

SUBMISSION OF THE INTEGRITY COMMISSION

October 2013

The three year review of the
functions, powers and
operations of the Integrity
Commission - Volume 2



The objectives of the Integrity Commission are to –

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

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ABBREVIATIONS AND ACRONYMS

ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity, Cwth
CCC	Crime and Corruption Commission, WA
CMC	Crime and Misconduct Commission, Qld
CEO	Chief Executive Officer, Integrity Commission
CMS	Case Management System, <i>Investigator</i>
DHHS	Department of Health and Human Services
DPAC	Department of Premier and Cabinet
DPEM	Department of Police and Emergency Management
DPO	Designated Public Officer, s 6 of the Act
DPP	Director of Public Prosecutions, Tasmania
ERG	Ethical Reference Groups
GBE	Government Business Enterprise
IBAC	Independent Broad-Based Anti-corruption Commission, Victoria
ICAC	Independent Commission Against Corruption, NSW
JSC	Parliamentary Joint Standing Committee on Integrity, Tasmania
LGAT	Local Government Association of Tasmania
MPER	Misconduct Prevention Education and Research
OPI	(Former) Office of Police Integrity, Victoria
PIC	Police Integrity Commission, NSW

APPENDIX 1

Extract from Report of the Board to the JSC, s 13(c)

Identified technical issues, Integrity Commission Act 2009

Identified technical issues, *Integrity Commission Act 2009*

	Section	Content	Technical issue	Recommendation
1	S 4(1)	<p>'premises of a public authority' means premises at which the business or operations of the public authority are conducted'</p> <p>[and see s 50 and s 72]</p>	<p>premises of a public authority is used in s 50(1) in relation to an investigator's power to enter premises and in s 72(1) in relation to an inquiry officer's power to enter premises.</p> <p>Premises as defined in the <i>Search Warrants Act 1997</i> specifically refer to 'a place <u>and a conveyance</u>'.</p> <p>The failure of the Act to include in the definition of 'premises of a public authority' any reference to a vehicle, makes it uncertain whether a conveyance (vehicle) owned, leased or used by a public authority could be entered under s 50 or s 72. Business records, for example vehicle log books, can be held in a vehicle, and some public officers will use their agencies vehicle like an office – for example field officers.</p>	Amend the definition of premises of a public authority , s 4(1) to be consistent with the <i>Search Warrants Act 1997</i> , such that a conveyance (vehicle) owned, leased or used by a public authority could be entered under s 50 or s 72.
2	s 16(3)	Delegations by the Board – ' <u>Section 23AA(2), (3), (4), (5) and (8) of the Acts Interpretation Act 1931</u> apply to a delegation made under <u>subsection (1)</u> '	The reference to particular sections of the power to delegate in the <i>Acts Interpretation Act 1931</i> , provides uncertainty as to whether other sections of the <i>Acts Interpretation Act 1931</i> in relation to delegations apply – eg s 23AA(1), (6) and (7). It is not clear why only the sections referred to would be applicable. For example, s 23AA(6) of the <i>Acts Interpretation Act</i> permits a delegator to exercise a function or power notwithstanding the delegation. Currently the wording of s 16(3) of the Act makes it uncertain whether a delegator can rely on s 23AA(6).	Amend s 16 to make it clear that all of s23AA of the <i>Acts Interpretation Act 1931</i> applies.
3	S 21	<p>Authorised persons</p> <p>(1) The chief executive officer may make arrangements with the principal officer of any public authority for a public officer of that authority to be made available <u>to undertake work</u> on behalf of</p>	The Commission has used s 21 Authorisations for a number of personnel undertaking work for the Commission, both within and outside of Tasmania. Initially it was thought that Authorisations should be made for Department of Justice IT staff and Supreme Court transcription staff, both of whom provide a service to the Commission [IT staff under a Service Level Agreement, and transcription staff on a fee for service	Amend s 21(1) and (2) so that persons undertaking any work for the Commission, irrespective of whether they are exercising a power or function, can be Authorised.

	<p>the Integrity Commission.</p> <p>(2) If a person is to be made available under subsection (1), <u>the chief executive officer is to, by written notice, authorise the person to perform the functions or exercise the powers</u> under this Act that are specified in the notice.</p> <p>(3) An arrangement made under subsection (1) may allow the authorised person to remain an employee of the public authority, but to report to the chief executive officer or other person nominated by the chief executive officer in relation to the work being undertaken on behalf of the Integrity Commission.</p> <p>(4) At the request of the chief executive officer, the Commissioner of Police is to make available, in accordance with an agreement referred to in subsection (10), police officers to undertake <u>investigations and assist with inquiries</u> on behalf of the Integrity Commission.</p> <p>(5) The chief executive officer may make arrangements with a law enforcement authority (however described) of the Commonwealth or another State or a Territory for officers or employees of that authority to be made available <u>to undertake investigations and assist with inquiries</u> on behalf of the Integrity Commission.</p> <p>(6) If a person is to be made available under subsection (4) or (5), the chief executive officer is to, by written notice, authorise the person to perform the functions or exercise the powers of an investigator or inquiry officer under this Act.</p> <p>(7) While undertaking work on behalf of</p>	<p>basis]. Both IT and transcription staff have access to confidential material created or used by the Commission.</p> <p>The Department of Justice and the Commission have received advice that an Authorisation under s 21 can only be for the exercise of the Commission's functions or powers and that transcription of recordings or proceedings or the maintenance of the Commission's computer network is not in the performance or exercise of any statutory power or function.</p> <p>The issue that arises is the inability of the Commission to ensure that administrative work undertaken by persons who are not designated officers and employees [see s 20] and which supports the functions or powers of the Commission are not adequately able to retain appropriate confidentiality given the sensitive nature of the work undertaken. Section 21(1) refers to 'work' but s 21(2) effectively means the work is restricted to work undertaken by a person performing or exercising powers or functions of the Commission.</p> <p>Other jurisdictions have overcome this issue by requiring those undertaking work for the agency to swear an oath, which binds the person to the confidentiality obligations under the particular act.</p> <p>This should be read in conjunction with the limitations under s 94 & 95.</p> <p>See for example: S 35, 36 & 37 of the <i>Independent Broad-Based Anti-Corruption Act 2011</i> (Vic)</p> <hr/> <p>Section 21(4) and (5) limits the arrangements with either the Commissioner of Police or a law enforcement authority to complaints which are in investigation or before an Integrity Tribunal. This means that a s 21 Authorisation cannot be made under s 21(4) or (5) if a complaint is in the assessment phase nor if there is an own motion investigation pursuant to</p>	<hr/> <p>Amend s 21(4) and (5) so that arrangements can be made with the Commissioner of Police or a law enforcement authority (in and outside of Tasmania) for officers or employees to be made available irrespective of whether the complaint is in assessment, or an own motion investigation, or an investigation, or an inquiry.</p>
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		<p>the Integrity Commission, an authorised person who is a police officer continues to have the functions and powers of a police officer but reports to the chief executive officer, or other person nominated by the chief executive officer, in relation to the work being undertaken on behalf of the Integrity Commission.</p> <p>(8) Nothing in this section or the <i>Police Service Act 2003</i> requires a police officer who is made available under <u>subsection (4)</u> to report to, provide information to or take direction from the Commissioner of Police or any senior officer within the meaning of that Act.</p> <p>(9) The Commissioner of Police is to appoint, with or without restrictions, as a special constable any person made available under <u>subsection (5)</u> unless the Commissioner of Police lodges a written objection with the Chief Commissioner stating the grounds of the objection.</p> <p>(10) The Commissioner of Police and the chief executive officer are to enter into a written agreement concerning the provision of police officers to undertake investigations and assist with inquiries on behalf of the Integrity Commission.</p>	<p>s45 or 89.</p> <p>While s 21(1) might be used by 'making arrangements', it does not have the same force as s 21(4), which is directory to the Commissioner of Police and further, is limited to public authorities within Tasmania, so cannot be used in place of s 21(5).</p> <p>This is contrasted to interstate integrity entities who are not so limited, for example –</p> <ul style="list-style-type: none"> ○ Ability to engage persons or bodies to perform services – s 17, <i>Police Integrity Act 2008</i> (Vic) ○ Ability to second or otherwise engage persons to assist the Commission – s181, <i>Corruption and Crime Commission Act 2003</i> (WA) ○ Ability to second persons – s 255 <i>Crime and Misconduct Act 2001</i> 	
4	S 26	<p>Report to Parliament</p> <p>(1) By 30 November in each year the Joint Committee is to make a report of its proceedings under this Act and cause a copy of the report to be laid before both Houses of Parliament.</p> <p>(2) If the Joint Committee is unable to</p>	<p>The Act requires the JSC to report under the Act by 30 November each year. However, by s 11, the Commission is required to report on or before 31 October each year. The Commission's report is also a report under s 36 of the <i>State Service Act 2000</i>, so it is unlikely to be laid before Parliament much before that date. The one month turn-around is insufficient for the Committee to properly consider the Commission report (and any other report from an integrity</p>	<p>Amend either or both s 11 and s 26 so that there is sufficient time for the JSC to consider the report of each integrity entity before having to prepare its own report.</p>

		<p>comply with subsection (1) because a House of Parliament is not sitting on 30 November in any year, the Joint Committee is to on or before that day, provide a copy of the report to the Clerk of the Legislative Council and the Clerk of the House of Assembly.</p> <p>(3) Upon presentation to the Clerk of the Legislative Council and the Clerk of the House of Assembly the report is taken to have been laid before each House of Parliament and ordered to be printed.</p> <p>(4) The Clerk of the Legislative Council and the Clerk of the House of Assembly are to cause a copy of the report to be laid before each House of Parliament within the first 3 sitting-days after receipt of the report.</p>	<p>entity) and then prepare its own. Amending this section to a later date (say, by 30 March in the following year) will permit the JSC to report in a more fulsome manner.</p>	
5	S 30 (a)	<p>The chief executive officer is to –</p> <p>(a) monitor the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament; and</p> <p>(b) ...</p>	<p>The Parliamentary disclosure of interests register is prescribed under Part 4 of the <i>Parliamentary (Disclosure of Interests) Act 1996</i>. The form of the register itself is the returns (both primary and ordinary) lodged by Members within the previous 8 years, filed in alphabetical order. Effectively it would appear that the obligation under the Act to monitor is an obligation to monitor the primary and ordinary returns of Members and the actual declarations of interest rather than the registers themselves.</p> <p>'Monitor' is not defined in the Act, and in the absence of any other legislative mandate, the Commission is merely limited to observing critically whether the returns and other declarations comply with prescribed forms. Currently there is no mandate for the Commission to make any recommendations or to effect greater transparency if that is required.</p>	<p>Amend s 30(a) so that the actual returns and declarations are monitored rather than just the register itself, and to enable the CEO to make recommendations to either or both the individual Members and to the Clerk of each House of Parliament.</p>
6	S 32	<p>Public officers to be given education and training relating to ethical conduct</p> <p>(1) The principal officer of a public</p>	<p>Although the Act directs public authorities to given appropriate education and training on ethical conduct to public officers, there are no provisions requiring a public authority to report on</p>	<p>Amend s 32 to require public authorities to report each year on education and training in relation to ethical conduct.</p>

		<p>authority is to ensure that public officers of the public authority are given appropriate education and training relating to ethical conduct.</p> <p>(2) In particular, the education and training must relate to –</p> <p>(a) the operation of this Act and any Act that relates to the conduct of the public officer; and</p> <p>(b) the application of ethical principles and obligations to public officers; and</p> <p>(c) the content of any code of conduct that applies to the public authority; and</p> <p>(d) the rights and obligations of public officers in relation to contraventions of any code of conduct that applies to public officers.</p>	<p>whether this obligation is being undertaken. This is in direct contrast to other obligations on public authorities pursuant to legislation or Employer/Ministerial directions (noting that Employer/Ministerial directions may not apply to all public authorities as defined by the Act).</p> <p>See for example:</p> <p><i>Right to Information Act 2009</i> s 53 – Reporting</p> <p><i>Public Interest Disclosures Act 2006</i> s 86 – Annual reports by public body</p> <p>Employment Direction No 28 – Family Violence – Workplace arrangements and requirements. Reports to SSMO each year.</p>	
7	S 35(1)(d) & s 38(1)	<p>‘Recommend to the Board that the Board recommend to the Premier that a commission of inquiry be established under the <u>Commissions of Inquiry Act 1995</u> in relation to the matter’</p> <hr/> <p>S 38(1)</p> <p>Actions of chief executive officer on receipt of assessment</p> <p>(1) On receipt of a report from an assessor prepared under <u>section 37</u>, the chief executive officer is to make a determination –</p> <p>....</p>	<p>The recommendation to the Board that there be a Commission of Inquiry can occur on receipt of a complaint (refer also to s 57(3) which was inserted in the last miscellaneous amendment to enable the Board to receive a recommendation under s 35(1)(d)), but if a complaint is accepted for assessment under s 35(1)(b), a recommendation to the Board about a commission of inquiry can only occur after the complaint has been assessed and then investigated. There is no apparent ability to recommend a commission of inquiry other than on immediate receipt and consideration of a complaint under s 35, or following a final investigation. However information may be uncovered during an assessment which would indicate that a Commission of Inquiry be immediately recommended to the Board.</p>	<p>Amend the Act so that the CEO can recommend to the Board that a commission of inquiry be established at any stage of the complaint process, rather than wait until completion of the process. This may involve consequential amendments to s35, 38, 57 and 58.</p>

8	S 35(2)	<p>'If the chief executive officer accepts a complaint for assessment, the chief executive officer is to appoint an assessor <u>to assess the complaint as to whether the complaint should be accepted for investigation</u>'</p>	<p>This appears inconsistent with and to limit the activities of the assessor when contrasted with s 37, where an assessor prepares a report with recommendations which include dismissal, referral or accepting for investigation. In making the recommendations to the CEO under s 37, the assessor is not confined to assessing a complaint to determine whether it should be investigated.</p>	<p>Amend s 35(2) to remove the inconsistency with s 37, and the limitation on an assessor to only assess a complaint for determination of accepting for investigation.</p>
9	S 35(1)(c) & s 38(1)(b) – (f) inclusive & ss 39 – 43 inclusive	<p>Referral of complaints</p> <p>S 35(1) On receipt of a complaint, the chief executive officer may –</p> <p>...</p> <p>(c) refer the complaint to an appropriate person for action; or</p> <p>...</p> <hr/> <p>S 38(1) On receipt of a report from an assessor prepared under section 37, the chief executive officer is to make a determination –</p> <p>...</p> <p>(b) to refer the complaint to which the report relates, any relevant material and the report to any relevant public authority with recommendations for investigation and action; or</p> <p>(c) to refer the complaint to which the report relates, any relevant material and the report to an appropriate integrity entity with recommendations for investigation and action; or</p> <p>(d) to refer the complaint to which the report relates, any relevant material and the report to an appropriate Parliamentary</p>	<p>The Commission is able to exercise its powers under Part 6 (ie the power to produce documents in s 47) when a complaint is retained for assessment or investigation. However, the Commission has formed the view, that once a complaint is referred to a person or other entity for action, the Commission exhausts its powers with respect to that complaint. This means that if action taken by the referred person/entity is inadequate, or uncovers other matters which should be investigated by the Commission, the Commission has no jurisdiction to deal with the complaint again.</p> <p>The Commission can seek progress reports, monitor or audit the referred complaint, but in doing so, cannot use its powers under Part 6. By way of example, in the past, the Commission has audited the investigation of a referred complaint, and made recommendations of further action which should occur, which recommendations include obtaining further evidence by the use of powers. However the Commission is reliant on the agency to make a new complaint, or must seek an own motion from the Board in order to enliven its jurisdiction again, all of which delays resolution of the complaint. It is preferable that the Commission retain jurisdiction throughout the referral, until resolution of the complaint.</p>	<p>Amend Part 5 and Part 6 so that the Commission retains jurisdiction over a complaint, even after referral to an appropriate person or entity for action, such jurisdiction to include the use of powers.</p>

