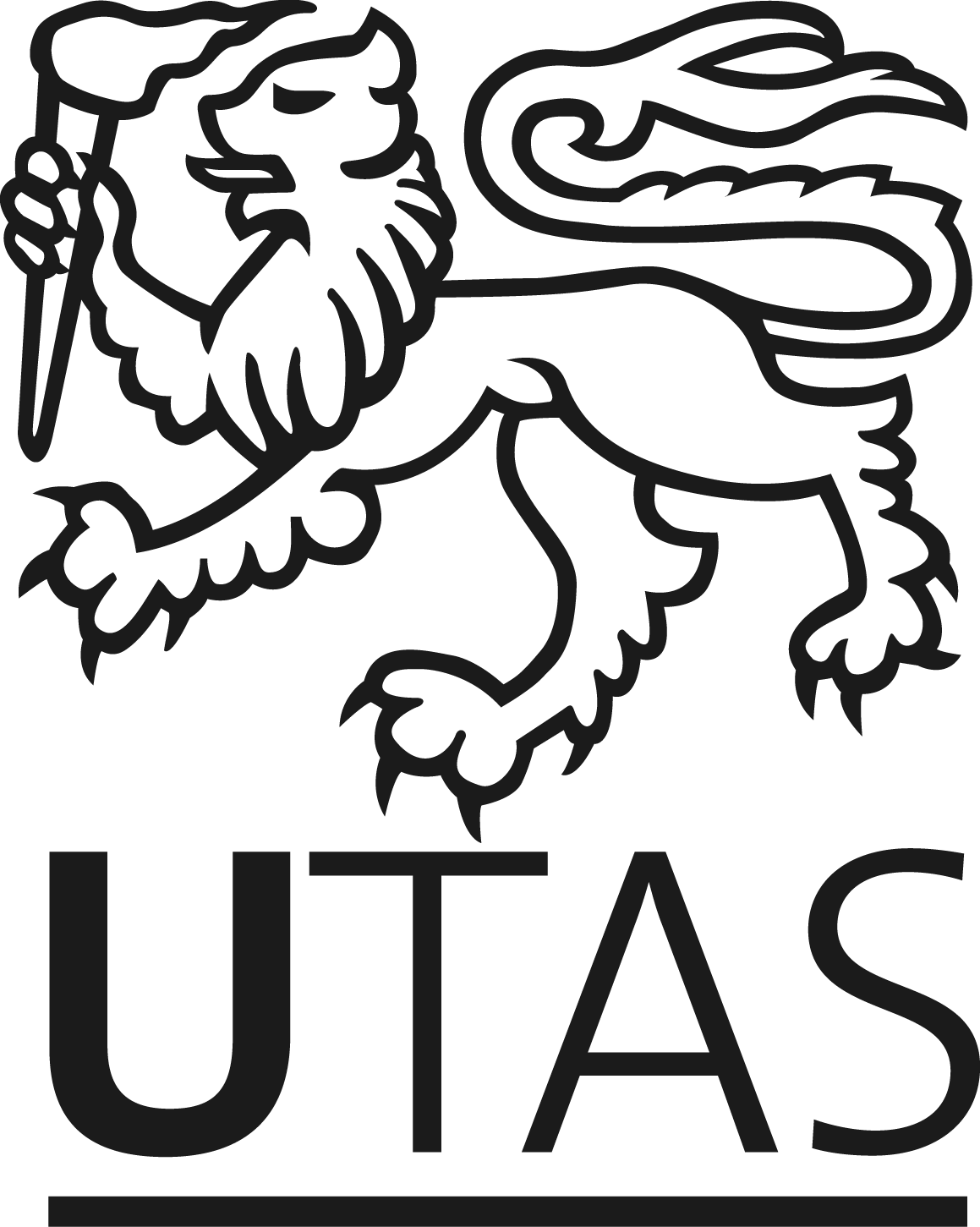
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2 March 2016

Independent Review of the Integrity Commission Act 2009

The Honorable William Cox AC DFD ED QC

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Email: integrity.review@justice.tas.gov.au

Dear Mr Cox

Thank you for your letter of February 1st which drew attention to the call for submissions to the review of the Integrity Commission Act of 2009. I was one of those involved in the discussions prior to the passing of the Act and I therefore welcome the opportunity to comment on these matters. There are three main issues I would like to raise. All three relate to a general dissatisfaction with the operation of the Act and the Commission over the past six years.

1. The Commission accepts complaints and undertakes investigations in a way that suggests no real discrimination between levels of misconduct nor with regard to whether cases of minor misconduct can be dealt with through existing processes. The result is an excessive (and apparently increasing) burden of cases being dealt with, and what appears, anecdotally, to be significant delay in dealing with individual cases. At the same time, in spite of the large number of investigations undertaken, the Commission has yet to unearth the level or type of misconduct that one might expect would be commensurate with such a relatively high level of investigation.

2. Neither the Commission nor its key officers seems to to have been able to establish a strong public profile in relation to public discourse on matters of ethics and integrity, and even the survey evidence adduced by the Commission itself seems not to provide any clear evidence of strong public awareness of or support for the work of the Commission. Yet public awareness and support is crucial to the successful operation of an ethics or integrity commission, and this can only be fostered through regular engagement in the public sphere – which includes engagement through popular media. It is not necessarily best fostered by a disciplinary or ‘policing’ approach.

3. The approach to ethical training taken by the Commission is essentially based in an audit and compliance model – one that puts a strong emphasis on codes of conduct. There is very little evidence, however, that such approaches are successful in significantly improving ethical conduct, and some evidence that they may have an opposite effect. One of the reasons for this is that such approaches often fail to address the preconditions of misconduct, including the organizational preconditions, but also because they typically ignore, not only the critical capacities on which ethical conduct depends, but also the effects of various forms of cognitive dissonance (for instance, the tendency for individuals systematically to over-estimate their own capacities to make judgments in consistent and unbiased fashion).

In general, I would suggest that the Act has resulted in the establishment of a relatively large and costly bureaucracy that has no demonstrated effectiveness in addressing the issues concerning public ethics that gave rise to the original legislation. I would note that the Act itself, and so also the Commission, is very different from that which Sir Max Bingham and I proposed in the public discussion leading up to the formulation of the legislation in 2009. We had argued for a small Commission that would deal only with cases of serious misconduct; that would draw on staff seconded from other agencies in order to carry out investigations; and that would have an important role in organizing educational programmes in ethics to be delivered, not by the Commission itself, but by other bodies contracted by the Commission. I continue to think that this would have been a more effective structure than that which was actually established under the Act. However, I am more pessimistic now than I was in 2008-2009 as to the capacity of any public body to be genuinely effective in promoting ethical conduct under current circumstances (and perhaps under any circumstances).

Aristotle tells us that virtue is not something that can be taught, but rather has to be absorbed as part of the very *ethos* of a political or social order. Such an observation raises significant questions for how we might think about a public body devoted to promoting ethical conduct in public organizations. Though Aristotle thought virtue could not be taught, he believed critical and philosophical thinking could be, and yet critical and philosophical reflection on ethics is not much in vogue within the current ‘integrity industry’ (which seems increasingly to be driven by the interests and biases of that industry), but I wonder whether, in our current circumstance, more such criticism and reflection is not precisely what is needed – perhaps even more so than additional codes, systems, or even investigations. That may sound idealistic, but again, perhaps we need more idealism rather than less.

I have tried to keep my comments here as brief and to the point as possible – but I would welcome the opportunity to expand on those comments in person should that be deemed appropriate.

Yours sincerely

Jeff Malpas

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