



*Parliament House,  
Hobart*

5 May 2016

The Honourable William Cox AC, RFD, ED, QC  
Independent Reviewer of the *Integrity Commission Act 2009*  
PO Box 825  
**HOBART TASMANIA 7001**

Dear Mr Cox,

First, may I thank you for the opportunity to provide a submission to the review well after the notified closing date.

I regret that it is brief and somewhat rushed, but hope that it at least conveys a concern I have in relation to a particular provision contained in the *Integrity Commission Act 2009* (the Act) which comes within my notice as Clerk of the House of Assembly.

Schedule 5 of the Act makes provision for meetings of the Joint Standing Committee on Integrity and part 3, paragraph (2) provides that, "A witness who is summoned to appear, or who appears, before the Joint Committee has the same protection and privileges as a witness in an action tried in the Supreme Court." This provision appears to be a reproduction of section 7(2) of the Public Accounts Committee Act (No. 54 of 1970) and in comparison to all other Parliamentary Committees, prescribes first, a unique status upon any witness to these two Committees and second, a unique legal responsibility upon each of these Committees and their Members. Regrettably, the passage of the Public Accounts Committee Act occurred prior to the advent of 'Hansard' and I am unable to provide any assistance to you as to why such a provision was made in the first place. I can find nothing that would assist an understanding of the motivation for including the provision in the Act the subject of review. I suspect it was included for no other reason than that it appears in the last statute enacted that dealt with Committees, albeit 39 years previously.

By virtue of this provision, there is a prescribed expectation then that the committee is both aware of and is able to properly apply the rules of evidence prescribed in the Evidence Act and consequently would not seek to adduce testimony contrary to such rules. Moreover, the committee is expected to be proactive in advising witnesses of their rights, the protections and immunities afforded to them under the Evidence Act.

Unlike other Parliamentary committees whose proceedings are protected by Article 9 of the Bill of Rights 1689, the statutory constitution of this committee arguably makes its proceedings justiciable in some respects.

At the risk of stating the obvious, the proceedings of Parliamentary committees are not conducted in the same manner as legal proceedings are conducted. The body of practice which attends the proceedings of committees together with the advice that is provided to them, comes from Parliamentary officials with many years' experience of Parliamentary processes and proceedings but not usually, legal expertise. Given a want of technical legal

experience of members of the Committee or its Secretariat, I am very concerned that the provision in respect the privilege afforded to witnesses in my view, places an unrealistic expectation of compliance and a potential exposure to legal challenge.

Second, this provision provides, in certain circumstances, a witness with the capacity to refuse to answer a question, a privilege not afforded to witnesses to other Parliamentary Committees, except obviously, the Public Accounts Committee. Putting to once side any argument that this Committee should have an ability to compel an answer from a witness, I would submit to you that equity of treatment of witnesses and uniformity of practice across all Parliamentary Committees should be a fundamental expectation of the Parliamentary process.

I respectfully submit to you that given the matters I have raised, consideration should be given as to what advantages, if any, there are to the inquiry process of this Committee by the maintenance of this provision.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Shane Donnelly', with a long, sweeping flourish extending to the right.

**Shane Donnelly**  
**CLERK OF THE HOUSE**