		<p>integrity entity; or</p> <p>(e) to refer the complaint to which the report relates, any relevant material and the report to the Commissioner of Police with a recommendation for investigation; or</p> <p>(f) to refer the complaint to which the report relates, any relevant material and the report to any person who the chief executive officer considers appropriate for action; or</p>		
10	S 37(1)	<p>'On completion of an assessment <u>or review</u> of a complaint, the assessor is to prepare a report of his or her assessment and forward that report to the chief executive officer'</p>	<p>The reference to a 'review' by an assessor in s 37 is the only time a review is mentioned, in the context of an assessment of a complaint. It is confusing having regard to the use of the term 'review' in the definition of 'audit' in s 4(1), and the further use of the term 'review' in s 88(2)(a) which refers to the Commissioner of Police giving reasonable assistance to the Commission to undertake a review. Further, it is noted that s 35(2) confines the actions of the CEO to accepting a complaint for assessment and the appointment of an assessor to an assessment, both actions without reference to a 'review of a complaint'.</p>	<p>Amend s 35 to enable the CEO, on receipt of a complaint to 'review a complaint', and to appoint an assessor to 'review a complaint', or alternatively amend the reference to 'review' in s 37, and include a definition to reduce confusion as to an assessor's functions and powers.</p>
11	S 37(2)(e)	<p>'The report of the assessor is to recommend that the complaint –</p> <p>...</p> <p>(e) be referred to the Commissioner of Police for investigation if the assessor considers a crime or other offence may have been committed; or ...'</p>	<p>This section is inconsistent with s 38(1)(e) in that it appears to limit a recommendation by the assessor to refer a complaint to the Commissioner of Police to a situation where a crime or offence may have been committed.</p> <p>However, a referral to the Commissioner of Police may need to be recommended where a complaint involves a police officer, but no crime or other offence is apparent. The wording also appears inconsistent with the outcome of a referral under s 42.</p>	<p>Amend s37(2)(e) to enable a referral to the Commissioner of Police may also be recommended where a complaint involves a police officer, but no crime or other offence is apparent.</p>
12	S 38 (1) (b)(c)(d)(e) & (f)	<p>'to refer the complaint to which the report relates, any relevant material and <u>the report...</u>'</p>	<p>'The report' referred to is s 38 is the report prepared by an assessor under s 37. It is an internally generated document which frequently contains sensitive information. Providing a copy of the assessor's report may compromise the evidence referred to in the report, particularly if the misconduct is</p>	<p>Amend s 38 to make it clear that the CEO does not have to refer the assessor's report to the agency but, rather, is only required to refer material relevant to the misconduct allegations and the Commission's assessment of those</p>

			ongoing. The reference material provided by the Commission should be discretionary such that a copy of the actual written complaint, and the assessor's report can be withheld if deemed appropriate by the CEO. Accordingly only relevant material should be referred by the Commission.	allegations.
13	S 38(2)	'The chief executive officer <u>is to give</u> written notice of his or her determination under subsection (1) to the principal officer of any relevant public authority and may...'	<p>The CEO's determination under subsection (1) includes dismissal of a complaint, or that the Commission investigate the complaint. While the dismissal of a complaint may be information which assists a public authority to build capacity, written notification of a determination to investigate may prejudice or compromise the investigation, notwithstanding the ability to treat the notice as a confidential document. However the use of the word 'is' is directory, instead of enabling the CEO to use discretion.</p> <p>This section should be contrasted with s 44(2) where written notice of the determination to investigate is discretionary.</p>	Amend s 38 so that it is consistent with s 44 such that written notice of the CEO's determination is discretionary.
14	S 39(2)	<p>'If a complaint is referred to a relevant public authority under <u>section 38(1)(b)</u>, the chief executive officer is to notify the principal officer of that public authority in writing that the chief executive officer is to be informed of the outcome of the investigation, including any action taken, or to be taken, by the public authority.</p> <p>(2) The chief executive officer may also –</p> <p>(a) require the relevant public authority to provide <u>progress reports</u> on the investigation at such times as the chief executive officer considers necessary; <u>or</u></p> <p>(b) <u>monitor</u> the conduct of the investigation; <u>or</u></p> <p>(c) <u>audit</u> the investigation after it has been completed'</p>	<p>On referral the Commission is entitled to seek progress reports, or monitor the conduct of the investigation, or audit a completed investigation conducted by the public authority.</p> <p>'Audit' includes to examine, investigate, inspect and review [s 4(1)]. The use of the word 'or' may have the effect of restricting the Commission to one function after referral, however there are complaints where the Commission may require progress reports and monitor the investigation while it is ongoing, and also seek to audit the investigation once completed.</p> <p>Section 39(2) only enables the Commission to monitor the 'conduct of the investigation' – contrasted with s 42 and s 43 which enable the Commission to monitor the investigation, rather than the conduct.</p>	<p>Amend s39 so that the language is consistent with s 42 & 43, to enable the Commission to monitor the investigation rather than the 'conduct of the investigation'.</p> <p>In addition an amendment to s 39 should remove any possible limitations imposed by the use of the word 'or' on the actions of the CEO to only obtain progress reports or monitor or audit.</p>

15	S 42(2) & 43(2)	<p>The chief executive officer may also –</p> <p>(a) require the Commissioner of Police [or the person] to provide progress reports on the investigation at such times as the chief executive officer considers necessary; <u>or</u></p> <p>(b) monitor the investigation; <u>or</u></p> <p>(c) audit the investigation after it has been completed.</p>	<p>See previous point – the same issues with the use of the word 'or' arise, in that it may have the effect of restricting the power of the CEO to one function after referral, rather than a combination of actions from the referral.</p>	<p>See previous point – amend s 42 and 43 to remove any possible limitations imposed by the use of the word 'or' on the actions of the CEO.</p>
16	S 44(2)	<p>'If a determination to investigate a complaint is made, the chief executive officer may, if he or she considers it appropriate, give written notice to –</p> <p>(a) the principal officer of any relevant public authority; and</p> <p>(b) the complainant; and</p> <p>(c) any public officer who is the subject of the complaint –</p> <p><u>that an investigator has been appointed to investigate the complaint'</u></p>	<p>This section, although discretionary, appears unnecessary given the obligations (both directory and discretionary) under s 38(2) [noting the recommendations in relation to s 38].</p> <p>An investigator must be appointed under s 44(1) but it serves no purpose to advise that 'an investigator has been appointed to investigate the complaint', given that notification has been given of the determination to conduct an investigation. As per the observations regarding s 38, notice of a determination to move to an investigation should be discretionary, as there may be good reasons why the Commission's activities around a complaint should be kept confidential – particularly if the misconduct alleged is systemic or ongoing.</p>	<p>Amend s 44 so that it is consistent with s 38 and that any discretionary notice by the Commission about a determination is comprised of relevant material.</p>
17	S 46(1)(c) S 55(1)	<p>S 46 Procedure on investigation</p> <p>(1) Subject to this Act and any directions issued by the chief executive officer under subsection (4), an investigator –</p> <p>(a) may conduct an investigation in any lawful manner he or she considers appropriate; and</p> <p>(b) may obtain information from any persons in any lawful manner he or she considers appropriate; and</p>	<p>In conducting an investigation, an investigator and an assessor exercising the powers of an investigator pursuant to s 35(4), are required to observe the rules of procedural fairness. What is required to comply with this obligation will depend on the facts of each matter. However, the investigator/assessor must have observed the rules of procedural fairness by the time s/he reports on the findings to the chief executive officer. This means that where this is an adverse factual finding by the investigator/assessor, the person must have been given the opportunity to respond to the adverse material or finding. The time for doing this will generally be at the time the investigator/assessor is finalising the report of findings under s 55(1).</p>	<p>Amend s 46 with respect to the mandatory obligations to observe the rules of procedural fairness during the investigation/assessment stage of a complaint.</p>

		<p>(c) must observe the rules of procedural fairness; and</p> <p>(d) may make any investigations he or she considers appropriate.</p> <hr/> <p>55. Investigator's report</p> <p>(1) On completion of an investigation, the investigator is to prepare a report of his or her findings for the chief executive officer.</p> <p>(2) The chief executive officer is to submit a report of the investigation to the Board.</p>	<p>Where a person is being given an opportunity to respond, the investigator/assessor has no means of attaching confidentiality obligations over the information forwarded to a person for the purposes of procedural fairness.</p> <p>The obligation to observe the rules of procedural fairness at the investigator stage means that adverse factual material gathered by the Commission will be put to the relevant person. As soon as that is done, the opportunity to maintain a covert investigation is lost. This may compromise the ability of the Commission to gather further evidence, particularly if the Board makes a decision under s 58(2)(d) to require further investigation. In that event, any further adverse material or findings must again be put to the person concerned.</p> <p>The chief executive officer provides a person with further opportunity to comment, by reason of s 56, but a s 98 confidentiality notice can apply to the draft report, thereby maintaining confidentiality.</p> <p>The obligations for procedural fairness during the investigation/assessment stage can be contrasted with other integrity agencies.</p> <p>See for example:</p> <p><i>Law Enforcement Integrity Commissioner Act 2006</i> (Cwth) s 51 – Opportunity to be heard prior to publishing a report with a critical finding, but not if it will compromise the effectiveness of the investigation or action to be taken.</p> <p><i>Independent Commission Against Corruption Act 1988</i> (NSW) ss 30 – 39 Compulsory examinations and public inquiries. The Commission may, but is not required to advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed.</p> <p><i>Corruption and Crime Commission Act 2003</i> (WA) s 36 Person investigated can be advised of the outcome of the investigation, if amongst other things, the Commission considers that giving the information to the person is in the public interest; s 86 where the person who is subject to an adverse report is entitled to make representations before the</p>	
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			report is tabled.	
18	S 47	<p>'In conducting an investigation under section 46(1), the investigator, by written notice given to a person, may require or direct the person to do any or all of the following...'</p>	<p>A notice under s 47 is a coercive notice with significant implications for a person who is served with that notice. Whilst the Commission has developed internal procedures around the issue of coercive notices, it is considered that legislative amendment should occur such that the notices are issued by the CEO, rather than an investigator (who may or may not be an employee of the Commission). This seems to be a sensible safeguard of the use of significant powers, consistent with the issue of coercive notices in other integrity jurisdictions.</p> <p>See for example:</p> <p><i>Corruption and Crime Commission Act 2003</i> (WA) s95 ('The Commission')</p> <p><i>Crime and Misconduct Act 2001</i>(Qld) s72 (The chairperson)</p> <p><i>Law Enforcement Integrity Commissioner Act 2006</i> (Cwth) ('The Integrity Commissioner')</p>	<p>Amend s 47 so that notices are issued by the CEO consistent with s 50 where an authorisation must be from the CEO. Having s 47 notices issued by the CEO is consistent with the exercise of similar powers in other integrity jurisdictions.</p>
19	S 49	<p>'A person required or directed to give evidence or answer questions as part of an investigation may be represented by a legal practitioner <u>or other agent</u>'</p>	<p>The wording of s 49 fails to take into account that an agent (or a legal practitioner) representing the person under direction, may themselves be the subject of a complaint or investigation. The Commission has had direct experience where two people who were served with notices each requested representation by the same agent, who was implicated in the original complaint.</p> <p>Other integrity jurisdictions enable the agency to refuse representation by someone who is involved or otherwise compromised.</p> <p>See for example:</p> <p><i>Corruption and Crime Commission Act 2003</i> (WA) s142(4)</p> <p><i>Police Integrity Act 2008</i> s76(2)</p>	<p>Amend s 49 in line with other integrity entities, so the Commission can refuse representation by a particular person (whether as a legal practitioner or other agent) who is already involved or suspected of being involved in an investigation.</p>

20	S 51	<p>(1) For the purpose of conducting an investigation, an investigator may apply to a magistrate for a warrant to enter premises.</p> <p>(2) The magistrate may, on application made under this section, issue a search warrant to an investigator if the investigator satisfies the magistrate that there are reasonable grounds to suspect that material relevant to the investigation is located at the premises.</p> <p>(3) A search warrant authorises an investigator and any person assisting an investigator –</p> <p>(a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and</p> <p>(b) <u>to exercise the powers in section 52.</u></p> <p>(4) The warrant must state –</p> <p>(a) that the investigator and any person assisting the investigator may, with any necessary force, enter the premises and <u>exercise the investigator's powers under this Part;</u> and</p> <p>(b) the reason for which the warrant is issued; and</p> <p>(c) the hours when the premises may be entered; and</p> <p>(d) the date, within 28 days after the day of the warrant's issue, of the warrant's expiry.</p> <p>(5)</p> <p>(6) Except as provided in this section, the provisions in respect of search warrants under the <u>Search Warrants Act</u></p>	<p>Inconsistent language has been used between s 51(3)(b) and s 51(4)(a) as the powers under the Part are not limited to the powers of an investigator under s 52.</p> <p>And see:</p> <p><i>Search Warrants Act 1997 s6</i></p>	<p>Amend s 51 so that the powers authorised by a search warrant are consistent with those stated in the warrant.</p>
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		<u>1997</u> extend and apply to warrants issued under this section.		
21	S 52	<p>(1) An investigator or any person assisting an investigator who enters premises under this Part may exercise any or all of the following powers:</p> <p>...</p> <p>(j) to require or direct any person who is on the premises to do any of the following:</p> <p>(i) to state his or her full name, date of birth and address;</p> <p>(ii) to answer (orally or in writing) questions asked by the investigator relevant to the investigation;</p> <p>(iii) to produce any record, information, material or thing;</p> <p>(iv) to operate equipment or facilities on the premises for a purpose relevant to the investigation;</p> <p>...</p>	<p>Section 98 of the Act imposes obligations of confidentiality on persons to whom certain notices under the Act have been served (for example, notices under s 47). The obligations of confidentiality are a means of not only keeping a complaint confidential, but of protecting a person required or directed to respond to the Commission.</p> <p>The s 98 confidentiality provisions do not extend to persons on premises if those premises are entered under s 50 or s 51. Although a search of premises would usually be an overt stage of an investigation process, it can occur during a covert stage. Persons at the premises who are directed or required to respond to an investigator, or person assisting an investigator, should have the protections afforded by the confidentiality provisions of s 98.</p>	Amend s 52 so that the confidentiality provisions under s 98 will extend to persons on premises and afford them the protection associated with confidentiality if they are required or directed to respond to a Commission officer.
22	S 52(3)	<p>Powers of investigator while on premises</p> <p>...</p> <p>(3) If an investigator takes anything away from the premises, the investigator must <u>issue a receipt in a form approved by the</u></p>	The requirement to issue a receipt in a form approved by the Board seems inconsistent with Part 6 of the Act. For example during an investigation the power to enter premises under s 50 is only available with a written notice of authorisation from the chief executive officer and similarly, the chief executive officer must approve an application for use of a surveillance device under s 53.	Amend s 52 to be consistent with the remainder of Part 6, such that the form of a receipt is approved by the chief executive officer.

