



REPORT OF THE INTEGRITY COMMISSION

No. 1 of 2013

**The outcomes of two investigations and one
assessment undertaken by the Integrity
Commission in 2012/13**

June 2013

The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania; and
- 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.

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This report and further information about the Commission can be found on the Commission website at www.integrity.tas.gov.au

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The Hon James Wilkinson MLC
President
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The Hon Michael Polly MP
Speaker
House of Assembly
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Dear Mr President
Dear Mr Speaker

In accordance with s 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents a report to Parliament on two investigations and one assessment conducted under the Act during 2012/13.

Yours sincerely



The Hon Murray Kellam AO
Chief Commissioner, on behalf of the Board



Diane Merryfull
Chief Executive Officer

25 June 2013

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Executive Summary

One of the ways in which the Integrity Commission is to achieve its objectives is to deal with complaints of misconduct and to make findings and recommendations in relation to its investigations.

The work of the Commission in dealing with complaints is not generally well understood, particularly because of the confidential nature of its assessment or investigation processes. The purpose of this report is to inform stakeholders about the investigative work of the Commission and the outcomes of this work by describing one of the assessments and two of the investigations finalised in 2012/13, on a de-identified basis. The assessment and both investigations were conducted in private in accordance with the *Integrity Commission Act 2009* (the Act). The assessment and Operation A both arose directly from complaints made to the Commission by the Department of Justice about misconduct with which the Department was already trying to deal, while Operation B is an example of a complaint made anonymously to the Commission.

In the assessment, the Commission was able to use its powers to gather information, which the Department could rely upon to dismiss an employee.

Each of the operations described in this report required considerable resources and time to ensure that the allegations were properly considered and investigated.

Operation A, which was about certain operations of the Risdon Prison Complex, identified systemic and persistent breaches of many policies relating to procurement, stock control, interaction with inmates, declarations of gifts and use of information technology. In referring the report of the investigation to the Secretary of the Department, the Board of the Integrity Commission made a number of recommendations to address the causes of these breaches. The Secretary accepted the recommendations.

Operation B was also complex, primarily because the behaviour of the subject officer had been ongoing for at least 10 years. The complaint alleged that a manager in a remote location had falsified claims for travel and related allowances. While each claim itself was not significant, the aggregation of the suspect claims totalled thousands of dollars. The subject officer resigned shortly after becoming aware of the Commission's investigation. The principal causes of this situation were a lack of integrity and honesty on the part of the manager and systemic failures in the governance of the manager's activities. In referring the report of the investigation to the Secretary of the Department, the Board made a number of recommendations to address the failures in governance. The Secretary accepted the recommendations.

The Integrity Commission's objectives

The Integrity Commission was established by the *Integrity Commission Act 2009* (the Act) and commenced operation on 1 October 2010.

The objectives of the Commission, as set out in s 3(2) of the Act, are that it is to:

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

Basis for the report

Under s 11(3) of the Act, the Commission may, at any time, lay before each House of Parliament a report on any matter arising in connection with the performance of its functions or exercise of its powers.

This report describes some of the investigative work of the Commission: one assessment and two investigations finalised in 2012/13.

These three matters offer useful examples of the ways in which misconduct matters come to the Commission, how such cases are dealt with and how the Commission can assist public sector agencies to deal with misconduct that has occurred and improve practices and systems to reduce the risk of misconduct occurring again.

Each of the matters described in the report involved officers employed in areas of the Department of Justice. That does not mean that the Department is more or less prone to misconduct than other departments. Partly it reflects the Department's willingness to engage with the Commission to help it deal with misconduct more effectively; two of the matters described were initiated by the Department making a complaint to the Commission.

The Commission's investigative function

Under the Act, the Commission can deal with a complaint of misconduct in a number of ways.

The Commission can:

- dismiss a complaint;
- refer a complaint to an appropriate person for action;
- assess a complaint; or
- recommend to the Board of the Commission that the Board recommend the Premier establish a Commission of Inquiry.

