Tribunal is to 'conduct an inquiry into a matter in respect of which the Board has determined under section 58 that an inquiry be undertaken', not an inquiry into a 'complaint'. An own motion investigation which is the subject of an Integrity Tribunal cannot be dismissed under subsection (2).	Amend s 78 and consider any relevant consequential amendments to s 58 so that the language as to what the function of an inquiry undertaken is consistent. Consider whether there should be an opportunity to dismiss or otherwise cease further consideration of an investigation which arose from an own motion investigation.	Recommend that the amendment be implemented.
37	S 80	**Offences relating to Integrity Tribunal** **(1)** A person must not intentionally prevent or intentionally try to prevent a person who is required by an Integrity Tribunal to appear before it from attending as a witness or producing any record, information, material or thing to the Integrity Tribunal. Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year. **(2)** A person must not use, cause, inflict or procure any violence,	An Integrity Tribunal is defined under s 4 to mean a Tribunal convened under s 60 (and which appears to be restricted to the persons who comprise the actual tribunal), but does not include an inquiry officer. Offences against inquiry officers are dealt with separately at s 81. However Part 7, which deals with inquiries by an Integrity Tribunal also refers to 'a person designated by the Integrity Tribunal' – s 71(1)(b) and appointing other persons to take evidence to be provides to the Integrity Tribunal – s71(2). The Act does not capture offences which might occur against anyone other than the Tribunal members and inquiry officers. Subsection (2) does not protect a person from being threatened (by violence or other way) on account of producing or surrendering a record, information, material or a thing to an Integrity Tribunal, or a person designated by a Tribunal or appointed to take evidence.	Amend s 80 to include offences against persons other than the Tribunal members, or inquiry officers, and make it clear that the threat of violence or other detriment is included as an offence.	Recommend that the amendment be referred to the Government for further consideration.

		punishment, damage, loss or disadvantage in relation to another person for or on account of – **(a)** that other person having given evidence before an Integrity Tribunal or produced or surrendered any record, information, material or thing to an Integrity Tribunal; or **(b)** any evidence given by that other person before an Integrity Tribunal or any record, information, material or thing produced or surrendered by that other person to an Integrity Tribunal. Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year. …			
38	S 81	**Offences relating to inquiry officers** **(1)** A person who, without reasonable excuse, fails to comply with a requirement or direction of an inquiry officer within 14 days of	Subsections (1) and (3) are restricted to matters involving an inquiry officer, although the Act also refers to persons assisting inquiry officers (s 73) and to persons designated or appointed (see previous discussion re s 80). Accordingly there is no apparent offence if a person fails to comply with the requirements or directions of a person assisting an inquiry officer or appointed or designated by a Tribunal. Subsection (2) does not protect a person from being	Amend s 81 to make it clear that the threat of violence or other detriment is included as an offence. Ensure that offences against persons assisting, appointed or designated in addition to inquiry officers, are captured .	Recommend that the amendment be referred to the Government for further consideration.

		receiving it commits an offence. Penalty: Fine not exceeding 5 000 penalty units. **(2)** A person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage in relation to another person for or on account of that other person having given evidence to an inquiry officer or produced or surrendered any record, information, material or thing to an inquiry officer. Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year. **(3)** A person must not obstruct or hinder an inquiry officer or any person assisting an inquiry officer in the performance of a function or the exercise of a power under section 74. Penalty: Fine not exceeding 5 000 penalty units.	threatened (by violence or other way) on account of providing information to an inquiry officer. (And see the discussion re offences relating to investigators under s 54 where similar issues arise).		