		<p><u>Board</u> and –</p> <p>(a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or</p> <p>(b) otherwise, leave it on the premises in an envelope addressed to the occupier.</p>	Furthermore, the form of a receipt is an operational matter, with such matters properly vested in the chief executive officer, in accordance with s 18 of the Act.	
23	S 52(4) [and s 51(4)(a)]	<p>52. Powers of investigator while on premises</p> <p>(4) An investigator and any assistants authorised to enter premises under a search warrant <u>may use such force as is reasonably necessary for the purpose of entering the premises and conducting the search.</u></p> <p>.....</p> <p>51. Search warrants</p> <p>(4) The warrant must state –</p> <p>(a) that the investigator and any person assisting the investigator may, <u>with any necessary force, enter the premises and exercise the investigator's powers under this Part;</u></p>	The wording of s 52(4) is inconsistent with s 51(4)(a), which on its face indicates that necessary force can be used to exercise powers under Part 6.	Amend s 52 with respect to the use of force so that the language of the force necessary and its purpose is consistent with the use of force in s 51 for the exercise of powers under Part 6.
24	S 53(1)	In the case of <u>a complaint</u> of serious misconduct, an investigator with the approval of the chief executive officer may apply for a warrant under Part 2 of the <i>Police Powers (Surveillance Devices) Act 2006</i> ...	A warrant can only be applied for if a complaint under s 33 has been received, which means that the Commission would be unable to apply for a warrant under s 53 if there was an own motion investigation, either under s 45 or s 89, even if the misconduct was serious.	Amend s 53 to enable a warrant to be applied for under Part 2 of the <i>Police Powers (Surveillance Devices) Act 2006</i> where there is a complaint, as well as an own motion investigation under s 45 or s 89, subject to the own motion investigation concerning serious misconduct.
25	S 53(2)	Division 3 of Part 5 of the <i>Police Powers (Surveillance Devices) Act 2006</i> applies to the Integrity Commission as if the Integrity Commission were a law enforcement	Section 53(2) of the Act makes the Commission's records in relation to surveillance devices warrants subject to inspection by the Ombudsman as if the Commission was a law enforcement agency under the Police Powers Act, but does not	The issue of appropriate amendments to s 53 and/or the <i>Police Powers (Surveillance Devices) Act 2006</i> was raised with the Department of Justice

		agency within the meaning of that Act.	impose any obligation on the Commission to maintain the same records as law enforcement agencies are required to do. The Commission, having consulted with the Ombudsman, has written to the Minister for Justice raising the issue. The same issue is replicated in s 75, which enables an application for a surveillance device during an inquiry.	for consideration in September 2012. Consider similar amendments to s 75.
26	S 54	<p>Offences relating to investigations</p> <p>(1) A person who, without reasonable excuse, fails to comply with a requirement or direction under <u>section 47</u> within 14 days of receiving it commits an offence.</p> <p>Penalty: Fine not exceeding 5 000 penalty units.</p> <p>(2) A person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to another person for or on account of that other person having given evidence to an investigator or produced or surrendered any record, information, material or thing to an investigator.</p> <p>Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.</p> <p>(3) A person must not obstruct or hinder an investigator or any person assisting an investigator in the performance of a function or the exercise of a power under <u>section 47</u>.</p> <p>Penalty: Fine not exceeding 2 000 penalty units.</p>	<p>Subsections (1) and (3) are restricted to s 47 matters involving an investigator – the Commission considers that those subsections would be more appropriately situated within section 47, consistent with other provisions within the Act – see s 52.</p> <p>Subsection (2) does not protect a person from being threatened (by violence or other way) on account of providing information to an investigator. Further, it restricts protection to matters concerning an investigator, rather than production to a person assisting an investigator, or to the Commission itself. For example, if a person is directed by a person assisting an investigator under s 52, to answer questions, and is subsequently threatened by another person (who may or may not be a public officer) for complying with that direction, there is no applicable offence in the Act. In the current format, it would not create an offence relating to an assessment, notwithstanding that an assessor can exercise the powers of an investigator pursuant to s 35(4).</p> <p>And see: <i>Independent Commission Against Corruption Act 1988</i> (NSW) s50 (‘...because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment...’) <i>Public Interest Disclosures Act 2002</i> s19 (‘...the person takes or threatens to take the action...’)</p>	<p>Amend s 54 to make it clear that the threat of violence or other detriment is included as an offence.</p> <p>In addition the offences should extend to any matter related to a complaint, be it during an investigation or assessment (where an assessor may exercise the powers of an investigator), and irrespective of whether it involves an investigator or a person assisting an investigator or assessor (including a person authorised under s 21).</p>

			<i>Corruption and Crime Commission Act 2003 (WA) s175 -</i> (‘...threaten to prejudice the safety...’)	
27	s 55(1)	On completion of an investigation, the investigator is to <u>prepare a report of his or her findings</u> for the chief executive officer.	The investigator should prepare a report of the investigation, which sets out the factual material obtained by the investigation, rather than findings (which suggests that judgments and decisions arising from factual material). The investigator is not the appropriate person to be making such decisions or judgments.	Amend s 55 to provide that the investigator should prepare a report of the investigation to the CEO.
28	S 56(1) & 57(1)	<p>56. Opportunity to provide comment on report</p> <p>(1) Before finalising any report for submission to the Board, the chief executive officer may, if he or she considers it appropriate, <u>give a draft of the report</u> to –</p> <p>(a) the principal officer of the relevant public authority; and</p> <p>(b) the public officer who is the subject of the investigation; and</p> <p>(c) any other person who in the chief executive officer's opinion has a special interest in the report.</p> <p>(2) A notice may be attached to a draft of a report specifying that the draft of the report is a confidential document.</p> <p>(3) A person referred to in <u>subsection (1)(a), (b) or (c)</u> may give the chief executive officer written submissions or comments in relation to the draft of the report within such time and in such a manner as the chief executive officer directs.</p>	<p>Under s 57(1), the ‘report of the investigation’ includes the investigator’s report under s 55. Accordingly, a draft report of the CEO referred to in s 56(1) will include the investigator’s report.</p> <p>It may not be appropriate for the entirety of the investigator’s report to go to the relevant public authority – for example the report may cover the actions of a number of authorities and may not be appropriate to reveal the contents of matters concerning one agency (before it has had a chance to comment) to another agency. Similarly with respect to any public officer or officers, there could be privacy concerns.</p> <p>There may also be a range of confidential material in the investigator’s report that need not be seen by the public authority or public officer concerned (eg evidence of collateral misconduct by others outside of authority/ongoing investigations).</p> <p>The investigator’s report is one piece of material that will be relevant to the CEO’s recommendation to the Board. It is however most accurately described as a working or operational document and may be of considerable length and detail. As the CEO has responsibility for making the recommendation to the Board, the CEO should only be legislatively required to report to the Board on the outcome of the investigation (the Board can always require the CEO to produce the full investigation report if it wants it) and any submissions in response to the draft and a recommendation.</p>	Amend s 56(1) so that the CEO need only provide relevant information on the outcome of the investigation to public authorities etc & 57 so that the CEO is required to provide to the Board a report on the outcome of the investigation (rather than the investigator’s report itself) and has capacity to make observations and recommendations on the investigation and future action..

		<p>(4) The chief executive officer must include in his or her report prepared under <u>section 57</u> any submissions or comments given to the chief executive officer under <u>subsection (3)</u> or a fair summary of those submissions or comments.</p> <p>(5) <u>Section 98</u> applies to a notice under <u>subsection (2)</u> if the notice provides that the draft of the report is a confidential document.</p> <p>.....</p> <p>57. Report by chief executive officer</p> <p>(1) The chief executive officer is to give to the Board <u>a report of the investigation that includes –</u></p> <p>(a) the investigator's report; and</p> <p>(b) submissions or comments given under <u>section 56</u>; and</p> <p>(c) a recommendation referred to in <u>subsection (2)</u>.</p>	<p>The report of the chief executive officer under s 57 appears limited when compared with the investigator's report under s 55, which refers to a report of findings. The chief executive officer is not empowered to make any findings nor observations beyond the recommendations under ss 57(2).</p>	
29	S 56(2) & (5)	<p>(2) A notice may be attached to a draft of a report specifying that the draft of the report is a confidential document.</p> <p>(5) <u>Section 98</u> applies to a notice under <u>subsection (2)</u> if the notice provides that the draft of the report is a confidential document.</p>	<p>Although the notice in subsection (2) provides that the draft report is confidential, the provisions of s 98 only apply to the notice – not to the draft report, or to any relevant material accompanying the report. By way of contrast, s 47 documents are themselves notices, such that s 98 provisions re confidentiality actually apply to the notice to produce, or attend or to give evidence [and see also s 35(5) which has similar wording].</p>	<p>Amend s 56 to make it clear that the obligations of confidentiality imposed by s 98 apply to the draft report, not just the notice accompanying the report. Consequential amendment may need to be considered for s 98 so that it applies not just to the notice, but to any relevant documentation the notice is attached to.</p> <p>(And see the discussion re s 98)</p>
30	S 57(2)(b) & s 58(2)(b)	<p>57. Report by chief executive officer</p> <p>(2) The chief executive officer is to recommend –</p>	<p>The 'report of any findings' is the investigator's report under s 55(1). The investigator's report is an internal working document (see discussion above at point 24). The material accompanying a referral should be limited to any allegations of misconduct</p>	<p>Amend s 57 and 58 so that the recommendation which can be made by the CEO to the Board and any decision by the Board, about what material is referred is discretionary (for example, that only</p>

		<p>(b) that the <u>report of any findings</u> and any other information obtained in the conduct of the investigation be referred to –</p> <p>.....</p> <p>58. Determination of Board</p> <p>(2) The Board may –</p> <p>(b) refer the <u>report of the investigation</u> and any information obtained in the conduct of the investigation to –</p>	<p>(either from the complaint or the investigation process) and other relevant material (transcripts, other documents, etc). It also appears inconsistent with the fact the CEO has a discretion to seek comment on the CEO draft report prior to submission to the Board (s 56(1)). This comment may lead to changes to findings or recommendations that are inevitably matters for the Board's decision.</p> <p>The current reference to the CEO recommending the referral of the 'investigator's report' is also inconsistent with s 58(2)(b) by which the Board may refer 'report of the investigation' which is the CEO's report under s 57, for referral. Any determination of the Board to refer that is therefore immediately contrary to the CEO's recommendation for a referral to include the investigator's report.</p> <p>There may be an issue if the recommendation by the chief executive officer is not the same as the determination of the Board. In that circumstance, it may be inappropriate for the Board to refer the CEO report of the investigation to a public officer, or authority when it has a different recommendation to the Board.</p>	<p>certain material arising from the investigation is referred for action to some agencies but not to others). In particular, the investigator's report should not automatically be referred nor should any recommendation by the CEO to the Board form part of the material that might be referred.</p>
31	S 58(2)(a)	<p>(2) The Board may –</p> <p>(a) dismiss <u>the complaint</u>; or</p>	<p>The investigation considered by the Board may be an own motion investigation commenced under s 45 or 89 – the inconsistent language means that an own motion investigation can't be dismissed after consideration by the Board, but it also provides no other closure for an own motion investigation if the outcome is not to continue – that is, if the own motion investigation will not be referred or further investigated, nor proceed to an inquiry.</p>	<p>Amend s 58(2) to enable the Board to both dismiss a complaint and/or cease an own motion investigation where further referral, investigation or an inquiry is not appropriate.</p>
32	S 68	<p>Directions conference</p> <p>(1) Before an inquiry is held, an Integrity Tribunal may conduct a directions conference in relation to the inquiry.</p> <p>(2) An Integrity Tribunal, by written notice, may require or direct any person</p>	<p>Substantial fines apply to all other offences under the Act, accordingly, the 10 penalty units applicable here, seems inconsistent with the remainder of the Act – see for example:</p> <ul style="list-style-type: none"> ○ S 52(5) – 2 000 penalty units ○ S 54(1) – 5 000 penalty units ○ S 74(5) – 2 000 penalty units ○ S 80(5) – 5 000 penalty units 	<p>Amend s 68 so that the penalty is consistent with other penalties in the Act.</p>

		<p>to –</p> <p>(a) attend a directions conference; and</p> <p>(b) provide and produce any specified record, information, material or thing at a directions conference.</p> <p>(3) A person, without reasonable excuse, must not fail to comply with a requirement or direction notified under <u>subsection (2)</u>.</p> <p><u>Penalty:</u></p> <p><u>Fine not exceeding 10 penalty units.</u></p> <p>(4) A directions conference is to be held in private.</p> <p>(5) An Integrity Tribunal may give any directions it considers necessary to ensure that the inquiry is conducted fairly and expeditiously.</p> <p>(6) An Integrity Tribunal may adjourn a directions conference from place to place and from time to time.</p>		
33	S 74(1)	<p>Powers of inquiry officer while on premises</p> <p>(1) An inquiry officer who enters premises under this Part may exercise any or all of the following powers:</p> <p>...</p>	<p>Section 74 replicates the powers of an investigator while on premises under s 52, but limits the powers to an inquiry officer (an inquiry officer is defined under s 4). However s 73 which permits an inquiry officer to apply to a magistrate for a warrant to enter premises refers to the inquiry officer 'and any person assisting the inquiry officer' – s 73(4)(a). In particular, s 73 (4)(a) requires the warrant to state that a person assisting the inquiry officer may exercise the inquiry officer's powers. This is consistent with the language in s 52 which also refers to a person assisting. For consistency, a person named in the warrant under s 73 as assisting an inquiry officer should also have the ability to exercise the powers under s 74, noting that they are authorised to use reasonable force under s 74(4) as</p>	<p>Amend s 74(1) and (2) to enable persons assisting an inquiry officer to exercise the relevant powers, in accordance with the terms of the warrant applied for under s 73.</p>

			an 'assistant'.	
34	S 74(3)	<p>Powers of inquiry officer while on premises</p> <p>...</p> <p>(3) If an inquiry officer takes anything away from the premises, the inquiry officer <u>must issue a receipt in a form approved by the Integrity Commission</u> and –</p> <p>...</p>	<p>Under Part 7 of the Act, it is the Board that has the power to convene an Integrity Tribunal and the Chief Commissioner who issues directions as to the procedure for conducting the inquiry. The power to enter premises and apply for search warrants requires authorisation or approval from the Chief Commissioner.</p> <p>However, the Integrity Commission, as referred to in s 74 is defined by s 7 to include the staff, and the chief executive officer amongst others. For consistency with this Part, the form should be approved by the chief executive officer (who has responsibility for operational matters pursuant to s 18), or the Chief Commissioner or an Integrity Tribunal.</p>	Amend s 74(3) so that the receipt is in a form approved by the chief executive officer, or the Chief Commissioner or the relevant Integrity Tribunal.
35	S 74(1)	<p>(j) require or direct any person who is on the premises to do any or all of the following:</p> <ul style="list-style-type: none"> (i) to state his or her full name, date of birth and address; (ii) to answer (orally or in writing) questions asked by the inquiry officer relevant to the inquiry; (iii) to produce any record, information, material or thing; (iv) to operate equipment or facilities on the premises for a purpose relevant to the inquiry; (v) to provide access (free of charge) to photocopying equipment on the premises the inquiry officer reasonably requires to enable the copying of any record, information, material or thing; (vi) to give other assistance the inquiry officer reasonably requires to conduct the inquiry; <p>...</p>	<p>Section 98 of the Act imposes obligations of confidentiality on persons to whom certain notices under the Act have been served (for example, notices under s 47 and 65). The obligations of confidentiality are a means of not only keeping a complaint confidential, but of protecting a person required or directed to respond to the Commission or to a Tribunal.</p> <p>The s 98 confidentiality provisions do not extend to persons on premises if those premises are entered under s 74. Although a search of premises would usually be an overt stage of an inquiry process, it can occur during a covert stage. Persons at the premises who are directed or required to respond to an investigator, or person assisting an investigator, should have the protections afforded by the confidentiality provisions of s 98 when considered necessary.</p>	Amend s 74 so that the confidentiality provisions under s 98 will extend to persons on premises and afford them the protection associated with confidentiality if they are required or directed to respond to an inquiry officer.