The Commission does not deal directly with most of the complaints it receives. Generally a complaint is either referred to an appropriate person for action or dismissed. Referral of a complaint is consistent with the intent of the Act, which specifically requires the Commission to perform its functions and exercise its powers in such a way as to improve the capacity of

public authorities to prevent and respond to cases of misconduct and not duplicate or interfere with work that it considers has been undertaken or is being undertaken by a public authority (s 9(1)(c) and (g) of the Act).

If the Commission refers a complaint to another person to deal with, it can require the person to provide a report back to the Commission about what action the person intends to take or monitor or audit any action taken.

The Act sets out the grounds on which a complaint can be dismissed.

The Commission reserves its investigative capacity for those complaints or allegations of misconduct which are:

- indicative of systemic problems;
- not capable of being appropriately dealt with elsewhere; or
- of significant public interest.

If the Commission decides to deal directly with a complaint, the first step is an assessment. Once appointed, an assessor can use all of the coercive powers available within the Act to conduct an investigation. At the end of the assessment of a complaint, the CEO can:

- dismiss the complaint;
- refer it for appropriate action to the principal officer of an agency, an integrity entity, the Commissioner of Police or another appropriate person; or
- decide that the Commission should investigate the complaint.

The other way that an investigation can be commenced is by the Board of the Integrity Commission determining to conduct an own motion investigation (s 45(1) of the Act).

The Act provides that an investigation is to be conducted in private unless otherwise authorised by the CEO. A circumstance when an investigation might not be conducted in private could be an own motion investigation into policies, practices and procedures (s 45(1)(d) or s 89(1)(c)). Investigations into allegations of misconduct are invariably conducted in private.

If the CEO decides to conduct an investigation, an investigator is appointed. During an investigation an investigator has a wide range of coercive powers available, including:

- issuing notices to produce information under s 47(1)(c) of the Act;
- issuing notices to attend and give evidence under s 47(1)(b);
- entering the premises of a public authority without the need for consent or a warrant under s 50 (or private premises with a warrant under s 51) to search, take possession of records and other things, require persons on the premises to answer questions etc; and
- in the case of a complaint of serious misconduct– obtaining a warrant to use a surveillance device.

Interviews under notice are recorded and transcribed. The Commission has a sophisticated case management system and practices and procedures for receiving and dealing with evidence.

An investigator is required to observe the rules of procedural fairness in conducting an investigation. In practice, this can occur by the investigator putting allegations and assertions to the subject officer during an interview and seeking their response and by making the investigation report (or part thereof), or the findings of the investigation, available to the subject officer for comment.

The investigator provides a report to the CEO who in turn reports to the Board. The CEO can make a draft of that report available to the principal officer of the agency concerned, the subject officer or any other person with a special interest. Any submissions or comments received from those persons (or a fair summary thereof) are then provided to the Board to consider along with the report of the investigation.

The outcome of the investigation is a matter for the Board. The Board can:

- dismiss the complaint;
- refer it for action to the principal officer of an agency, an integrity entity, the Commissioner of Police or the DPP, the responsible Minister or another appropriate person;
- recommend to the Premier that a commission of inquiry be established;
- decide that further investigation be conducted; or
- convene an Integrity Tribunal.

It is important to note that neither an investigator, the CEO nor the Board can make a finding that misconduct has occurred. Only an Integrity Tribunal can make such a finding. However, investigators can and do make findings of fact.

Similarly, only an Integrity Tribunal can make a recommendation that any particular sanction should be imposed in relation to a matter.

In practice, the Board would make an observation to a principal officer that it was 'open to conclude on the evidence that a person had engaged in misconduct'. It is a matter for the principal officer to decide what to do with an employee who may have engaged in misconduct. For example, under Employment Direction 5 which applies to *State Service Act 2000* employees, it is a matter for a head of agency to determine whether or not to take action for a breach of the code of conduct:

7.1 Should a Head of Agency have reasonable grounds to believe that a breach of the Code [State Service Code of Conduct] may have occurred, the Head of the Agency must appoint in writing a person (the Investigator) to investigate the alleged breach of the Code (in accordance with the procedures in the Direction).