39	S 87	**Investigation or dealing with misconduct by designated public officers** **(1)** The Integrity Commission is to assess, investigate, inquire into or otherwise deal with, in accordance with Parts 6 and 7, complaints relating to misconduct by a designated public officer. **(2)** In assessing, investigating, inquiring into or otherwise dealing with a complaint under subsection (1), the Integrity Commission may have regard to – **(a)** established procedures or procedures of the relevant public authority; and **(b)** any codes of conduct relevant to the designated public officer who is the subject of the complaint; and **(c)** any statutory obligations or relevant law relating to that designated public officer.	This section was amended on 22 December 2011, with the reference to Parts 6 and 7 included in subsection (1). Since amendment, the Solicitor-General has flagged a potential issue that the failure to include Part 5 of the Act (which deals with assessment of a complaint) with Parts 6 and 7, will mean that any complaint dealing with a designated public officer, cannot be assessed. Instead each complaint must be investigated and a report forwarded to the Board, even where a complaint is vexatious or without substance. This appears contrary to the wording throughout the section which refers to 'assessing' or 'otherwise dealing with' a complaint. The obligation to investigate every complaint involving a designated public officer will be onerous, and is an unintended consequence of the December 2011 amendment.	Amend s 87 to include a reference to Part 5, so that the Commission is able to deal with a complaint about a DPO consistently with other complaints.	Recommend that the amendment be implemented.

40	S 94	**94. Information confidential** **(1)** This section applies to a person who is or has been – **(a)** a member of the Board; or **(b)** the Parliamentary Standards Commissioner; or **(c)** an officer or employee of the Integrity Commission; or **(d)** a person authorised or appointed under section 21 to undertake work on behalf of the Integrity Commission; or **(e)** an assessor or investigator; or **(f)** a member of the Joint Committee; or **(g)** a member of an Integrity Tribunal; or **(h)** an inquiry officer or other person appointed to assist an Integrity Tribunal.	The persons who are required to keep information confidential are listed in s 94 and are separate to any notices served or delivered under the Act which may be kept confidential under s 98. However the list of people does not take into account persons who might have access to confidential information, but not be a staff member or otherwise authorised because they do not perform any functions. For example the Commission has a Service Level Agreement with the Department of Justice which provides for IT services. The Commission and the Department of Justice have received legal advice that employees of the Department of Justice, performing IT services for the Commission, do not have the same obligations to keep information held by the Commission, which they have ready access to, confidential, notwithstanding the sensitive nature of the information. Further, they are not subject to the same sanctions that a Commission officer would be subject to if information is released inappropriately. Instead sanctions are limited to a breach of the Code of Conduct if the person is a state servant.	Amend s 94 to include personnel who perform services for the Commission or a Tribunal and who have access to extremely confidential information, but do not fall with the class of persons identified.	Recommend that the amendment be implemented.
41	S 95	**95. Protection from personal liability**	See the references to s 94 – the same considerations apply to s 95, in that personnel who perform sensitive work for the Commission, or who through their work have access to	Amend s 95 to protect personnel from personal liability where they undertake work involving sensitive or confidential information, for the Commission or Tribunal	Recommend that the amendment be

		(1) No civil or criminal proceedings lie in respect of any action done, or omission made, in good faith in the exercise or intended exercise of, any powers or functions under this Act by the following persons: (a) the Board; (b) any members of the Board; (c) the Parliamentary Standards Commissioner; (d) an Integrity Tribunal; (e) any persons appointed to assist the Integrity Tribunal; (f) legal representatives of any witness at an inquiry; (g) the chief executive officer; (h) an assessor, investigator or inquiry officer; (i) officers and employees of the Integrity Commission; (j) any persons authorised or appointed under section 21 to undertake work on	sensitive information from the Commission, are not protected from personal liability unless they fall within the class of persons nominated, and are exercising powers or functions. Some people (ie transcription staff employed by the Supreme Court) are not exercising a power or function, but should nevertheless have protection from personal liability where they are acting in good faith.	but do not actually exercise a power or function.	implemented.