36	S 78(1) &(2)	<p>(1) At the conclusion of an inquiry, an Integrity Tribunal may make a determination in relation to <u>the complaint</u> or matter that was the subject of the inquiry.</p> <p>(2) An Integrity Tribunal may do any one or more of the following:</p> <p>(a) dismiss <u>the complaint</u>;</p>	<p>See s 65 which refers to the 'allegation of misconduct'. It is clear from s 61 that the function of the Integrity Tribunal is to 'conduct an inquiry into a matter in respect of which the Board has determined under section 58 that an inquiry be undertaken', not an inquiry into a 'complaint'.</p> <p>An own motion investigation which is the subject of an Integrity Tribunal cannot be dismissed under subsection (2).</p>	<p>Amend s 78 and consider any relevant consequential amendments to s 58 so that the language as to what the function of an inquiry undertaken is consistent.</p> <p>Consider whether there should be an opportunity to dismiss or otherwise cease further consideration of an investigation which arose from an own motion investigation.</p>
37	S 80	<p>Offences relating to Integrity Tribunal</p> <p>(1) A person must not intentionally prevent or intentionally try to prevent a person who is required by an Integrity Tribunal to appear before it from attending as a witness or producing any record, information, material or thing <u>to the Integrity Tribunal</u>.</p> <p>Penalty:</p> <p>Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.</p> <p>(2) A <u>person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage</u> in relation to another person for or on account of –</p> <p>(a) that other person having given evidence before an Integrity Tribunal or produced or surrendered any record, information, material or thing to an Integrity Tribunal; or</p> <p>(b) any evidence given by that other person before an Integrity Tribunal or any record, information, material or thing produced or surrendered by that other</p>	<p>An Integrity Tribunal is defined under s 4 to mean a Tribunal convened under s 60 (and which appears to be restricted to the persons who comprise the actual tribunal), but does not include an inquiry officer. Offences against inquiry officers are dealt with separately at s 81. However Part 7, which deals with inquiries by an Integrity Tribunal also refers to 'a person designated by the Integrity Tribunal' – s 71(1)(b) and appointing other persons to take evidence to be provides to the Integrity Tribunal – s71(2). The Act does not capture offences which might occur against anyone other than the Tribunal members and inquiry officers.</p> <p>Subsection (2) does not protect a person from being threatened (by violence or other way) on account of producing or surrendering a record, information, material or a thing to an Integrity Tribunal, or a person designated by a Tribunal or appointed to take evidence.</p>	<p>Amend s 80 to include offences against persons other than the Tribunal members, or inquiry officers, and make it clear that the threat of violence or other detriment is included as an offence.</p>

		<p>person to an Integrity Tribunal.</p> <p>Penalty:</p> <p>Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.</p> <p>...</p>		
38	S 81	<p>Offences relating to inquiry officers</p> <p>(1) A person who, without reasonable excuse, fails to comply with a requirement or direction of an inquiry officer within 14 days of receiving it commits an offence.</p> <p>Penalty:</p> <p>Fine not exceeding 5 000 penalty units.</p> <p>(2) A person <u>must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage</u> in relation to another person for or on account of that other person having given evidence to an inquiry officer or produced or surrendered any record, information, material or thing to an inquiry officer.</p> <p>Penalty:</p> <p>Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.</p> <p>(3) A person must not obstruct or hinder an inquiry officer or any person assisting an inquiry officer in the performance of a function or the exercise of a power under <u>section 74</u>.</p> <p>Penalty:</p> <p>Fine not exceeding 5 000 penalty units.</p>	<p>Subsections (1) and (3) are restricted to matters involving an inquiry officer, although the Act also refers to persons assisting inquiry officers (s 73) and to persons designated or appointed (see previous discussion re s 80). Accordingly there is no apparent offence if a person fails to comply with the requirements or directions of a person assisting an inquiry officer or appointed or designated by a Tribunal.</p> <p>Subsection (2) does not protect a person from being threatened (by violence or other way) on account of providing information to an inquiry officer. (And see the discussion re offences relating to investigators under s 54 where similar issues arise).</p>	<p>Amend s 81 to make it clear that the threat of violence or other detriment is included as an offence.</p> <p>Ensure that offences against persons assisting, appointed or designated in addition to inquiry officers, are captured .</p>

39	S 87	<p>Investigation or dealing with misconduct by designated public officers</p> <p>(1) The Integrity Commission is to assess, investigate, inquire into or otherwise deal with, in accordance with Parts 6 and 7, complaints relating to misconduct by a designated public officer.</p> <p>(2) In assessing, investigating, inquiring into or otherwise dealing with a complaint under subsection (1), the Integrity Commission may have regard to –</p> <p>(a) established procedures or procedures of the relevant public authority; and</p> <p>(b) any codes of conduct relevant to the designated public officer who is the subject of the complaint; and</p> <p>(c) any statutory obligations or relevant law relating to that designated public officer.</p>	<p>This section was amended on 22 December 2011, with the reference to Parts 6 and 7 included in subsection (1). Since amendment, the Solicitor-General has flagged a potential issue that the failure to include Part 5 of the Act (which deals with assessment of a complaint) with Parts 6 and 7, will mean that any complaint dealing with a designated public officer, cannot be assessed. Instead each complaint must be investigated and a report forwarded to the Board, even where a complaint is vexatious or without substance. This appears contrary to the wording throughout the section which refers to 'assessing' or 'otherwise dealing with' a complaint.</p> <p>The obligation to investigate every complaint involving a designated public officer will be onerous, and is an unintended consequence of the December 2011 amendment.</p>	Amend s 87 to include a reference to Part 5, so that the Commission is able to deal with a complaint about a DPO consistently with other complaints.
40	S 94	<p>94. Information confidential</p> <p>(1) This section applies to a person who is or has been –</p> <p>(a) a member of the Board; or</p> <p>(b) the Parliamentary Standards Commissioner; or</p> <p>(c) an officer or employee of the Integrity Commission; or</p> <p>(d) a person authorised or appointed under <u>section 21</u> to undertake work on behalf of the Integrity Commission; or</p>	<p>The persons who are required to keep information confidential are listed in s 94 and are separate to any notices served or delivered under the Act which may be kept confidential under s 98. However the list of people does not take into account persons who might have access to confidential information, but not be a staff member or otherwise authorised because they do not perform any functions. For example the Commission has a Service Level Agreement with the Department of Justice which provides for IT services. The Commission and the Department of Justice have received legal advice that employees of the Department of Justice, performing IT services for the Commission, do not have the same obligations to keep information held by the Commission, which they have ready access to, confidential, notwithstanding the sensitive nature of</p>	Amend s 94 to include personnel who perform services for the Commission or a Tribunal and who have access to extremely confidential information, but do not fall with the class of persons identified.

		<p>(e) an assessor or investigator; or</p> <p>(f) a member of the Joint Committee; or</p> <p>(g) a member of an Integrity Tribunal; or</p> <p>(h) an inquiry officer or other person appointed to assist an Integrity Tribunal.</p>	<p>the information. Further, they are not subject to the same sanctions that a Commission officer would be subject to if information is released inappropriately. Instead sanctions are limited to a breach of the Code of Conduct if the person is a state servant.</p>	
41	S 95	<p>95. Protection from personal liability</p> <p>(1) No civil or criminal proceedings lie in respect of any action done, or omission made, in good faith in the exercise or intended exercise of, any powers or functions under this Act by the following persons:</p> <p>(a) the Board;</p> <p>(b) any members of the Board;</p> <p>(c) the Parliamentary Standards Commissioner;</p> <p>(d) an Integrity Tribunal;</p> <p>(e) any persons appointed to assist the Integrity Tribunal;</p> <p>(f) legal representatives of any witness at an inquiry;</p> <p>(g) the chief executive officer;</p> <p>(h) an assessor, investigator or inquiry officer;</p> <p>(i) officers and employees of the Integrity Commission;</p> <p>(j) any persons authorised or appointed under <u>section 21</u> to undertake work on behalf of the Integrity Commission.</p>	<p>See the references to s 94 – the same considerations apply to s 95, in that personnel who perform sensitive work for the Commission, or who through their work have access to sensitive information from the Commission, are not protected from personal liability unless they fall within the class of persons nominated, and are exercising powers or functions. Some people (ie transcription staff employed by the Supreme Court) are not exercising a power or function, but should nevertheless have protection from personal liability where they are acting in good faith.</p>	<p>Amend s 95 to protect personnel from personal liability where they undertake work involving sensitive or confidential information, for the Commission or Tribunal but do not actually exercise a power or function.</p>

42	S 96	<p>96. False or misleading statements</p> <p>A person, in making a complaint, <u>giving any information or advice</u> or producing any record under this Act, must not –</p> <p>(a) make a statement knowing it to be false or misleading; or</p> <p>(b) omit any matter from a statement knowing that without that matter the statement is false or misleading.</p> <p>Penalty:</p> <p>Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.</p>	<p>On its face, s 96 makes the giving of a false or misleading statement an offence. However the language used, in particular 'giving any information or advice' is inconsistent with the sections where an officer of the Commission can direct or require a statement – see for example s 47.</p> <p>Although there are offences under s 54 with respect to s 47, those offences do not include the giving of a false or misleading statement (see also s 52)</p> <p>The language used in s 47 is to provide information or explanation, to attend and give evidence and to produce. In s 52(1)(j) a person is required to answer or to produce or to give other assistance. Similar considerations apply to the giving of evidence before an integrity tribunal under s 71.</p>	<p>Amend s 96 so that it is clear that a person who makes a false or misleading statement or omits any matter from a statement knowing that it would then be false or misleading, in compliance with a requirement or direction under the Act, commits an offence.</p>
43	S 97	<p>97. Destruction or alteration of records or things</p> <p>A person must not knowingly destroy, dispose of or alter any record or thing required to be produced under this Act for the purpose of misleading <u>any investigation or inquiry</u>.</p> <p>Penalty:</p> <p>Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.</p>	<p>Section 97 is limited to an investigation or inquiry, and therefore appears to omit a record or thing required to be produced during an assessment of a complaint, although s 35(4) enables an assessor to utilise the powers of an investigator under Part 6 of the Act.</p> <p>Furthermore, if a complaint is referred to an agency for investigation, either following an assessment, or an investigation by the Commission, destruction or alteration of records or things after referral would not be an offence.</p>	<p>Amend s 97 so that the destruction or alteration of records or things while an assessor is using the powers of an investigator, is an offence.</p> <p>Consider development of a further offence regarding destruction or alteration of records or things relevant to an allegation of misconduct, following referral by the Commission.</p>
44	S 98	<p>98. Certain notices to be confidential documents</p> <p>(1) A person on whom a notice that is a confidential document was served or to</p>	<p>Refer to Point 25, which is also concerned with confidentiality provisions under s 98.</p> <p>The use of s 98 is limited to those sections which specifically refer to the ability of the Commission to make a particular</p>	<p>Amend s 98 so that the Commission can ensure confidentiality over its actions beyond the notices referred to at particular sections of the Act.</p>