An Assessment

In July 2012, the Department of Justice notified the Commission of an internal investigation then being undertaken by the Department into allegations about an officer who, it was suspected, had acted inappropriately towards a client of the service in which the officer was employed – in particular by having contact with the client outside of a work context. The allegations had been made by the client.

The results of the internal investigation to that point had been inconclusive and the allegations had been denied by the officer. During the internal investigation, the officer produced a statutory declaration, provided by the officer's partner, stating that the officer had been with the partner at a time relevant to the client's allegation. The effect of the statutory declaration was that it provided an alibi for the officer.

Confronted with the statutory declaration, the Department had been unable to take the investigation any further as it had no means of gathering evidence to refute the officer's denials.

In July 2012, the Department made a formal complaint which allowed the Commission to proceed and an assessment was commenced.

The Commission issued a notice to produce records, to the financial institutions of the subject officer and the officer's partner. This resulted in production to the Commission of evidence of EFTPOS transactions placing the subject officer in the location, on the date and at the time, alleged by the client.

The subject officer was interviewed by the Commission and, when confronted with the evidence of the transactions, admitted to having previously lied about the matter – particularly in the course of the Department's internal investigation. The officer stated that the story about being in the partner's presence had been fabricated because the officer was scared, as persons in the officer's position 'aren't meant to do that'. The officer admitted asking the partner to provide a false statutory declaration.

The officer's partner was also interviewed by the Commission. The partner admitted to making the false statutory declaration.

The Commission concluded its assessment and determined that the complaint should be referred back to the Department for further action.

With the information provided in the Commission's assessment the Department was able to finalise its internal investigation and the officer's employment was terminated.

The Commission forwarded the evidence of the false statutory declaration to Tasmania Police. Tasmania Police advised that it had decided not to take any action in relation to that matter.

Comment

This matter shows how the Commission assists public authorities in their management of misconduct matters.

Two Investigations

Operation A

Operation A was an investigation conducted by the Integrity Commission into aspects of the operation and management of the Store and Canteen areas of the Risdon Prison Complex between approximately 2008/9 and 2010/11.

The Commission's investigation was preceded by an internal audit performed by an externally contracted auditor commissioned by the Department of Justice. The audit had identified conduct that, if substantiated:

- represented '... a very serious and systemic breach of ... policies, processes and expected conduct' and
- 'exposed the Department and Tasmanian Prison Service to significant reputational and financial risks'.

The Commission was notified of the Department's decision to undertake an audit in August 2011.

Because the matter had not been referred as a complaint, the Commission did not at that time have jurisdiction to take any investigative step, but the Commission did offer guidance to the Department as the audit proceeded.

The Department formally made a complaint to the Commission in November 2011. The Commission assessed the complaint and, in February 2012, determined to conduct an investigation.

The investigation continued throughout 2012. In the course of its investigation, the Commission:

- conducted 43 interviews (public officers and others) – three of these interviews were conducted pursuant to notices to attend;
- issued 21 notices to produce information, to public and private entities;
- sought assistance from Tasmania Police, with two experienced police investigators being made available to work on the investigation for six months; and
- engaged a forensic financial accountant with the cooperation of the (then) Office of Police Integrity (Victoria).

Findings

The audit conducted for the Department uncovered an unsatisfactory state of affairs in the store and canteen areas, but had not explored how that came to be, the level of responsibility or culpability of individuals or where and why systems failures had occurred. There also remained a question of possible criminal activity.

The Commission's investigation identified systemic and persistent breaches of many policies relating to procurement, stock control, interaction with inmates, declarations of gifts and use of information technology. Staff responsible for supervising these areas of the prison had failed to do so adequately.

The investigation did not find evidence clearly indicating that criminal offences had been committed, but the conduct that had been allowed to occur had left these areas of the prison significantly exposed to the risk of criminal conduct.