		behalf of the Integrity Commission.			
42	S 96	**96. False or misleading statements** A person, in making a complaint, giving any information or advice or producing any record under this Act, must not – (a) make a statement knowing it to be false or misleading; or (b) omit any matter from a statement knowing that without that matter the statement is false or misleading. Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.	On its face, s 96 makes the giving of a false or misleading statement an offence. However the language used, in particular 'giving any information or advice' is inconsistent with the sections where an officer of the Commission can direct or require a statement – see for example s 47. Although there are offences under s 54 with respect to s 47, those offences do not include the giving of a false or misleading statement (see also s 52) The language used in s 47 is to provide information or explanation, to attend and give evidence and to produce. In s 52(1)(j) a person is required to answer or to produce or to give other assistance. Similar considerations apply to the giving of evidence before an integrity tribunal under s 71.	Amend s 96 so that it is clear that a person who makes a false or misleading statement or omits any matter from a statement knowing that it would then be false or misleading, in compliance with a requirement or direction under the Act, commits an offence.	Recommend that the amendment be referred to the Government for further consideration.
43	S 97	**97. Destruction or alteration of records or things** A person must not knowingly destroy, dispose of or alter any record or thing required to be produced under this Act for the purpose	Section 97 is limited to an investigation or inquiry, and therefore appears to omit a record or thing required to be produced during an assessment of a complaint, although s 35(4) enables an assessor to utilise the powers of an investigator under Part 6 of the Act. Furthermore, if a complaint is referred to an agency for investigation, either following an assessment, or an investigation by the Commission, destruction or alteration of	Amend s 97 so that the destruction or alteration of records or things while an assessor is using the powers of an investigator, is an offence. Consider development of a further offence regarding destruction or alteration of records or things relevant to an allegation of misconduct, following referral by the Commission.	Recommend that the amendment be implemented.

		of misleading any investigation or inquiry. Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.	records or things after referral would not be an offence.		
44	S 98	**98. Certain notices to be confidential documents** (1) A person on whom a notice that is a confidential document was served or to whom such a notice was given under this Act must not disclose to another person – (a) the existence of the notice; or (b) the contents of the notice; or (c) any matters relating to or arising from the notice – unless the person on whom the notice was served or to whom the notice was given has a reasonable excuse. Penalty: Fine not exceeding	Refer to Point 25, which is also concerned with confidentiality provisions under s 98. The use of s 98 is limited to those sections which specifically refer to the ability of the Commission to make a particular notice confidential. However it is not just the notice which is confidential, but the documents to which the notice is attached which should be confidential. As an example, s 88 sets out the Commissions role in relation to police misconduct, which includes at s 88(3) the assumption of responsibility for a police investigation, but no ability by the Commission to make those actions subject to confidentiality. Again, at s 58, the Board can make a determination to refer an investigation to an agency and while the determination to refer can be subject to a s 98 confidentiality notice, the referral of the report of the investigation may not be so subject. A further example is s 90 where the Commissioner of Police may be given an opportunity to comment on a report which is adverse to Tasmania Police. During that process, the Commission is currently unable to require confidentiality in accordance with s 98.	Amend s 98 so that the Commission can ensure confidentiality over its actions beyond the notices referred to at particular sections of the Act.	n/a This issue is already covered in the Report.

		2 000 penalty units. (1A) A person to whom the existence of a notice that is a confidential document was disclosed must not disclose to another person – (a) the existence of that notice; or (b) the contents of the notice; or (c) any matters relating to or arising from the notice – unless the person to whom the existence of the notice was disclosed has a reasonable excuse. Penalty: Fine not exceeding 2 000 penalty units. (1B) For the purposes of subsections (1) and (1A), matters relating to or arising from a notice include but are not limited to – (a) obligations or duties imposed on any person by the notice; and (b) any evidence or information produced or			

		provided to the Integrity Commission or an Integrity Tribunal; and (c) the contents of any document seized under this Act; and (d) any information that might enable a person who is the subject of an investigation or inquiry to be identified or located; and (e) the fact that any person has been required or directed by an investigator or an Integrity Tribunal to provide information, attend an inquiry, give evidence or produce anything; and (f) any other matters that may be prescribed. (2) It is a reasonable excuse for a person to disclose the existence of a notice that is a confidential document if – (a) the disclosure is made for the purpose of – (i) seeking legal advice in relation to the notice or an offence against subsection (1); or			