		<p>whom such a notice was given under this Act must not disclose to another person –</p> <p>(a) the existence of the notice; or</p> <p>(b) the contents of the notice; or</p> <p>(c) any matters relating to or arising from the notice –</p> <p>unless the person on whom the notice was served or to whom the notice was given has a reasonable excuse.</p> <p>Penalty:</p> <p>Fine not exceeding 2 000 penalty units.</p> <p>(1A) A person to whom the existence of a notice that is a confidential document was disclosed must not disclose to another person –</p> <p>(a) the existence of that notice; or</p> <p>(b) the contents of the notice; or</p> <p>(c) any matters relating to or arising from the notice –</p> <p>unless the person to whom the existence of the notice was disclosed has a reasonable excuse.</p> <p>Penalty:</p> <p>Fine not exceeding 2 000 penalty units.</p> <p>(1B) For the purposes of <u>subsections (1) and (1A)</u>, matters relating to or arising from a notice include but are not limited to –</p> <p>(a) obligations or duties imposed on any person by the notice; and</p> <p>(b) any evidence or information produced or provided to the Integrity Commission or</p>	<p>notice confidential. However it is not just the notice which is confidential, but the documents to which the notice is attached which should be confidential.</p> <p>As an example, s 88 sets out the Commissions role in relation to police misconduct, which includes at s 88(3) the assumption of responsibility for a police investigation, but no ability by the Commission to make those actions subject to confidentiality. Again, at s 58, the Board can make a determination to refer an investigation to an agency and while the determination to refer can be subject to a s 98 confidentiality notice, the referral of the report of the investigation may not be so subject.</p> <p>A further example is s 90 where the Commissioner of Police may be given an opportunity to comment on a report which is adverse to Tasmania Police. During that process, the Commission is currently unable to require confidentiality in accordance with s 98.</p>	
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		<p>an Integrity Tribunal; and</p> <p>(c) the contents of any document seized under this Act; and</p> <p>(d) any information that might enable a person who is the subject of an investigation or inquiry to be identified or located; and</p> <p>(e) the fact that any person has been required or directed by an investigator or an Integrity Tribunal to provide information, attend an inquiry, give evidence or produce anything; and</p> <p>(f) any other matters that may be prescribed.</p> <p>(2) It is a reasonable excuse for a person to disclose the existence of a notice that is a confidential document if –</p> <p>(a) the disclosure is made for the purpose of –</p> <p>(i) seeking legal advice in relation to the notice or an offence against <u>subsection (1)</u>; or</p> <p>(ii) obtaining information in order to comply with the notice; or</p> <p>(iii) the administration of this Act; and</p> <p>(b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the notice to another person unless the person to whom the disclosure was made has a reasonable excuse.</p> <p>(3) The Integrity Commission or an Integrity Tribunal may advise a person on whom a notice was served or to whom a notice was given under this Act that the</p>		
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		<p>notice is no longer confidential.</p> <p>(4) If the Integrity Commission or an Integrity Tribunal advises a person referred to in <u>subsection (3)</u> that a notice is no longer confidential, <u>subsections (1)</u> and <u>(1A)</u> do not apply.</p>		
45	S 99	<p>99. Injunctions</p> <p>(1) The Supreme Court may, on application made by the Integrity Commission, grant an injunction restraining any conduct in which a person (whether or not a public authority or public officer) is engaging or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of –</p> <p>(a) <u>an investigation or proposed investigation</u> by an investigator; or</p> <p>(b) an inquiry or proposed inquiry by an Integrity Tribunal.</p> <p>(2) The conduct referred to in <u>subsection (1)</u> does not include conduct relating to a proceeding in Parliament.</p>	<p>Injunctions are limited to investigations or 'proposed investigations'. The language used appears inconsistent with the Act, in that nowhere else is the term 'proposed investigation' used. Accordingly this section may not capture an assessment. It is not inconceivable that the need for an injunction could arise during an assessment phase, for example to prevent destruction of documents. Furthermore, if an allegation of misconduct has been referred to an agency for that agency's investigation, the current wording does not allow the Commission to seek an injunction.</p>	<p>Amend s 99 so that the Commission can seek an injunction restraining any conduct which affects an allegation of misconduct within the jurisdiction of the Commission.</p>
46	S 102	<p>Personal information may be disclosed to Integrity Commission</p> <p>A personal information custodian, within the meaning of the <i>Personal Information Protection Act 2004</i>, is authorised to disclose personal information, within the meaning of that Act, to the Integrity Commission for the purpose of and in accordance with this Act.</p>	<p>The Commissioner of Police is a personal information custodian within the meaning of the PIP Act.</p> <p>The Commission seeks information from Tasmania Police database on a regular basis. The information is required to enable the Commission to fulfill its functions under the Act. The Commission and Tasmania Police have a Memorandum of Understanding which has a clause allowing the Commission online access to relevant police-held data, subject to all relevant legal restrictions. Currently the information is accessed by the Commission on a request by request basis, with</p>	<p>Amend the <i>Personal Information Protection Act 2004</i> and/or the IC Act to enable to appropriate Tasmania Police databases.</p>

			<p>Commission investigators required to attend at Police HQ. The Commission seeks specific data about an individual and specifies on each occasion that it is for a purpose and function under the Act. This has presented difficulties for both Tasmania Police and the Commission in that the Commission is unable to maintain absolute confidentiality of information in relation to its own functions simply because Tasmania Police are advised of the information sought. A not insignificant percentage of complaints are about police. Further, the lack of immediate accessible data has restricted the Commission when responding to complaints. Specific background information, such as is held by Tasmania Police may be relevant about a particular complaint, subject officer, witness or complainant and important to any determination by the Commission to dismiss, assess or investigate.</p> <p>The Commission is also conducting an audit of all police complaints finalized in 2012 but can only look at the hard copy files of the matters rather than examining the records electronically (in the IAPRO database). This is cumbersome and time consuming.</p> <p>Access to appropriate data will confirm sources of information and allow the Commission to independently analyse information received and to cross reference the checks taken by police when the Commission audits or monitors a matter.</p> <p>It is considered that electronic desktop access at the Commission (with appropriate passwords, and audit trails) will significantly enhance the operational work undertaken by the Commission. It is also in line with access available to interstate integrity agencies and the respective State and Commonwealth police forces.</p> <p>Tasmania Police and the Commission have obtained legal advice that electronic desktop access at the Commission would be the grant of unlimited access to the personal information in the control of the Commissioner of Police, and that such disclosure would not be for a purpose of and in accordance with the Act.</p> <p>Authorisation for the Commission to have unlimited access to Police databases (electronic access, but limited to a function</p>	
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			<p>under the IC Act) would require an express statutory provision, and in the absence of that, the granting to the Commission of such unlimited access, will inevitably involve a contravention of the PIP Act by the Commissioner of Police, particularly during periods when access is not required by the Commission to fulfil its statutory functions (ie when the electronic password protected database is idle).</p> <p>Section 9 of the PIP Act does provide that some clauses in the Schedule detailing the Personal Information Protection Principles do not apply to any law enforcement information collected or held by a law enforcement agency if it considers that non-compliance is reasonably necessary –</p> <p>(a) for the purpose of any of its functions or activities; or</p> <p>(b) for the enforcement of laws relating to the confiscation of the proceeds of crime; or</p> <p>(c) in connection with the conduct of proceedings in any court or tribunal.</p> <p>The Commission is not a law enforcement agency for the purposes of the PIP Act (noting however that it is a law enforcement agency for the purposes of the <i>Australian Consumer Law (Tasmania) Act 2010</i>).</p>	
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Identified technical issues, other Tasmanian Legislation

	Section	Content	Technical issue	Recommendation
	<i>Corrections Act 1997</i>	Rights of Prisoners to make a complaint to the Commission		

1	S 29(1)(l)	<p>Rights of prisoners and detainees</p> <p>(1) Every prisoner and detainee has the following rights:</p> <p>...</p> <p>(l) the right to send letters to, and receive letters from, the Minister, the Director, an official visitor, the Ombudsman or an officer of the Ombudsman without those letters being opened by prison staff;</p>	<p>Currently prisoners and detainees are unable to make a complaint of misconduct to the Commission without the written complaint being opened and read by an authorised prison staff member. The <i>Corrections Act 1997</i> exempts certain forms of communication from being opened unless staff reasonably suspect that the letter contains an unauthorised item. The exemptions relate to the Office of the Ombudsman, Official Visitors, Members of Parliament, the Parole Board, Legal Practitioners and others. As prisoners or detainees are uniquely placed to experience or observe misconduct by prison staff, and noting that the Integrity Commission Act requires complaints about misconduct to be in writing, the Commission submits that it should be included in the list of exempt correspondence.</p> <p>In addition to the Corrections Act, the Ombudsman also has a specific provision in the <i>Ombudsman Act 1978</i>, s 18, which facilitates the making of a complaint by a person in custody. While the Integrity Commission Act has provisions which facilitate the giving of information to an investigator where a detainee or prisoner is served with a coercive notice, it does not go as far as facilitating complaints from detainees or prisoners.</p>	<p>Amend s 29(1)(l) of the <i>Corrections Act 1997</i> to include the Integrity Commission as an exempt entity with respect to correspondence to and from prisoners and detainees.</p> <p>In addition, make consequential amendments to the <i>Integrity Commission Act 2009</i> similar to those in s 18 of the Ombudsman Act, so that a person detained in custody who wishes to make a complaint to the Commission, will be assisted to make that complaint. [For example, see s 47(4) of the Act which is along similar lines in that it facilitates the giving of information to an investigator where a detainee or prisoner is served with a s 47 Notice but does not go as far as facilitating complaints from detainees or prisoners].</p>
<p>Personal Information Protection Act 2004</p> <p>Access to data held by Tasmania Police</p>				
2	S 9 & Schedule 1	<p>S 9. Law enforcement information</p> <p>Clauses 1(3), (4) and (5), 2(1), 5(3)(c), 7, 9 and 10(1) of Schedule 1 do not apply to any law enforcement information collected or held by a law enforcement agency if it considers that non-compliance is reasonably necessary –</p> <p>(a) for the purpose of any of its functions or activities; or</p>	See the discussion re s 102 of the IC Act.	Amend the <i>Personal Information Protection Act 2004</i> and/or the IC Act to enable to appropriate Tasmania Police databases.

		<p>(b) for the enforcement of laws relating to the confiscation of the proceeds of crime; or</p> <p>(c) in connection with the conduct of proceedings in any court or tribunal.</p> <p>-----</p> <p>Schedule 1</p> <p>2. Use and disclosure</p> <p>(1) A personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected unless –</p> <p>...</p> <p>(f) the use or disclosure is required or authorised by or under law; or</p> <p>(g) the personal information custodian reasonably believes that the use or disclosure is reasonably necessary for any of the following purposes by or on behalf of a law enforcement agency:</p> <p>(i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;</p> <p>(ii) the enforcement of laws relating to the confiscation of the proceeds of crime;</p> <p>(iii) the protection of the public revenue;</p> <p>(iv) the prevention, detection, investigation or remedying of conduct that is in the opinion of the personal information custodian seriously improper conduct;</p>		
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		<p>(v) the preparation for, or conduct of, proceedings before any court or tribunal or implementation of any order of a court or tribunal;</p> <p>(vi) the investigation of missing persons;</p> <p>(vii) the investigation of a matter under the <u>Coroners Act 1995</u>; or</p> <p>...</p>		
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APPENDIX 2

Compilation of relevant statistical information from Registers maintained by the Commission

Table 1 – Registers of Matters Pursuant to the *Integrity Commission Act 2009* (calendar year)

REGISTER	2010*	2011	2012	2013**
Section 21 Authorisations	3	7	8	1
Section 47 – Notices to attend and give evidence and/or produce documents (Total):	2	16	51[^]	49
(a)	0	0	1	0
(b)	0	7	9	25
(c)	2	9	42	24
Section 50 – Power to Enter Premises	0	0	3	0
Section 51 – Search Warrants	0	0	0	0
Section 53 – Surveillance Device Warrants	0	0	1	0

*From 1 October 2010

**Until 30 August 2013

[^] One notice was issued under both s47(1)(a) and (c)

Table 2 – Register of applications under the *Right to Information Act 2009*

REGISTER	2010*/11	2011/12	2012/13	2013**/14
Applications (Total):	1	2	2	0
<i>Information exempt [s 6(1)(d)]</i>	1	2	1	0
<i>Information supplied</i>	0	0	2	0

*From 1 October 2010

**Until 30 August 2013

Table 3 – Inspection of records by inspection entities

REGISTER	2010*/11	2011/12	2012/13	2013**/14
<i>Police Powers (Surveillance Devices) Act 2006 – s 41</i>	0	0	0	1

*From 1 October 2010

**Until 30 August 2013

APPENDIX 3

Parliamentary oversight committees in Australia

Australian Parliamentary Oversight Committees								
	Crime and Misconduct Commission	Independent Commission Against Corruption	Police Integrity Commission	Corruption and Crime Commission	Independent Broad-based Anti-corruption Commission	Integrity in Law Enforcement	Independent Commissioner Against Corruption	Integrity Commission
	CMC	ICAC	PIC	CCC	IBAC	ACLEI	ICAC/ Office for Public Integrity	IC
Establishing Act	<i>Crime and Misconduct Act 2001</i>	<i>Independent Commission Against Corruption Act 1988</i>	<i>Police Integrity Commission Act 1996</i>	<i>Corruption and Crime Commission Act 2003</i>	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>	<i>Law Enforcement Integrity Commissioner Act 2006</i>	<i>Independent Commissioner Against Corruption Act 2012</i>	<i>Integrity Commission Act 2009</i>
Jurisdiction	QLD	NSW - not Police	NSW - Police only	WA	VIC	Cwth Australian Federal Police; Australian Customs and Border Protection Services; Australian Crime Commission	SA	Tas
Parliamentary Oversight Committee	Parliamentary Crime and Misconduct Committee - PCMC The Office of the Parliamentary Crime and Misconduct Commissioner is established, s 303. An officer of Parliament		Parliamentary Joint Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission - COOPIC	Parliamentary Joint Standing Committee on the Corruption and Crime Commission - JSCCCC The Office of Parliamentary Inspector of the CCC is also established, s 188 CCC Act 2003, as in independent office	Parliamentary Joint House Committee - on the Independent Broad-based Anti-corruption Commission - IBAC Committee The Victorian Inspectorate is also established as a separate independent office - <i>Victorian Inspectorate Act 2011</i>	Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity - PJCACLEI	Crime and Corruption Policy Review Committee - CCPRC	Joint Standing Committee on Integrity - JSC
Section	s 291	s 63	s 94; & the <i>Ombudsman Act 1974</i> (NSW)	s 216A; & s 188	s 5(fa) <i>Parliamentary Committees Act 2003</i> (Vic); & <i>Victorian Inspectorate Act 2011</i>	s 213	s 45; & <i>Parliamentary Committees Act 1991</i> (SA)	s 23

	CMC	ICAC	PIC	CCC	IBAC	ACLEI	ICAC/ Office for Public Integrity	IC
Functions of Parliamentary Committee in relation to integrity agency								
Monitor & Review	Yes Performance of the CMC functions Does not include the Queensland Ombudsman	Yes Exercise by ICAC and the Inspector of ICAC's functions	Yes Exercise by PIC and the Inspector of their functions	Yes Exercise of the functions to the CCC and the Parliamentary Inspector	Yes Performance of duties and functions of IBAC Also has the function of oversight over the Vic Ombudsman (& officers), the Vic Auditor-General (& officers) and is the examiner appointed under the <i>Major Crimes (Investigative Powers) Act 2004</i>	Yes Performance of the Commissioner's functions	No	Yes Performance of the functions of an integrity entity* Integrity entity includes the Ombudsman
Report to Parliament	To the Legislative Assembly (note unicameral Parliament)	To both Houses of Parliament	To both Houses of Parliament	To both Houses of Parliament	To both Houses of Parliament	To both Houses of Parliament	To both Houses of Parliament	To both Houses of Parliament
Substance of report	Matters relevant to the CMC and to the performance of its functions or exercise of powers	With such comments as it thinks fit on any matter appertaining to the ICAC or the Inspector	With such comments as it thinks fit	On the means by which corruption prevention practices may be enhanced within the public sector	On any matter connected with the performance of the duties and functions of the IBAC that require the attention of Parliament	With such comments as it thinks fit on any matter connected with the performance of the Commissioner's functions	On any matter of policy affecting public administration arising out of a report, as the CCPRC considers appropriate	On matters relevant to an integrity entity and to the performance of the entity's functions or exercise of its powers
Examination of Annual Report	Yes	Yes Inspect ICAC and the Inspector's report and to report to both Houses of Parliament on matters arising out of the AR	Yes The AR of the PIC and Inspector and report to both Houses of Parliament on any matter arising	Not specifically stated outside the monitoring and reporting function	Yes Examine any reports made by IBAC	Yes The AR of ACLEI and any special report and report to Parliament on any matter arising	Yes Examination of AR of ICAC and Commissioner of Police or Police Ombudsman.	Yes Examination of AR of integrity entities and any other report and report to both Houses of Parliament