Critical deficiencies in procurement and management of stock inventory in the canteen reflecting widespread and longstanding non-compliance with policy and procedure

Procurement

The audit found that over a three year period to 2011, \$2 million worth of stock had been sourced from two related suppliers without regard to, or compliance with, the relevant procurement policies. In particular, there had been no competitive approach to the market for the supply of those goods and no formal contracts were entered into.

This situation arose gradually over time. A supplier had initially been providing a limited range of items to the prison canteen. Commencing in 2005, the supplier was asked to supply additional items. Soon the single product grew to a number of lines and the supplier formed a new business entity to supply the additional items. The person behind the new entity formed an association with the staff member responsible for purchasing items for the canteen. That staff member had no training or relevant experience in procurement, and relied on the supplier to source stock, informing the supplier of the price the prison was currently paying for an item, and leaving it to the supplier to find stock and sell it into the prison. The supplier would take the staff member to trade shows where the officer received gifts and other benefits from trade suppliers. The supplier also purchased private items for the staff member (to be repaid later).

While there was no evidence that the relationship between the staff member and the supplier included criminal conduct, the supplier had taken advantage of, and made a profit from, a situation where there was little control, oversight or appropriate purchasing practice. The supplier was dealing with a person who had no training or experience in the duties that they were required to perform, nor adequate supervision.

Stock control

Prison staff responsible for procurement failed to use (or did not make proper use of) the applicable ordering system. This led to over-ordering of stock and payments to the supplier for goods not delivered. Contrary to applicable policy, value for money was not realised.

In addition to over-ordering, substantial quantities of goods were written-off in non-compliance with applicable policies.

Stocktakes were not undertaken as required by the applicable policy. Significant shortages were found when stocktakes were carried out (2006 – 2011) but none of the responsible prison staff took action to identify or correct problems.

There was inadequate supervision of the staff in the canteen to ensure that they followed applicable practices and procedures.

Finally, in 2011/12, the Department of Justice placed the Prison Canteen on its internal audit program. It was the result of this audit that led the Department to complain to the Integrity Commission.

Inappropriate practices involving prison inmates, including inappropriate use of inmate labour and the conduct of inappropriate relationships between prison staff and inmates

Contrary to policy, inmates were permitted to handle canteen stock on their own account and on behalf of other inmates. This practice gave rise to a risk that inmates could acquire extra items or tamper with consumables for other inmates.

A member of the prison staff permitted inmates to use computer facilities, access the Internet and to make unauthorised telephone calls. This was contrary to the applicable policy.

The staff member made unauthorised purchases for inmates (which they paid for by transferring money). The staff member also allowed the inmates to have access to goods which were contraband in the prison, in particular protein powder.

Another member of the prison staff received gifts from prisoners which were not declared.

Inappropriate practices within the administration of the Risdon Prison

Computer usernames and passwords were 'shared' by some prison staff, with the effect that transactions were inaccurately recorded. For instance, some transactions were recorded as being made by staff members who were on leave. One staff member left his logon details written on a sticky note by his computer. Such practices posed obvious and significant integrity risks.

Other inappropriate practices included not requiring a requisition when goods were issued out of the store and the evidence pointed to a workplace culture where canteen stock was routinely removed for personal use and other unauthorised purposes by members of the prison staff. The supply of goods to staff was 'covered up' by goods being written up as out of date or damaged stock.

Conflict of interest, including failure to declare receipt of gifts and benefits

As noted, one member of the prison staff had a practice of attending trade shows with a supplier during work hours. The staff member received goods, gifts and benefits from different providers at these shows. The gifts and benefits included a Sony PlayStation Portable, tickets to a corporate box at an AFL match in Launceston, a Coles/Myer gift voucher, a golf putter and payment of match fees for golf days. None of these gifts or benefits was disclosed, contrary to the applicable policy.

Despite claiming to have no knowledge of the applicable policy, the staff member admitted that acceptance of such gifts and benefits shouldn't have occurred.

