

Submission to the 5-year review of the Integrity Commission

University of Tasmania

March 2016

### **General comments**

In the light of the experience of the last 5 years, it may be that Tasmania does not need something as big and expensive as a commission, and with such expansive powers, particularly as the primary focus of the commission when it was established was intended to be educative.

The 5 years of operation of the Integrity Commission do not appear to have uncovered any systemic corruption or any major issues. The commission was intended to have a largely educative/preventative function, and this seems to be well covered in the materials it makes available and the workshops it runs. However, this worthwhile educative function could be carried out just as effectively if attached to an existing body, or contracted out. That structure would not entail the expense of a separate commission.

Similarly, the investigative function is important, but it has not been demonstrated that the commission is best placed to carry out that function.

A key feature of the commission was to be its preliminary “assessment” process. Under that process, the commission would, quickly and relatively informally, assess a complaint to see if there appeared to be any substance such that the complaint should be investigated. If so, the commission was then to determine either to investigate the complaint itself or to refer the complaint to another investigative body.

In practice, this initial assessment process can in fact take months – almost 6 months in one case concerning the university, where on the face of the complaint, if the nature of a university had been understood, it should have been immediately clear that there was no reasonable ground to proceed.

There are existing investigative bodies that are better equipped to carry out the investigative function, should a serious complaint arise. There has been no suggestion over the last 5 years that any of those bodies have been compromised or would be otherwise unsuitable to carry out the investigation into such a complaint, and the commission appears to have investigated insubstantial complaints at an unjustifiable depth in the investigations it has so far undertaken.

An independent Integrity Commission could be expected (although the legislation is not internally consistent in this regard) to restrict its own investigations into allegations of serious misconduct (which is defined to mean conduct that could be a crime, a serious offence or grounds for dismissal) – again, in at least one instance involving the university, the allegations were not of that nature.

Once the commission accepts a complaint for investigation, the commission could be expected to judge an organisation according to compliance with the organisation’s own policies. In practice, it appears that the commission actually judges an organisation according to what the commission sees as best practice, after the event, and it then intimates that the organisation’s policies ought to have contained certain provisions that have not been complied with in the case under investigation. This was true with the University investigation referred to earlier, but also, it seems, to the investigation into various public sector agencies and their gifts policies.

## **Impact on the University of Tasmania**

In relation to how the commission relates to the University, the University's experience has been that the commission is public service in outlook. It does not understand that a University operates in a different way, not in a way in which unethical behavior is countenanced but in a way that recognises that there are differing requirements and context in which a university makes decisions – particularly in relation to the employment practices of a university that is the only university in the State. The process for creating senior roles for senior academics is quite different from rearranging a public service department's staffing profile to accommodate a partner, for instance.

Universities are very different in their composition, purpose and endeavour from public sector bodies and local government authorities. By its very nature, the governance of a university should be separate from the governance that applies to the public sector and local government sectors, and oversight by bodies such as the commission of the governance of a University is therefore inappropriate.

The governing body of the University includes a majority of members external to the University, ie not students or staff. Those external members are appointed either by the Minister or by the Council, but in consultation between them. This brings into University governance the perspectives of senior people who have lifelong experience in public service and in many wider community sectors, in contrast to the governance arrangements for public service agencies.

Further, the University of Tasmania is a signatory to the Magna Charta Universitatum, which celebrates university traditions and encourages bonds amongst universities. The signing of that statement illustrates that this university, like the other signatories, is one of a special breed of organisations that has survived over the ages with the pursuit of truth as a cornerstone. The Magna Charta Universitatum references the fundamental values and principles of a university, in particular the ideals of institutional autonomy and academic freedom.

The capture of the University of Tasmania under the State Integrity Commission legislation seems to be a direct contradiction of that of institutional autonomy. It is also unnecessary, given that the University is already covered by numerous other external bodies with investigative or similar powers, including -

- the Tertiary Education Quality and Standards Commission
- the Commonwealth Department of Education and Training
- the Australian Research Council (in relation to research misconduct)
- the Fair Work Commission
- Worksafe
- the Ombudsman
- the Anti-Discrimination Commission
- the Equal Opportunity Commission
- and of course Tasmania Police and Australian Federal Police for matters that are contrary to the law.

The University has a policy for dealing with allegations of fraud and corruption, together with whistleblower protection based on the Ombudsman's guidelines. The Council's Audit and Risk Committee, chaired by the Deputy Chancellor, is charged with monitoring the implementation of those policies and procedures.

### **Confidentiality requirements**

Finally, whether or not the University remains within the jurisdiction of the Integrity Commission, the unwieldy confidentiality requirements imposed by the commission should also be reviewed, with a view to considering whether or not that level of confidentiality is actually required in any given case. As the requirements currently stand, it is not easy for an organisation like the University to respond appropriately to a complaint without risking penalties for disclosing the fact and substance of a complaint in the process of assembling its response.