	CMC	ICAC	PIC	CCC	IBAC	ACLEI	ICAC/ Office for Public Integrity	IC
Selection and Removal of Commissioners	Yes	Yes Has the power to veto a proposed appointment, on referral from the Minister.	No	No	Yes Consider any proposed appointment of a Commissioner and to exercise a power of veto	No	No	Yes
Matters relevant to investigation functions	s 294 - can direct the CMC to investigate a matter involving misconduct (with bipartisan support within the Committee). Results must be reported to the committee	No Can inquire into the functions, but is not authorised to investigate a matter, including any decisions about an investigation	No Can inquire into functions but not authorised to investigate a matter or decision about an investigation	No Matters relevant to the investigative functions are assigned to the Parliamentary Inspector	No Cannot investigate a matter relating to the particular conduct the subject of a complaint or notification to IBAC; nor of a particular disclosure; not review of any decision of IBAC or findings or recommendations Those matters rest with the Victorian Inspectorate	Is not authorised to investigate a corruption issue or reconsider decisions or recommendations of the Commissioner	No	Can provide guidance and advice relating to the functions of an integrity entity but is specifically not authorised to reinvestigate a complaint or a decision of the IC. Is unable to make findings or recommendations in relation to a particular investigation or inquiry by the IC
Powers	Call for persons, documents and other things; appoint persons with special knowledge or skill to help the committee; may inspect any non-operational record or thing in the CMC's possession and take copies	Power to send for persons, papers and records. Production of records is in accordance with practice of the select committees of the Legislative Assembly, except that evidence of confidential matters can be taken in private	Powers are as constituted under the <i>Ombudsman Act 1974</i>	The Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to committees	In accordance with <i>Parliamentary Committees Act 2003</i> , can call for evidence, persons or things and take evidence in public, or in private in special circumstances	Can request information from the Commissioner in relation to an investigation; may request information about the general performance of the Commissioner's functions	In accordance with the <i>Parliamentary Committees Act 1991</i>	May summon witnesses to give evidence and produce documents, such evidence to be taken in public May take evidence in private if good and sufficient reason

	CMC	ICAC	PIC	CCC	IBAC	ACLEI	ICAC/ Office for Public Integrity	IC
Matters withheld from the Committee	Yes CMC can refuse to disclose information if confidentiality should continue to be strictly maintained and reasons are given. Register must be maintained by CMC of information withheld.	N/A	N/A	N/A The Parliamentary Inspector is entitled to full access to the records of the CCC	N/A IBAC is required to produce information to the Victorian Inspectorate	Yes Commissioner must not comply with a request for information if the information is certified confidential and disclosure would contravene the certification. Commissioner can decide not to comply with a request if the information is sensitive and it is not in the public interest to give the information.		N/A
Complaints about the Commission	Power to refer complaints or concerns about the CMC or CMC officer - to CMC, or police or other law enforcement agency, or parliamentary commissioner or DPP or take other appropriate action (with bipartisan support within the Committee)	Inspector may investigate and assess complaints about ICAC and refer matters relating to ICAC to other public authorities for action and may recommend disciplinary action or criminal prosecution	No Complaints are investigated by the Inspector	No Complaints are investigated by the Parliamentary Inspector	No Complaints are investigated by the Victorian Inspectorate	No		No

	CMC	ICAC	PIC	CCC	IBAC	ACLEI	ICAC/ Office for Public Integrity	IC
Examine trends and changes	Not specifically stated, but may report on any matter relevant to the CMC's functions or any matter arising from any reports	Yes Report to both Houses of Parliament	Yes Report to both Houses of Parliament	No	No	Yes Report to both Houses of Parliament on any change the Committee thinks desirable		No
Matters referred from Parliament	Report on any matter relevant to the XMJ functions that is referred to by the Legislative Assembly	Inquire into any matters referred by both Houses of Parliament and report	Inquire into any matters referred by both Houses of Parliament and report	Not specifically	Carry out any other function conferred on the IBAC Committee by the <i>Parliamentary Committees Act 2003</i> or the IBAC Act	Inquire into any question in connection with the Committee's duties referred by either House and report to that House		
Separate Parliamentary Commissioner/Inspector	yes - s 303 Office of Parliamentary Crime and Misconduct Commissioner Is an officer of the Parliament	yes - s 57B Office of the Inspector of ICAC - this Office is subject to oversight by the PJICAC. Inspector meets regularly but informally with the ICAC Commissioner.	yes - s 89 Inspector of the Police integrity Commission (IPIC). Independent office, not subject to direction of the COOPIC	Yes - s 188 Parliamentary Inspector of the CCC Is an officer of Parliament and is responsible for assisting the Standing Committee in the performance of its functions	Yes Victorian Inspectorate - established by the <i>Victorian Inspectorate Act 2011</i> . Is subject to oversight by the IBAC Committee	No		Yes Parliamentary Standards Commissioner (PSC) - but does not oversee the IC Independent officer, not subject to the JSC

	CMC	ICAC	PIC	CCC	IBAC	ACLEI	ICAC/ Office for Public Integrity	IC
Functions of Parliamentary Commissioner/Inspector in relation to integrity agency	Audit records of CMC including operational files; exercise of powers; appropriateness of CMC conducting an investigation; registers required to be maintained; authorisations for exercise of powers; policies and procedures are strictly complied with; inspect register of matters withheld from the Committee; review reports given by the CMC to the PCMC to verify accuracy and completion.	Audit operations of ICAC to monitor compliance with laws; deal with complaints of abuse of power, impropriety and misconduct by ICAC or ICAC officers; deal with maladministration including delay and unreasonable invasions of privacy; assess the effectiveness and appropriateness of the procedures relating to legality or propriety.	Audit the operations of PIC to monitor compliance with the law; deal with complaints of abuse of power, impropriety and other misconduct by PIC and PIC officers; assess effectiveness and appropriateness of procedures and activities of PIC. Entitled to full access and may require production of documents or officers to attend.	Audit operation of the Act; audit the operations of the CCC to monitor compliance with the law; deal with matters of misconduct on the part of CCC officers; audit any operation carried out pursuant to any powers conferred under the Act; assess the effectiveness and appropriateness of the procedures; make recommendations to the CCC and others	Monitor the compliance of the IBAC with the IBAC Act; assess the effectiveness and appropriateness of the policies and procedures; receive complaints about IBAC; investigate and assess the conduct of IBAC including exercise of duties, functions and powers	N/A		Nil
	Report and make recommendations to PCMC	Report and make recommendations	Report and make recommendations	Report and make recommendations to either House of Parliament and the Standing Committee	Report and make recommendations	N/A		N/A

	CMC	ICAC	PIC	CCC	IBAC	ACLEI	ICAC/ Office for Public Integrity	IC
	s 320 - conduct an annual review of intelligence data in the possession of the CMC AND police	Inspector may investigate any aspect of the ICAC operations and any conduct and is entitled to full access to records; may require production of documents or officers to attend to answer questions	May be exercised on own initiative, or at request of Minister, in response to a complaint or on referral by Ombudsman, ICAC, NSW Crime Commission or any other agency.	May be exercised on own initiative; at request of Minister; in response to a matter reported to the Inspector or in response to a reference by either House of Parliament or the Standing Committee or the CCC	Power to do all things that are necessary or convenient to be done, including complete discretion in the performance of duties, subject to any other laws May commence own motion investigation Has full and free access to all the records of the IBAC IBAC must give full assistance	N/A		N/A
Administrative arrangements for Parliamentary Committees	Holds regular meetings	s 69 - all evidence to be taken in public, unless it relates to a secret or confidential matter	Meets once per year in relation to the AR, and when other matters arise.	Not stated	Sits at times and places as convenient	Powers and proceedings of the Committee to be determined by both Houses of Parliament Has power to call for witnesses and documents be produced		May sit at such times and in such places, and it thinks fit
	Bi-monthly in camera meetings with the Chairperson, Commissioners, and Assistant Commissioners	One hearing each year following AR, with a second hearing during the year. Held in public. May also conduct issues based inquiries and call for public submissions.	Generally a hearing each 6 months. Held in public, or occasionally in camera. Inspector reports at least once per year.	Not stated	As required. Yet to be determined as this is a new Committee Committee can meet in private or hold public hearings as determined by the <i>Parliamentary Committees Act 2003</i> All evidence to be taken in public or in private subject to special circumstances	The Committee meets at least once per year, with a public hearing and published transcript		Has sat at least twice per year since establishment Meetings to date have been in camera

APPENDIX 4

Executive Summary – Report on Ethics & Integrity in the Tasmanian Public Sector 2013

INTEGRITY COMMISSION EXECUTIVE SUMMARY

REPORT ON ETHICS & INTEGRITY
IN THE TASMANIAN PUBLIC SECTOR

2013



INTRODUCTION

The Integrity Commission was established in October 2010. One of its key objectives is to improve the standard of conduct, propriety and ethics in Tasmanian public authorities by adopting a strong educative, preventative and advisory role.

Since establishment, the Commission has been collecting information about the state of ethics and integrity in the public sector. The Commission has done this by delivering face to face training and education programs; establishing discussion and advisory groups (Ethical Reference Groups);¹ examining public information about agencies; investigating misconduct and auditing the way agencies have responded to allegations of misconduct.

While agencies believe that they are providing sufficient information in applicable codes of conduct and ethics and integrity at induction, staff do not perceive that they have received that training.

Between November 2012 and January 2013, the Commission conducted a detailed survey of integrity mechanisms in state departments and government businesses.² The total staff within agencies surveyed amounted to nearly 31,000. The Commission combined the information it had gathered from all sources, and from this survey, to produce the first 'map' of the gaps in ethics and integrity policies and practices in these agencies. This information provides valuable insight into the key areas of misconduct risk. The Commission will use this information to develop training, research and misconduct prevention activities (products) to ensure that the work of the Commission is directed towards the areas of highest misconduct risk and that its products are most effective in helping agencies to reduce that risk. This work will also assist agency heads to meet their obligations under the *Integrity Commission Act 2009* to provide training to staff on ethics and integrity.

1. Ethical reference groups have been established to cover key areas of state public administration - state service departments, government businesses, local government. There is also a separate group to cover northern agencies.

2. The survey was conducted generally by face to face interviews with officers nominated by the head of the agency.

WHAT IS A MISCONDUCT RISK?

Misconduct risk arises from various sources. A poor culture; gaps in administrative processes; a lack of, or poorly drafted policies and procedures; ignorance of obligations and accountability system failures have been identified as key factors.³

Risk management models are universally recommended for agencies to assess their own governance needs, adopt (or not adopt) recommended standards and tailor their integrity frameworks to suit their needs.⁴ The OECD⁵ recommends agencies identify high risk areas and manage them with existing processes such as personnel management or internal audit.

In mapping misconduct risk within the Tasmanian public sector, the Commission identified a number of risk areas to measure agencies against, in order to determine the 'health' of the sector in relation to ethics and integrity. The areas the Commission focussed on included:

- education on ethical codes and key integrity policies - this included an assessment of whether education was ongoing or limited to induction, employees understood the information that was provided to them and records of training were maintained;
- key ethical guides - values, vision and mission statements and service charters set the ethical tone of an agency, so the existence, accessibility and employee awareness of these was assessed;
- misconduct management systems - crucial to minimising misconduct risk is the identification, reporting and treatment of complaints and reports of misconduct (internal or external). The existence and robustness of these management systems was assessed; and
- Public Interest Disclosure - protection of a 'discloser' is a key risk management tool, particularly for misconduct at higher levels, which is most serious. The existence of procedures to allow for such disclosures and the awareness of employees and the public in how to use them was assessed.

3. Testing APS Ethics: Where's the Integrity, Lynelle Briggs

Australian Journal of Public Administration, Vol 68 No 2 p 119

4. ASX corporate governance principles at <http://www.asx.com.au/governance/corporate-governance.htm>

5. OECD Reviews of Public Sector Integrity <http://www.oecd.org/gov/ethics/publicsectorintegrityreviews.htm>

Generally, the survey of 26 agencies found that most:

- provide their staff with information on the code of conduct at induction;
- review complaints for the purpose of improving processes;
- have comprehensive internal audits; and
- train and delegate staff in known risk areas, such as procurement.

However some key gaps were identified.

Education

Of most concern was that 17 out of 26 agencies surveyed did not provide adequate training or awareness-raising in ethics and integrity after staff induction.

This information confirmed what the Commission had been told directly by staff of agencies. The Commission surveyed staff who undertook its face to face training in 2012 and 69% of those who responded said they had not attended training in ethics or integrity at all with either their current or former employer. Of those the Commission trained in 2013, 58% said they had not received any previous ethics and integrity training.

The Ethical Reference Groups which meet regularly with Commission officers have also consistently raised concerns that staff are not aware of their responsibilities under the applicable codes of conduct and are also unaware of their ethical obligations generally.

These findings indicate that while agencies believe that they are providing sufficient information in applicable codes of conduct and ethics and integrity at induction, staff do not perceive that they have received that training. It was also clear from our survey that for most agencies, ethics training is a 'one-off' on induction. After induction staff are not reminded about it nor do they have their understanding refreshed.

Other gaps in the education area included:

- 8 agencies did not make any record of their staff's understanding of their ethical training and 3 did not record participant attendance; and
- 8 omitted key ethical issues (such as the code of conduct, vision, mission and values and the service charter) from initial induction or ethical training.



Key ethical guides

Of the agencies surveyed 7 had no service charter and 4 no vision statement.



Managing misconduct

There was significant room for improvement in recording and analysing complaints - 9 agencies did not have a complaints policy or defined process for handling complaints and 8 did not have a complaints register to track breaches of key policies and report trends to senior management.

Eight agencies did not inform their contractors about code of conduct provisions that might be relevant to the work they did for the agency.

Staff were not trained at all in key compliance policies covering high risk areas such as conflict of interest (4 agencies) and receipt of gifts and benefits (6 agencies). Nine agencies provided no ongoing training or awareness - raising of these after induction. An interesting parallel theme emerged from feedback the Commission received in its staff training sessions. There was a widespread degree of concern about conflicts of interest, particularly in the health sector and local councils (recruitment was identified as a key area). Nepotism and patronage were perceived as a problem in these sectors.

On the positive side 22 agencies surveyed said they reported complaints to senior management in one form or another, after receipt.



Public Interest Disclosure

The *Public Interest Disclosures Act 2002* (the PID Act) requires agencies to establish procedures to deal with certain processes (such as investigations and disclosures) under the Act and to make those procedures available to its staff and the public.

The information we received from our survey of agencies showed that nearly a quarter did not have PID procedures in place and 10 did not provide training to staff on PID rights and obligations, despite the Ombudsman publishing guidelines and model procedures to assist agencies to comply with the PID Act.