		(ii) obtaining information in order to comply with the notice; or (iii) the administration of this Act; and (b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the notice to another person unless the person to whom the disclosure was made has a reasonable excuse. (3) The Integrity Commission or an Integrity Tribunal may advise a person on whom a notice was served or to whom a notice was given under this Act that the notice is no longer confidential. (4) If the Integrity Commission or an Integrity Tribunal advises a person referred to in subsection (3) that a notice is no longer confidential, subsections (1) and (1A) do not apply.			
45	S 99	**99. Injunctions** (1) The Supreme	Injunctions are limited to investigations or 'proposed investigations'. The language used appears inconsistent with the Act, in that nowhere else is the term 'proposed	Amend s 99 so that the Commission can seek an injunction restraining any conduct which affects an allegation of misconduct within the jurisdiction of the	Recommend that the amendment be

		Court may, on application made by the Integrity Commission, grant an injunction restraining any conduct in which a person (whether or not a public authority or public officer) is engaging or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of – (a) an investigation or proposed investigation by an investigator; or (b) an inquiry or proposed inquiry by an Integrity Tribunal. (2) The conduct referred to in subsection (1) does not include conduct relating to a proceeding in Parliament.	investigation' used. Accordingly this section may not capture an assessment. It is not inconceivable that the need for an injunction could arise during an assessment phase, for example to prevent destruction of documents. Furthermore, if an allegation of misconduct has been referred to an agency for that agency's investigation, the current wording does not allow the Commission to seek an injunction.	Commission.	implemented.
46	S 102	**Personal information may be disclosed to Integrity Commission** A personal information custodian, within the meaning of the *Personal Information Protection Act 2004*, is authorised to disclose personal information, within the	The Commissioner of Police is a personal information custodian within the meaning of the PIP Act. The Commission seeks information from Tasmania Police database on a regular basis. The information is required to enable the Commission to fulfill its functions under the Act. The Commission and Tasmania Police have a Memorandum of Understanding which has a clause allowing the Commission online access to relevant police-held data, subject to all relevant legal restrictions. Currently the information is accessed by the Commission on a	Amend the *Personal Information Protection Act 2004* and/or the IC Act to enable to appropriate Tasmania Police databases.	n/a This issue is already covered in the Report.

		meaning of that Act, to the Integrity Commission for the purpose of and in accordance with this Act.	request by request basis, with Commission investigators required to attend at Police HQ. The Commission seeks specific data about an individual and specifies on each occasion that it is for a purpose and function under the Act. This has presented difficulties for both Tasmania Police and the Commission in that the Commission is unable to maintain absolute confidentiality of information in relation to its own functions simply because Tasmania Police are advised of the information sought. A not insignificant percentage of complaints are about police. Further, the lack of immediate accessible data has restricted the Commission when responding to complaints. Specific background information, such as is held by Tasmania Police may be relevant about a particular complaint, subject officer, witness or complainant and important to any determination by the Commission to dismiss, assess or investigate. The Commission is also conducting an audit of all police complaints finalized in 2012 but can only look at the hard copy files of the matters rather than examining the records electronically (in the IAPRO database). This is cumbersome and time consuming. Access to appropriate data will confirm sources of information and allow the Commission to independently analyse information received and to cross reference the checks taken by police when the Commission audits or monitors a matter. It is considered that electronic desktop access at the Commission (with appropriate passwords, and audit trails) will significantly enhance the operational work undertaken by the Commission. It is also in line with access available to interstate integrity agencies and the respective State and Commonwealth police forces. Tasmania Police and the Commission have obtained legal advice that electronic desktop access at the Commission would be the grant of unlimited access to the personal information in the control of the Commissioner of Police, and that such disclosure would not be for a purpose of and in accordance with the Act.		

