

1 April 2016

Our Ref: GP/CA
File No.:

The Honourable William Cox AC, RFD, ED, QC
Independent Reviewer
GPO Box 825
HOBART TAS 7001

Dear Mr Cox

Independent Review of the Integrity Commission Act 2009

Thank you for providing the Local Government Association of Tasmania (LGAT) with an opportunity to provide a submission to the Independent Review of the *Integrity Commission Act 2009*. The Terms of Reference for the review were considered by a number of Local Council General Managers at a recent General Managers Workshop.

We understand that the Terms of Reference for the review are broad in scope and include:

- a) The operation of the Act in achieving its object and the objectives of the Integrity Commission;
- b) The operation of the Integrity Commission, including the exercise of its powers, the investigation of complaints and the conduct of inquiries; and
- c) The operation of the Parliamentary Standards Commissioner; and
- d) The operation of the Joint Committee; and
- e) The effectiveness of orders and regulations made under this Act in furthering the object of the Act and the objectives of the Integrity Commission; and
- f) Any other matters relevant to the effect of this Act in improving ethical conduct and public confidence in public authorities.

Although LGAT and its member councils have an interest in many of the issues to be examined as part of the review this submission focuses specifically on the operation of the Integrity Commission, including the exercise of its powers, the investigation of complaints and the conduct of inquiries.

In the first instance, we wish to acknowledge the strong level of collaboration and cooperation between the Integrity Commission and LGAT in relation to education and training provided to the Local Government sector. This role is not only important but allows for long-term sustainable changes in behaviour and support development of a culture of integrity across the State and Local Government sectors.

In particular we commend the Prevention and Education unit for the well developed video scenarios and encourage creation of more tools of this type.

Going forward it will be important to have a realistic and balanced view to ensure advice works well in real world situations. We would be anxious to avoid a situation, such as that occurring currently in Western Australia where practicalities have gone out the window and Councillors are being required to declare (as Gifts and Benefits) if they borrow a neighbour's trailer and baby shower gifts received by friends and family by virtue of the fact they are ratepayers.

In relation to the broader functions and powers, some concerns have been raised in relation to how complaints are managed and investigations instigated.

In particular:

- Whether the Commission provides sufficiently for procedural fairness as required under section 46 (1) (c) and 69 (1) (b) of the Act.
- The need for greater accountability from the Integrity Commission around activities including reporting on what complaints it acts on versus the amount of complaints received so that there is broader awareness of the level of serious misconduct as opposed to unsubstantiated complaints. For example, the annual report talks about the level of complaints going up but not clearly (or up front) that the number accepted for assessment is very low. Similarly for each Council in the Annual Report the number of complaints to which they is subject is listed, but not the number of complaints which were upheld vs dismissed vs referred and so on.
- It is suggested there should be greater clarity in the Act to specify the grounds for Integrity Commission source investigations (s8 (1) (j)). As it now stands there is ambiguity around what triggers a source investigation and the subsequent process for investigating. There does not appear to be enough detail to support consideration of parameters such as seriousness of the issue at hand, public benefits, value, resource requirements etc.
- It was suggested that the CEO of the Integrity Commission should invoke his/her powers more often under Section 36 of the Act to dismiss complaints and reduce the number of irrelevant investigations being undertaken. However, related to above, this may be related to a lack of differentiation in reporting between complaints received and complaints referred or dismissed.
- It is felt that General Managers or Mayors should be clearly provided with the ability to notify their council when an investigation involving their organisation is being undertaken, noting this can be done without advising of the specifics of the investigation. In small Councils responding to a complaint can be resource intensive and divert senior staff from other activity. They should be able to explain this to Council.

In addition to these high level comments specific issues with the Act have been identified. These include:

- a) In Section 102 of the Act reference is made to the *Personal Information Protection Act 2014*, a query has been raised as to whether there should also be reference to the *Right to Information Act 2009*?
- b) In Section 4 (1) of the Act a definition is provided for a local authority. A query has been raised as to whether reference needs specifically to be made to the Local Government Audit Panels established under Section 85 of the *Local Government Act 1993*.

It is essential that the work of the Integrity Commission, particularly in relation to investigations, is seen by Stakeholders as an authoritative and trustworthy way to manage misconduct in the public sector. There is concern that some of the work currently undertaken by the Commission is untargeted and meaningless and therefore may not be meeting the key objectives that it was set up to achieve.

If you have any further questions about the submission please contact Katrena Stephenson, CEO, Local Government Association.

Yours sincerely



Katrena Stephenson
CHIEF EXECUTIVE OFFICER

Cc: the Hon. Peter Gutwein, Minister for Local Government