WHAT THE **INTEGRITY COMMISSION** **FOUND** FROM **26** AGENCIES SURVEYED



Education on ethical codes, policies and issues, vision/mission statement, service charter and PID

Limited or lack of ongoing ethics and integrity training or awareness-raising following initial induction.	17
Key ethical issues omitted from induction.	8
Employees not provided with practical examples during education or awareness-raising.	1
Training records not kept.	3
Employee understanding of education or awareness-raising not assessed or recorded.	8



Key ethical guides

No vision statement.	4
No service charter.	7
Limited or no access to service charter.	3
No steps taken to make the code of conduct 'visible' to employees.	1



Managing misconduct

Key compliance policies (including conflict of interest, gifts and benefits and confidentiality) not included in ongoing training or awareness raising.	9
Contractors not informed about the code of conduct.	8
No complaints policy or process.	9
No complaints/breach registers.	8
Complaints not reported to senior management.	4



Public interest disclosure (PID)

No PID policy or procedures.

6

No PID training.

10

Limited or no access to PID information.

6



Special needs clients

Limited or no provision for special needs clients.

3



Investigations

Limited or no guidance and education for employees on conducting investigations.

2



Accreditation

Employee accreditation not checked.

1



Risk assessment

No internal audit.

1



Special needs clients

Most agencies (23) had some procedures in place to inform special needs clients about the key policies that existed for their benefit (e.g. consultation with special interest groups, establishment of telephone hotlines, and direct liaison with carers, guardians and parents).



Investigations

Most agencies used external consultants to carry out investigations for code of conduct breaches – 6 exclusively and an additional 13 for more serious or complex investigations.

Of those agencies which conducted their investigations internally, 10 stated that they provided guidance or training to their staff conducting the investigations.

However, feedback from our training sessions and the Ethical Advisory Groups over the last year indicated that there is a significant lack of skill in managing and carrying out these kinds of disciplinary investigations.

The Commission surveyed staff who undertook its face to face training in 2012 and **69% of those who responded said they had not attended training in ethics or integrity at all** with either their current or former employer. Of those the Commission trained in 2013, **58% said they had not received any previous ethics and integrity training.**

GAPS = MISCONDUCT RISKS

The following identified gaps give rise to integrity risks in agencies:

- employees do not know of their ethical obligations, which places the agencies at risk of them engaging in misconduct or behaviour that might be seen as such by the public;
- manager ignorance of how to address employee misconduct, which places agencies at risk of poor cultures developing though bad behaviour not being addressed;

There was a widespread degree of concern about conflicts of interest, particularly in the health sector and local councils (recruitment was identified as a key area). **Nepotism and patronage were perceived as problems in these sectors.**

- employee misunderstanding of their organisation's core values and the expected behaviour that flows from them;
- lack of training records making disciplinary action following a breach of the code of conduct or key compliance policy difficult to substantiate or sanction through appropriate penalty;
- ignorance of ethical standards in contractors engaged to deliver core business leading to an increased risk of behaviour damaging to the reputation of the agency;
- the lack of a co-ordinated complaint process with analysis and feedback to management resulting in trends and risks not being identified;
- the lack of robust and accessible PID procedures may result in employees or others avoiding use of the PID processes to expose misconduct, allowing it to go undetected; and
- the lack of facilities to allow special needs clients to complain, may result in misconduct involving them going undetected.

Good practices

There were a number of activities, resources and programs within a small proportion of those surveyed, mostly from government businesses, that serve as good practice examples within the state public sector.

1. Education

- use of online training tools;
- agencies establishing a compliance officer position conducting monthly compliance training;
- toolbox talks on the code of conduct/ethical issues;
- regular internal emails and newsletters about ethical issues;
- refresher training on ethics and the code of conduct; and
- the agency's code of conduct is discussed regularly with staff.

2. Managing misconduct

- the code of conduct forms part of the contract of engagement and induction for contractors.

3. Client Services

- service agreements made with customers containing dispute resolution procedures; and
- undertaking a customer service survey.

4. Risk assessment

- discussion regarding the service charter is included in the performance review process; and
- a register of issues and opportunities identifies opportunities for improvement and assesses risk.

.....

Crucial to minimising misconduct risk is the identification, reporting and treatment of complaints and reports of misconduct.

.....

WHAT HELP DID AGENCIES ASK FOR FROM THE INTEGRITY COMMISSION?

Agencies wanted:

- help with reviewing ethical frameworks, including key compliance policies;
- online training modules to assist with ongoing training in ethics and integrity;
- information sheets and articles on 'hot topics' and compliance requirements with embedded scenarios for use in toolbox talks and newsletters;
- training that was suited to them and their staff in areas such as release of information, code of conduct, whistleblowing, social media, conflict of interest and gifts; and
- information on the role and processes of the Integrity Commission.

WHAT NEXT?

Based on the information from these sources, the Commission is currently developing a range of misconduct prevention products, including:

- conflict of interest template policies, procedures and guidance that agencies will be able to tailor to their specific needs and use with minimal additional work;
- training modules on ethics and integrity to be available online for use by agencies to deliver in-house training. The first of these modules is due to be released in June 2013;
- a bank of case studies and scenarios to complement the training modules; and
- a 'hot topic' series on misconduct risks, available on the Commission website.

The Commission will continue its regular Ethical Reference Groups in Hobart and Launceston. As well as catering for the ethical issues they raised in 2012, the Commission will facilitate environments for more issues to be raised and will develop a range of template policies, procedures and guidance to assist strengthening agencies' ethical frameworks.

The Commission will also continue its regular ethics and integrity direct training workshops for public sector employees in Hobart and Launceston.



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APPENDIX 5

Report of the Integrity Commission No 1, 2013



**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.

© Integrity Commission of Tasmania, June 2013.

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
 Legislative Council
 Parliament House
 Hobart TAS 7000

The Hon Michael Polly MP
 Speaker
 House of Assembly
 Parliament House
 Hobart TAS 7000

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

A handwritten signature in black ink, appearing to read "Murray Kellam".

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

A handwritten signature in black ink, appearing to read "Diane Merryfull".

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.

APPENDIX 6

Report of the Integrity Commission No 2, 2013 – an audit of Tasmania Police complaints finalised in 2012



**REPORT OF THE INTEGRITY
COMMISSION
No. 2 of 2013**

**An audit of Tasmania Police complaints finalised in
2012**

September 2013

The objectives of the Integrity Commission are –

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

© Integrity Commission of Tasmania, September 2013.

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
 Parliament House
 Hobart TAS 7000

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 an audit conducted in 2013 of Tasmania Police complaints completed during 2012.

Yours sincerely

A handwritten signature in black ink, appearing to read "Murray Kellam".

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

A handwritten signature in black ink, appearing to read "Diane Merryfull".

Diane Merryfull
 Chief Executive Officer

25 September 2013

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Report of the Integrity Commission – No. 2 of 2013
An audit of Tasmania Police complaints

Executive summary

Under s 88(1) of the *Integrity Commission Act 2009*, the Commission has the function of auditing the way that the Commissioner of Police has dealt with complaints about police misconduct.

In February 2013, the Commission commenced its first audit of Tasmania Police complaints. For this audit, the Commission aimed to look at all complaints finalised by Tasmania Police in 2012. Nearly 90 complaints of varying degrees of seriousness were subject to the audit. The Commission undertook the audit by looking at the hard copy records of Tasmania Police complaint files in accordance with an audit instrument which it applied to all files inspected. This instrument and the project plan (which included details of the audit focus and objectives), were provided to Tasmania Police for comment prior to the audit commencing. Tasmania Police raised no objections to the conduct of the audit or the proposed methodology, and the audit was undertaken with the full cooperation of Tasmania Police.

Overall, the audit found that Tasmania Police is managing its complaints system well. Complaints were appropriately classified, good contact was made with complainants, investigations were adequately undertaken and possible systemic issues were identified. The audit noted that there was room for improvement in record keeping and timeliness of complaint finalisation.

Because the results of the audit will be considered in the current joint Tasmania Police/Integrity Commission review of police protocols in relation to complaint handling (known as the 'Graduated Management Model'), no recommendations were made in this report.

The work of the Commission in undertaking this audit and publishing the results will help ensure public confidence that complaints against police will be dealt with appropriately.

Report of the Integrity Commission – No. 2 of 2013
An audit of Tasmania Police complaints

Introduction

In every Tasmanian public authority, responsibility for managing misconduct within the agency lies with the principal officer. In the case of complaints of misconduct against police officers, the responsibility rests with the Commissioner of Police.¹

The Integrity Commission's role in relation to police misconduct – as set out in Division 2 of Part 8 of the *Integrity Commission Act 2009* (IC Act) – envisages that the Commission will 'audit the way the Commissioner of Police has dealt with police misconduct'.² Further, the Commissioner of Police is required to provide assistance to the Commission 'to undertake a review or audit'.³

To give effect to the legislative provisions, the Commission and Tasmania Police entered into a memorandum of understanding (MOU) specifying the following:

The [Commissioner of Police] agrees to notify the [Integrity Commission] CEO in writing, as soon as practicable, if a complaint has been received by Tasmania Police about a designated public officer,⁴ or it is reasonably suspected that such an officer has engaged in misconduct or serious misconduct.⁵

The [Commissioner of Police] agrees to notify the CEO in writing, as soon as practicable, if a complaint has been received by Tasmania Police, or where it is reasonably suspected, that an officer has engaged in serious misconduct.

This report is about the Integrity Commission's inaugural audit of the way in which the Commissioner of Police responds to complaints of misconduct against police officers.

The Commission's audit was wide in its scope, covering all complaints of police misconduct dealt with and finalised by Tasmania Police during calendar year 2012 (i.e. 1 January – 31 December 2012 – the audit period).⁶

Being the first audit, the results provide a benchmark for future comparison and analysis. It is proposed that the Commission will conduct audits of this nature at least annually, although future audits are likely to be undertaken on a sampling basis and may focus specifically on issues such as allegation types or allegations by police district or work unit.

Similar processes are undertaken by police oversight bodies in other Australian jurisdictions, and assist in ensuring the transparency and effectiveness of the processes by which allegations of police misconduct are internally dealt with in the respective jurisdictions.⁷

¹ The terms 'misconduct' and 'police misconduct' are defined in section 4 of the *Integrity Commission Act 2009* (Tas) (IC Act). 'Police misconduct' means misconduct by a police officer.

² IC Act s 88(1)(c).

³ IC Act s 88(2)(a).

⁴ In simple terms, a 'designated public officer' is a commissioned police officer – that is, of the rank of inspector or above, see IC Act s 6.

⁵ 'Serious misconduct' means misconduct by a public officer that could, if proved, be a crime or an offence of a serious nature, or misconduct providing reasonable grounds for terminating the public officer's appointment, see IC Act s 4.

⁶ This included complaints initiated in 2011 which were finalised in 2012.

⁷ See for example *Crime and Misconduct Commission Act 2001* (Qld) s 47(1)(b) (CMC auditing and review of Queensland Police complaint handling); *Australian Federal Police Act 1979* (Cth) s 40XA(2) (Ombudsman review of AFP complaint handling).

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Tasmania Police internal complaint handling system

Tasmania Police deals with allegations of misconduct against its officers in accordance with a set of protocols known as the 'Graduated Management Model' (GMM).⁸

Historically, a complaint of misconduct against a Tasmania Police officer was investigated by the (then) Internal Investigations Unit (now Professional Standards Command), with the final determination being the responsibility of the Deputy Commissioner of Police. This process often resulted in protracted delays as formal inquiry lines and reporting procedures were adhered to. The GMM was designed to be a departure from that process, with devolution of responsibility for dealing with the investigation and resolution of complaints to lower (and more appropriate) levels of command.

Underpinning the GMM is the concept that complaints against police should be dealt with at a level of command, and with a level of investigation, that is commensurate with the seriousness of the allegation and the likely sanction in the event that the complaint is sustained. The level of categorisation dictates which area of command should be tasked with investigating or resolving the matter in question.

Tasmania Police accepts complaints about its officers via most means.⁹ The GMM provides that a police officer receiving a complaint must, by the end of that officer's shift, complete a nominated form, and send the form via e-mail to his or her divisional inspector, district commander, and to Professional Standards.

Upon receipt, some complaints may be dismissed. Section 46(2) of the *Police Service Act 2003* (PS Act) sets out the factors which may be taken into account in determining to dismiss a complaint. Section 47 of the PS Act allows for the complaint to be resolved by 'conciliation' at any stage. Conciliation may involve measures such as an apology, direction, guidance, training and/or mentoring.¹⁰

Under the GMM, complaints are classified into two categories: 'Class 1 misconduct' or 'Class 2 misconduct'. If a complaint is not dismissed under section 46(2) of the PS Act or conciliated, a divisional inspector is to decide how the complaint should be categorised. If in doubt, Professional Standards is to be consulted.

As a general rule, Class 2 matters are more serious, and are subject to investigation by Professional Standards or by personnel as directed by the Deputy Commissioner of Police. Class 2 complaints will generally involve allegations of the commission of an offence or a crime by a police officer.

Class 1 complaints are those which, even if proven, are likely to result only in internal disciplinary measures – not dismissal. Complaints categorised as Class 1 will be managed by a district commander or a divisional inspector. In each case, the actual investigation may be further delegated to a lower rank, but the commander or inspector retains supervisory responsibility for ensuring the investigation is completed competently and that appropriate

⁸ Tasmania Police, *Graduated Management Model for Complaints Against Police* (2010).

⁹ Complaints may be made in person at a police station, by telephone, e-mail or by post.

¹⁰ For conciliation to occur, the complainant and the subject officer must agree to the process. An investigation will proceed if the subject officer denies the allegations and refuses conciliation. GMM guidelines provide that a subject officer is to be contacted and informed of possible outcomes if the complaint is found to be true (although a subject officer is not to be informed of a complaint if doing so could harm the investigation).

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action is taken when warranted. When an investigation and/or resolution of a complaint is found to be deficient, the officer responsible for the management of the matter (i.e. the commander or inspector) will be held accountable.

The GMM lists 21 types of behaviour, drawn from the Code of Conduct in section 42 of the PS Act, which may be categorised as Class 1 or Class 2 misconduct, depending on the circumstances in each case. These types of behaviour run the gamut from 'breach of policy', to 'incivility' and 'excessive force'. On the other hand, the GMM also lists behaviour which must always be classified as Class 2 misconduct – for example, 'corruption', 'crime', 'drug use' or 'drug distribution', and (breach of) 'honesty and integrity'.

Upon completion of an investigation into a complaint of police misconduct, the Commissioner of Police (or, in practice, the relevant commander) must decide whether there has been a breach of the Tasmania Police Code of Conduct.¹¹ If there has been a breach, disciplinary action may result; this might extend from counselling to dismissal.¹² If there has not been a breach, other corrective action may still be taken where warranted.

A complaint may 'shift' between categories if evidence emerges revealing it is more or less serious. Professional Standards has the final say on the categorisation of a complaint. One purpose of the Commission's audit was to determine the accuracy of such categorisations.