			Authorisation for the Commission to have unlimited access to Police databases (electronic access, but limited to a function under the IC Act) would require an express statutory provision, and in the absence of that, the granting to the Commission of such unlimited access, will inevitably involve a contravention of the PIP Act by the Commissioner of Police, particularly during periods when access is not required by the Commission to fulfil its statutory functions (ie when the electronic password protected database is idle). Section 9 of the PIP Act does provide that some clauses in the Schedule detailing the Personal Information Protection Principles do not apply to any law enforcement information collected or held by a law enforcement agency if it considers that non-compliance is reasonably necessary – **(a)** for the purpose of any of its functions or activities; or **(b)** for the enforcement of laws relating to the confiscation of the proceeds of crime; or **(c)** in connection with the conduct of proceedings in any court or tribunal. The Commission is not a law enforcement agency for the purposes of the PIP Act (noting however that it is a law enforcement agency for the purposes of the *Australian Consumer Law (Tasmania) Act 2010*).		

Identified technical issues, other Tasmanian Legislation

	Section	Content	Technical issue	Recommendation	
	Corrections Act 1997				

	Rights of Prisoners to make a complaint to the Commission				
1	S 29(1)(l)	**Rights of prisoners and detainees** (1) Every prisoner and detainee has the following rights: … (l) the right to send letters to, and receive letters from, the Minister, the Director, an official visitor, the Ombudsman or an officer of the Ombudsman without those letters being opened by prison staff;	Currently prisoners and detainees are unable to make a complaint of misconduct to the Commission without the written complaint being opened and read by an authorised prison staff member. The *Corrections Act 1997* exempts certain forms of communication from being opened unless staff reasonably suspect that the letter contains an unauthorised item. The exemptions relate to the Office of the Ombudsman, Official Visitors, Members of Parliament, the Parole Board, Legal Practitioners and others. As prisoners or detainees are uniquely placed to experience or observe misconduct by prison staff, and noting that the Integrity Commission Act requires complaints about misconduct to be in writing, the Commission submits that it should be included in the list of exempt correspondence. In addition to the Corrections Act, the Ombudsman also has a specific provision in the *Ombudsman Act 1978*, s 18, which facilitates the making of a complaint by a person in custody. While the Integrity Commission Act has provisions which facilitate the giving of information to an investigator where a detainee or prisoner is served with a coercive notice, it does not go as far as facilitating complaints from detainees or prisoners.	Amend s 29(1)(l) of the *Corrections Act 1997* to include the Integrity Commission as an exempt entity with respect to correspondence to and from prisoners and detainees. In addition, make consequential amendments to the *Integrity Commission Act 2009* similar to those in s 18 of the Ombudsman Act, so that a person detained in custody who wishes to make a complaint to the Commission, will be assisted to make that complaint. [For example, see s 47(4) of the Act which is along similar lines in that it facilitates the giving of information to an investigator where a detainee or prisoner is served with a s 47 Notice but does not go as far as facilitating complaints from detainees or prisoners].	Recommend that the amendment be implemented.
	Personal Information Protection Act 2004 **Access to data held by Tasmania Police**				

2	S 9 & Schedule 1	**S 9. Law enforcement information** Clauses 1(3), (4) and (5), 2(1), 5(3)(c), 7, 9 and 10(1) of Schedule 1 do not apply to any law enforcement information collected or held by a law enforcement agency if it considers that non-compliance is reasonably necessary – (a) for the purpose of any of its functions or activities; or (b) for the enforcement of laws relating to the confiscation of the proceeds of crime; or (c) in connection with the conduct of proceedings in any court or tribunal. --- **Schedule 1** **2. Use and disclosure** **(1)** A personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected unless – **…** **(f)** the use or disclosure is required or authorised by or under law; or **(g)** the personal information custodian reasonably believes that the use or disclosure is reasonably necessary for any of the following purposes by or on behalf of a law enforcement agency: **(i)** the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a	See the discussion re s 102 of the IC Act.	Amend the *Personal Information Protection Act 2004* and/or the IC Act to enable to appropriate Tasmania Police databases.	n/a This issue is already covered in the Report.