This officer's supervisor knew of the receipt of some of these gifts and benefits but did not require that they be declared. The supervisor claimed to have no knowledge of the applicable policy in relation to declaring gifts.

Conclusion

The Commission's investigation highlighted numerous and repeated breaches of policy and inappropriate and improper conduct by certain prison staff.

However, it was evident that the staff members concerned had received little, if any, training specific to their duties. In some instances, the evidence suggested that staff considered there to be nothing inappropriate in conduct that was otherwise clearly contrary to policy. Certain staff were ill-equipped and unqualified for their tasks. Moreover, the failure to comply with the applicable processes ought to have been easily-identifiable by supervisors and managers, yet there had been no meaningful attempt by the more senior prison personnel responsible to deal with the issues.

The Board of the Integrity Commission resolved to refer the investigator's report to the Secretary of the Department of Justice with its determination about what could be concluded on the evidence in relation to misconduct by certain prison staff.

The Board also made the following recommendations to the Secretary:

- a) The Department of Justice should establish an implementation register for recommendations from internal and external auditors which should be reviewed by the Executive of the Department regularly. That register should contain information on when and how recommendations were implemented and what evaluation processes will be used to test the effectiveness of the implemented recommendations.
- b) The Department should establish minimum qualifications or training requirements for all staff undertaking procurement activities and should establish systems to ensure that only staff with the required training or qualifications undertake procurement.
- c) The Department should establish a system for recording the training and/or qualifications held by staff.
- d) The Department should take immediate steps to ensure that all staff are made aware of the requirements in relation to the receipt of gifts and benefits over and above placing information on the Intranet.
- e) All Tasmanian Prison Service Director's Standing Orders should be reviewed so that they are appropriate, adequate and capable of being complied with. Adequate steps need to be taken to ensure that all staff to whom the Standing Orders apply are informed about them.
- f) A Director's Standing Order (or other appropriate guideline) on the use of inmate labour should be prepared.
- g) The Department should take steps to ensure that managers have primary responsibility for making their staff aware of the policies/guidelines/procedures with which they must comply.

The Board required the Secretary to provide a report on progress on the implementation of the recommendations and on any further implementation of the recommendations arising from the internal audit within three months of the date of the notification.

The Secretary accepted recommendations a), b), d), e), f) and g) without qualification and recommendation c) in principle. The Secretary advised that the Government was currently examining its human resource management system requirements. The solution identified could include a capacity to record training and qualifications, in which case the Department of Justice would be able to fully implement the recommendation. His preference was to await the outcome of this process, as it would produce the most cost effective outcome.

Comment

The Commission is able to acquire co-opted assistance (e.g. from Tasmania Police and other agencies) to conduct its investigations.

The Commission's investigations enable it to determine the underlying cause of misconduct so improvements can be made to prevent future or repeated incidents.

Operation B

Operation B involved the investigation of an anonymous complaint to the Integrity Commission about the manager of a government sub-agency, administered by the Department of Justice, operating in a remote location.

Received in May 2012, the anonymous complaint alleged that the manager had, for over a decade, falsified claims for allowances and reimbursement of expenses for travel associated with the manager's work. It was alleged that the manager had exaggerated travel claims and had submitted false documentation in support of those claims. As a consequence, the manager had been paid allowances and reimbursements to which the Manager was not entitled.

The Commission assessed the complaint and, in July 2012, determined to conduct an investigation. The final investigation report was concluded in May 2013. In the course of its investigation, the Commission:

- conducted interviews with seven persons (public officers and others), some on more than one occasion, two interviews were conducted pursuant to a notice to attend;
- issued nine notices to produce information to public and private entities;
- entered the premises of the agency and seized documents and information technology equipment; and
- conducted surveillance of the manager over a period of approximately two months.

Findings

False claims for travel were made over a period of years

Analysis of the manager's travel claims revealed evidence contradicting 50 separate claims lodged between 2001 and 2012. The 50 claims involved a total sum in excess of \$10,000. An additional 26 claims, involving over \$4,600 appeared to involve the same *modus*

operandi, but insufficient evidence existed to determine their legitimacy and, for this reason, those claims remain suspect.