		penalty or sanction; **(ii)** the enforcement of laws relating to the confiscation of the proceeds of crime; **(iii)** the protection of the public revenue; **(iv)** the prevention, detection, investigation or remedying of conduct that is in the opinion of the personal information custodian seriously improper conduct; **(v)** the preparation for, or conduct of, proceedings before any court or tribunal or implementation of any order of a court or tribunal; **(vi)** the investigation of missing persons; **(vii)** the investigation of a matter under the *Coroners Act 1995*; or …			

ATTACHMENT 3: Template of information attached to coercive notices

IMPORTANT INFORMATION
FOR RECIPIENTS OF A NOTICE UNDER SECTION 47(1)

This information is intended for persons who have been served with a Notice issued under section 47(1) of the *Integrity Commission Act 2009* ['the Act'].

What are you required to do?

The Notice that has been served upon you will specify your obligations.

For instance, section 47 of the Act permits an investigator, by written notice, to require or direct a person:

- to provide the investigator or any person assisting the investigator with any information or explanation that the investigator requires
- to attend and give evidence before the investigator
- to produce to the investigator any record, information, material or thing in that person's custody or possession or control.

The investigator may require or direct that:

- the information, explanation or answers to questions be given orally or in writing
- the truth of the information, explanation or answers be verified, or be subject to oath or affirmation.

The Notice will set out what it is that the investigator requires of you. It will specify if you are required to produce information, an explanation, or answers to questions, and will indicate whether your response must be in writing, or oral.

The Notice will also contain a description of the information or explanation you are required to provide, and will specify when, and in what manner you are required to provide it.

In addition, the Notice will nominate contact details for the Integrity Commission officer you should contact if you have questions, or if problems arise affecting your capacity to meet the requirements of the Notice.

Confidentiality – Section 98

The Notice may specify that it is a **confidential document** – in terms of section 98 of the *Integrity Commission Act 2009*. If so specified, you must not disclose the existence of the Notice to another person unless you have a reasonable excuse.

It is an offence, subject to a fine not exceeding 2,000 penalty points [$260,000], to disclose the Notice without reasonable excuse. Section 98(2) of the *Integrity Commission Act 2009* provides details as to what may constitute a reasonable excuse.

In simple terms, you should take care to ensure to take no action that might disclose the existence of the Notice to any person. However, you may disclose the existence of the Notice if it is necessary for you to seek legal advice, or in order to ensure compliance. It might, for instance, be necessary for you to brief a colleague in order to retrieve or gain access to a relevant document. You may have to disclose the existence of the Notice in

order to request permission of your supervisor to leave the workplace to attend at the Commission to give evidence.

If it is necessary to inform another person, section 98(2)(b) of the Act stipulates that you should also inform that person that the Notice is a confidential document, and that it is an offence to disclose the existence of the Notice to another unless there is a reasonable excuse. In other words, any person to whom you make the disclosure is in the same position you are, and you are obliged to so advise them.

In addition to obligations imposed by the *Integrity Commission Act 2009*, a public officer may also have a responsibility to preserve confidentiality of information obtained in the course of employment. A breach of confidentiality might also constitute a breach of the applicable code of conduct governing the public officer's employment for which various penalties may apply.

If you have any doubt about whether or not it is reasonable in a particular case to disclose the existence of the Notice, you should seek to clarify the matter with the nominated contact officer.

Legal representation

Pursuant to section 49 of the Act, a person directed to provide information or an explanation under section 47(1) may be represented by a legal practitioner or other agent. Accordingly, it is open to you to disclose the existence of the Notice in order to seek legal advice in relation to it – but any person you make a disclosure to must be advised of the prohibition against disclosure, and the obligations that arise in that regard. See above commentary on Confidentiality.

You should inform the Commission as soon as possible (at least 48 hours before a scheduled interview) of the identity of your representative. Where you seek to be represented by a person who may compromise the investigation (for example because they have a conflict of interest or are otherwise connected with the matter under investigation), the Commission may require you to be represented by a different agent.

Claims of privilege

The powers conferred on the Commission by section 47(1) of the Act may not automatically be avoided by a claim of privilege.

If you seek to claim privilege in respect of any requirement or direction arising from the Notice, the Commission may withdraw the requirement or direction in accordance with section 92(3) of the Act. If the requirement or direction is not withdrawn, a further written Notice to comply with the requirement or direction will be issued. You will be obliged to comply with that further Notice within 14 days, or make application to the Supreme Court to determine the claim of privilege. Section 92 of the Act sets out the procedure that is to be followed to determine a claim of privilege.

As the recipient of this Notice, you should consider, where necessary, seeking appropriate legal advice as to whether a third party may be able to assert privilege over any documents you are required to produce.

How will information be used?

Subject to any claim for privilege, the information or explanation produced may be used for the purposes of the Commission's complaint assessment, investigation or a subsequent Integrity Tribunal inquiry.

It is also a specific function of the Commission to collect evidence for the prosecution of persons for offences, or for proceedings to investigate a breach of a code of conduct or for proceedings under any other Act.

Failure to comply with Notice

A person who, without a reasonable excuse, fails to comply with a requirement or a direction made pursuant to a Notice under a section 47(1) of the Act within 14 days of receipt of the Notice or such other time period as specified in the Notice, commits an offence, and may be subject to a fine not exceeding 5,000 penalty units [$650,000], pursuant to section 54(1) of the *Integrity Commission Act 2009.*

Furnishing false and misleading information

A person who produces information or advice in purported compliance with a section 47(1) Notice, knowing it to be false or misleading, or omits any matter from the produced information or explanation knowing that without that matter the information or explanation is false or misleading, commits an offence under the Act, and may be subject to a fine not exceeding 5,000 penalty units [$650,000] or imprisonment for a term not exceeding one year, pursuant to section 96 of the *Integrity Commission Act 2009.*

Production of statement of information or advice

The Commission considers the security of information to be of paramount importance. Unless otherwise arranged, all written statements of information or explanation produced pursuant to a Notice under section 47(1) of the Act must be delivered by hand in a secure and suitable container to the officer nominated in the Notice or, in another manner agreed to by the Commission.

Transcripts

If you are required to attend the Commission to give evidence by interview, that evidence will be recorded. The Commissions makes a transcript of each recorded interview. If you, or your legal representative, require a copy of the transcript, you may advise the Commission at the conclusion of the interview. Alternatively, at any other time you may make a request in writing to the Commission.

The timing of the provision of such a transcript is at the Commission's discretion, but will usually occur after conclusion of all interviews in an investigation. In exceptional circumstances, the Commission may determine it is not appropriate to provide a transcript. When the Commission provides a transcript, confidentiality in accordance with s 98 may also apply to the circumstances which the transcript can be used or communicated.

Your welfare

If you have attended, are attending or are due to attend before the Commission to give evidence or to produce a document or any other thing and, because of this, you consider that you need to consult a medical practitioner, psychologist or psychiatrist, or your employer's Employee Assistance Program, you are at liberty to do so.

Other Information

The Commission is situated at Level 2, 199 Macquarie Street, Hobart, Tasmania. Its telephone number is 1300 720 289.