To illustrate the conduct involved, in May 2002 the manager submitted a travel claim for a two-night stay in Hobart. The claim contained a detailed certification of the travel arrangements, including references to the manager's attendance at meetings. The claim totalled \$283.80.

Contrary to the claim, the logbook for the manager's office vehicle revealed no travel for the relevant period and mobile telephone records and other evidence indicated that the manager was, in fact, vacationing interstate.

When interviewed about the claim, the manager was unable to explain the apparent anomalies.

A more recent illustration was the manager's submission of a claim seeking reimbursement of expenses and payment of allowances for travel undertaken in 2012. The claim totalled \$242.95 and contained a detailed account of the manager's purported business travel and activities, including certification that the manager had stayed overnight at a particular location in the north of the State.

Evidence gathered by the Commission demonstrated the manager's actual activities bore little relation to the travel claim and suggested that the manager had been engaged in personal activities.

When interviewed about the incident, the manager admitted having stayed overnight at a hotel other than that identified in the travel claim. The manager acknowledged the travel claim was 'clearly wrong' and suggested it was based on a mistaken recollection.

These two examples are provided as they indicate that the false claims formed part of a course of conduct over a period of years.

Inappropriate use of government vehicles, failure to keep records, improper use of work time

Apart from evidence contradicting the travel claims, the Commission's investigation revealed evidence that the manager had failed to comply with departmental policies in relation to the use of government vehicles, including a failure to keep proper records. Evidence also showed the manager had also failed to accurately record work hours and routinely attended to personal interests during work time.

Conclusion

The manager became aware of the Commission's investigation in the latter part of 2012 and resigned very shortly thereafter. In light of that resignation, no basis exists for disciplinary action.

The behaviour exposed during Operation B, which had gone largely unchallenged for over a decade, appeared to have two broad causes:

- a lack of integrity and honesty on the part of the manager; and
- systemic failures in the governance of the manager's activities.

Despite the fact that the manager had taken some steps to minimise the risk of detection, much of the conduct was not especially sophisticated, was documented and could have been identified and dealt with through more effective supervision and appropriate risk identification and management.

Particularly evident from this investigation was the adverse consequences that can arise from one individual's conduct. For a small office, these consequences included:

- the financial cost of the payment of travel allowances to which the person was not entitled and of the misuse of the office motor vehicle and the officer's time;
- the potential damage to the reputation of the agency, particularly in relation to industry stakeholders with which it is associated; and
- a lack of respect and poor morale in the workplace stemming from staff awareness of the manager's conduct. This was exacerbated by the staff's belief that 'head office' was not interested in dealing with the conduct.

Outcome

In May 2013, the Board of the Integrity Commission resolved to refer the investigator's report to the Secretary of the Department of Justice with its determination in relation to any misconduct by the subject officer.

The Board also made the following recommendations to the Secretary.

The Department of Justice should:

- a) review its arrangements for the support and supervision of staff in remote locations – in particular in relation to approval of travel; working hours; use of government resources (such as motor vehicles) and use of government credit cards;
- b) review the governance arrangements of the agency concerned to provide clarity in respect of its functions and responsibilities particularly in respect of the work of staff employed to support that agency;
- c) give consideration to implementing audits of travel claims by staff;
- d) take steps to ensure that its procedures for responding to and dealing with complaints from staff about managers and supervisors are highly visible, available to and reinforced to staff; and
- e) take steps to foster a greater focus on, and understanding of, ethical behaviour in the Department.

The Board required the Secretary to provide a report on progress in implementing the recommendations within three months of the date of the notification.

The Secretary accepted all of the recommendations without qualification.

The Board also referred the investigator's report to Tasmania Police and another interested entity.

Comment

The Commission has a wide range of powers to effectively gain the information needed for its investigations.

One complaint can result in significant investigative effort with very useful results.