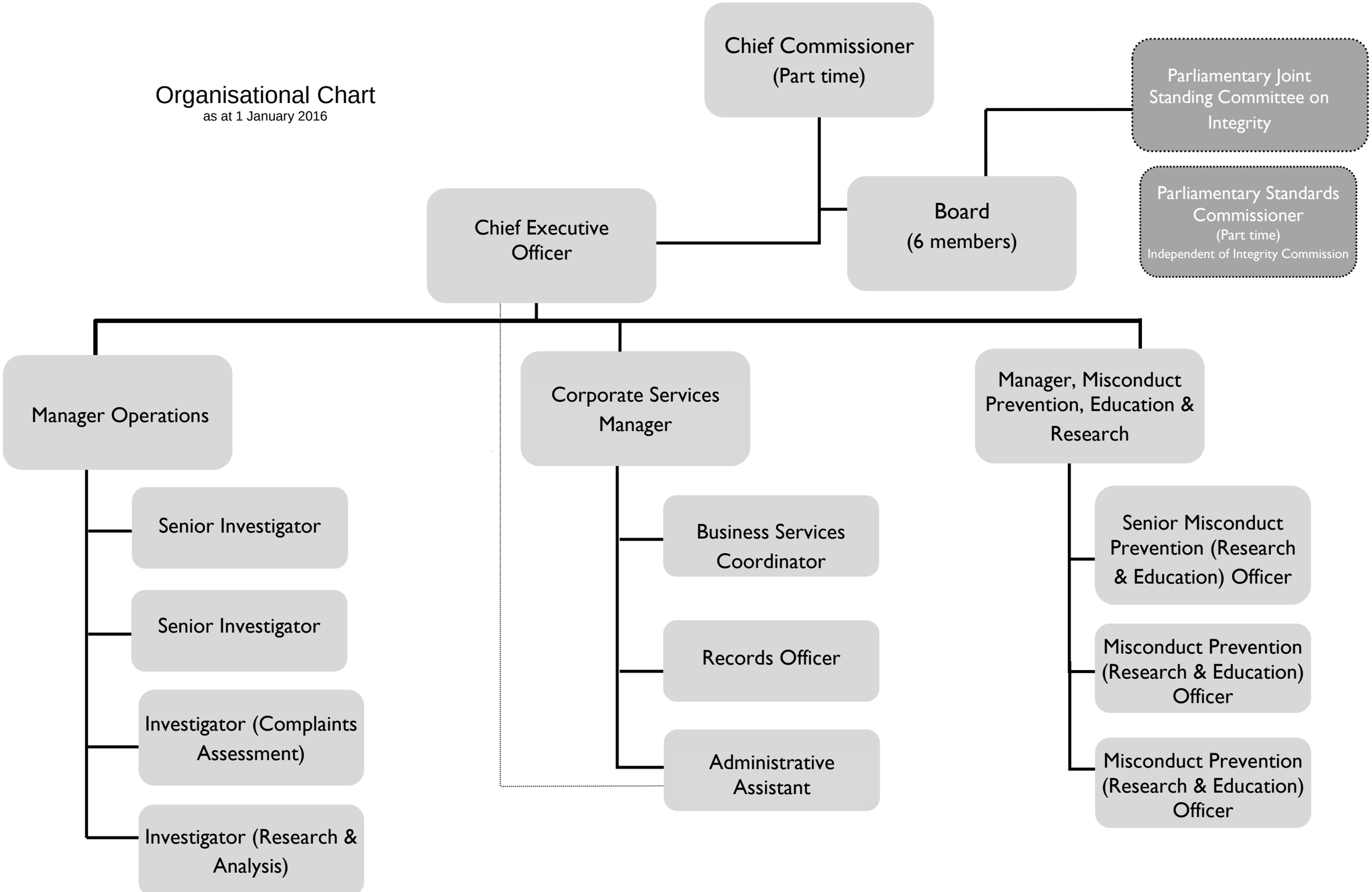
The email address for the Integrity Commission is integritycommission@integrity.tas.gov.au.

Further information about the Commission can be found at www.integrity.tas.gov.au, including a copy of the *Integrity Commission Act 2009*.

ATTACHMENT 4: Organisational chart (1 January 2016)

Organisational Chart

as at 1 January 2016



ATTACHMENT 5: Integrity Commission submissions to Three Year Review

Submission No 1 to the Joint Standing Committee Vol 1

Submission No 1 to the Joint Standing Committee Vol 2

Submission No 2 to the Joint Standing Committee

Submission No 3 to the Joint Standing Committee

All of the above documents are available on the Commission's website:
http://www.integrity.tas.gov.au/resources_and_publications/publications


INTEGRITY
COMMISSION