The GMM also offers some limited direction on the progression of complaints, from initial receipt and recording to investigation. It also provides some guidance as to timeframes for the progression of investigations. Part of the audit's focus was to determine the level to which investigating officers met those requirements.

Tasmania Police comment

The GMM commenced in 2010. Because the audit focused on all complaints finalised in 2012, complaints received in 2011 (some in the early months of 2011) were subject to audit. As a result, Tasmania Police said that some officers involved in the investigations were likely not involved in investigations under the GMM previously, and thus likely 'lacked familiarity with its requirements' and that investigative standards in these matters 'may not necessarily be representative of today's investigative standards'.

Review of GMM

Early in 2013, Tasmania Police and the Integrity Commission agreed to conduct a joint review of the GMM. The terms of reference for that review contemplated some form of audit of complaints. Because of the review, expected to be finalised in late 2013, no recommendations have been made in this report. However, the results of the audit will provide valuable information about how the GMM is operating in practice and will inform any recommendations for change arising from the review.

¹¹ *Police Service Act 2003* (Tas) s 43(2) (PS Act).

¹² Refer PS Act s 43(3). Under GMM guidelines, where an allegation of Class 2 misconduct has been sustained, the relevant commander is to recommend an outcome to the Deputy Commissioner. Where that recommendation is for demotion or termination, the Deputy Commissioner is to consult with the Commissioner.

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Number of complaints audited

During the audit period, Tasmania Police finalised twenty (20) Class 2 complaints.

Of the 20 files provided, 19 were subjected to the audit process. One file could not be located.¹³

For the same reporting period, Tasmania Police forwarded to us seventy-six (76) Class 1 complaints as being finalised in 2012. One file was identified as containing material which, according to the relevant legislation,¹⁴ is not authorised to be disclosed to the Commission. As a result, that file was set aside and was not audited.

Two file numbers were associated with a single file received by the Commission. As a result, this case was counted as two separate files by Tasmania Police, but was audited as one by the Commission. Additionally, two further complaint files arose out of largely similar facts. The Commission determined to also audit these two files as one. In the course of the audit, one file was returned to Tasmania Police as it was required for further investigation purposes. A further two files were not audited as the Commission was of the view that they were finalised outside of the audit period. For these reasons, the Commission audited a total of 70 Class 1 complaints.

In total, the Commission audited 89 files, containing 148 allegations of police misconduct.¹⁵

For the purposes of the statistical data referred to in this report, the percentages are taken as a proportion of the total allegations identified.¹⁶ This provides a more accurate picture of complaint handling procedures, as often a single complaint file would contain numerous allegations, occasionally against multiple subject officers.

Objectives of audit

The objectives of the audit were to:

- examine the adequacy of the complaint handling processes;
- examine the timeliness of complaint handling;
- ensure that Tasmania Police is complying with its legislative obligations regarding complaint handling;
- identify any failings or systemic issues in the management of complaints; and
- highlight any areas where improvements can be made.

Focus of audit

In order to achieve these objectives, the Commission focused on specific issues:

- complaint classification - whether Class 1 and Class 2 misconduct complaints were properly categorised;
- timeliness - whether the Commission had been notified of Class 2 complaints and when;

¹³ A copy of the IAPro (the Tasmania Police complaint case management system) printout was provided, however it contained insufficient information to conduct a satisfactory audit of the file (C2: 1112-017).

¹⁴ *Telecommunications (Interception and Access Act) 1979* (Cth).

¹⁵ One complaint file did not identify any allegation of misconduct.

¹⁶ Unless otherwise stated.

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- timeliness - whether the receipt of the complaint by Tasmania Police was recorded promptly, and how long it took to investigate the complaint;
- customer service - whether there was adequate contact with complainants;
- compliance - whether there was compliance with the legislative requirements of ss 45, 46 and 47 of the PS Act in relation to the registration, investigation and determination of complaints;
- adequacy - whether the investigation was adequate given the level of seriousness of the allegations, including:
 - whether relevant witnesses were interviewed;
 - whether relevant evidence was gathered;
 - whether the analysis of evidence was logical; and
 - whether the outcome reached was reasonable and appropriate; and
- reporting - whether the Tasmania Police complaint management system is adequate to identify and report on relevant issues.

Method

On 24 January 2013, the Integrity Commission provided to Tasmania Police a copy of the proposed draft audit instrument and project plan, which referred to the audit objectives and focus set out above. On 8 February 2013, the Commissioner of Police advised that Tasmania Police had no objection to the audit, asked that sufficient time be allowed for comment on any draft report, noted the difference in treatment between Class 1 and Class 2 complaints, and referred to the use of the audit in the proposed GMM review.

Tasmania Police made no comment on, nor raised any objections to, the objectives or focus of the audit or the proposed audit instrument.

On 8 July 2013, Tasmania Police was provided with a draft copy of the audit report and its comments were received on 16 August 2013. The response was lengthy (19 pages) and therefore is not attached in full, but, where necessary, reference is made to the comments and to any relevant Integrity Commission response.

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Complaint numbers

As might be expected, the number of Class 1 complaints outnumbered Class 2 complaints.

Class 1 complaints

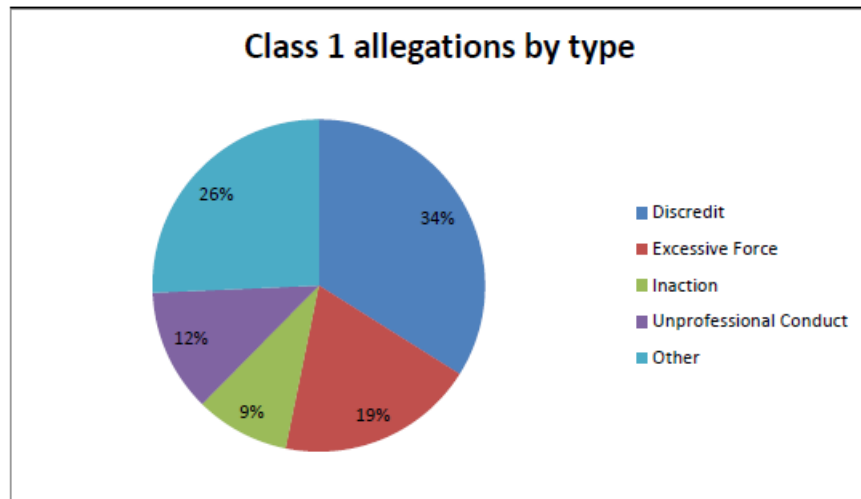
The Class 1 complaint files subjected to audit contained a total of 110 separate allegations.

The three most common Class 1 allegations were:

- bringing discredit to Tasmania Police ('discredit') - 34% of allegations;
- using excessive force ('excessive force') - 19% of allegations; and
- displaying unprofessional conduct ('unprofessional conduct') - 12% of allegations.

The chart below provides a breakdown of all Class 1 allegations by type.

It should be noted that the complaints do not cover the full spectrum of possible allegation types. In other words, some allegation types did not feature in 2012.



Class 2 complaints

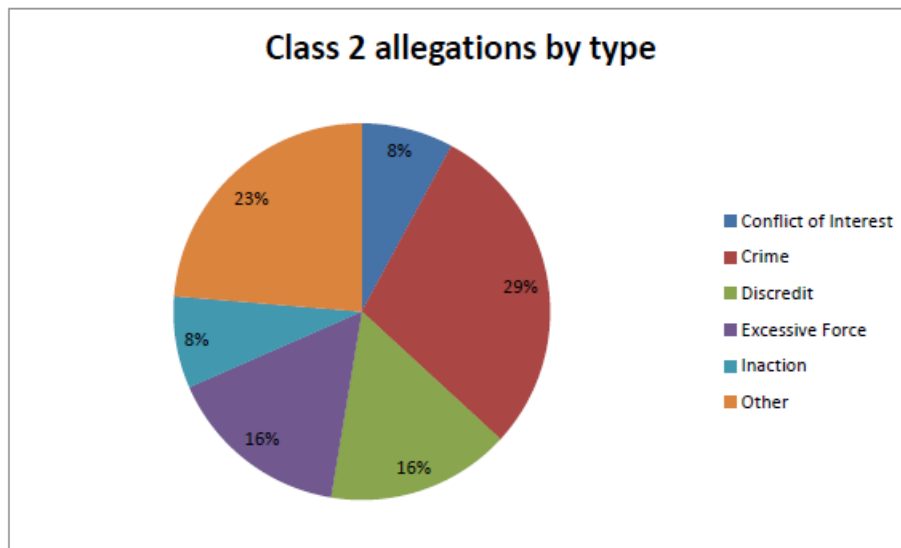
The 19 Class 2 complaint files subjected to audit contained 38 separate allegations. The three most common allegations identified were:

- criminal conduct ('crime') - 29% of allegations;
- discredit¹⁷ - 16% of allegations; and
- excessive force - 16% of allegations.

The chart below breaks down the identified Class 2 allegations by type.

¹⁷ Section 42(11)(b) of the PS Act provides that a police officer must not, at any time, conduct himself or herself or act in a manner that is likely to bring discredit on the Police Service.

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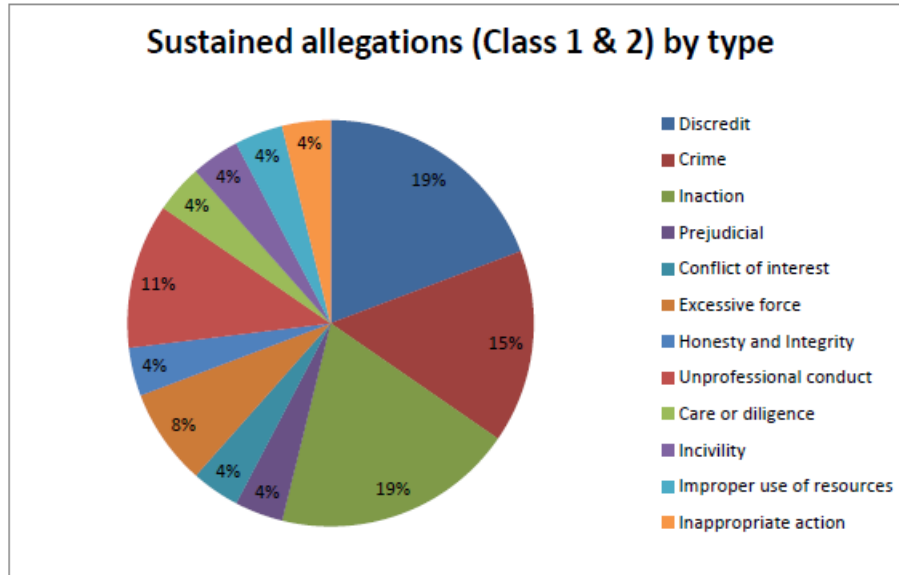
As noted above, some allegations, such as excessive force, can be classified as either Class 1 or Class 2 misconduct. The actual classification depends on the nature and seriousness of the conduct in question.

As with Class 1 matters, some Class 2 allegation types did not feature in 2012.

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Sustained complaints/allegations

The audit identified a total of 26 allegations (from 21 separate complaint files) that were found to have been 'sustained'. This included both Class 1 and Class 2 complaints.



As evidenced in the chart, the three most commonly sustained allegations overall in 2012 involved 'inaction'¹⁸ (19% of sustained allegations), 'discredit' (19%) and 'crime' (15%).

In terms of the classification of sustained allegations, nearly half (12 allegations) were Class 1, and just over half (14 allegations) were Class 2.

The most commonly sustained Class 1 allegation was 'inaction' (three allegations from three complaints), and the most commonly sustained Class 2 allegation was 'crime' (four allegations from four complaints).

¹⁸ Section 42(2) of the PS Act provides that a police officer must act with care and diligence in the course of his or her duties in the Police Service.

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Key findings

Complaint classification

The audit revealed that 98% of complaints had been correctly categorised by Tasmania Police in the first instance. Of the remaining three complaints (or two percent), one did not identify any allegation of misconduct, and another had been (correctly) re-classified from Class 1 to Class 2 by Professional Standards. The remaining matter was assessed by the investigator to lack the threshold requirements of a 'complaint'.¹⁹

Timeliness

Two primary issues were examined with respect to timeliness:

- whether the Integrity Commission had been notified of the matter in accordance with the MOU,²⁰ and
- the length of time taken to complete the complaint process.²¹

Time taken to notify the Integrity Commission

The current MOU between the Integrity Commission and Tasmania Police does not specify any exact timeframe requirements on notifying the Commission. It is only necessary that the Commission be notified 'as soon as practicable' of complaints amounting to serious misconduct or misconduct by designated public officers.

From all of the Class 2 complaint files where a notification to the Commission was identified, 57.1% recorded a notification being made within 30 days of receipt of the complaint.

Tasmania Police comment

In its comments on the draft report, Tasmania Police stated that it was appropriate to audit its performance against the GMM and the PS Act requirements. However, given that notification to the Commission pursuant to the MOU is not required under legislation, the obligations under the MOU are inherently different to those under the PS Act. Additionally, the MOU imposed mutual obligations on the Commission and the police. For these reasons, Tasmania Police claimed that it was not appropriate for this audit to assess notifications from Tasmania Police to the Commission pursuant to the MOU.

Further, Tasmania Police stated that notifications under the MOU related to serious misconduct and it was not necessarily the case that all matters classified as Class 2 complaints would have amounted to serious misconduct.

The Commission does not accept these assertions by Tasmania Police for two reasons.

Firstly, the project plan which was provided to Tasmania Police for comment prior to the audit clearly indicated that the audit would look at the 'notification to the Integrity Commission of Class 2 complaints'. No objection was made at that time about the

¹⁹ The complaint file on this matter shows a determination that it did not in fact satisfy the definition of a 'complaint' against police.

²⁰ In accordance with the MOU, Tasmania Police is required to notify the Commission of complaints against designated public officers (officers with a rank of inspector or above) as well as any complaints about serious misconduct.

²¹ The GMM stipulates timeframes for the completion of Class 1 matters but not Class 2.

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appropriateness of including notifications to the Commission in the audit, nor to the plan that the audit would look at Class 2 complaints in this regard.

Secondly, while in theory there is a difference between Class 2 and 'serious misconduct' complaints, in practice they are the same. It was the Commissioner of Police who recently publicly confirmed that Class 1 complaints are those which, even if proven, will only result in internal disciplinary measures (not dismissal), and that Class 2 complaints generally involve 'allegations of the commission of an offence or a crime by a police officer'.²²

Under the MOU, Tasmania Police is to notify the Commission of any complaint of misconduct by a commissioned officer and any complaint of serious misconduct. Under the IC Act, serious misconduct is a crime or an offence of a serious nature, or misconduct providing reasonable grounds for terminating the public officer's appointment.

Time taken to register complaints

The PS Act requires that, on receipt of a complaint, the Commissioner must enter the details in a register of complaints. Tasmania Police uses an electronic case management system, 'IAPro', to record and track the investigation of complaints against its officers. Entries recorded on IAPro assisted the Commission to identify relevant dates.

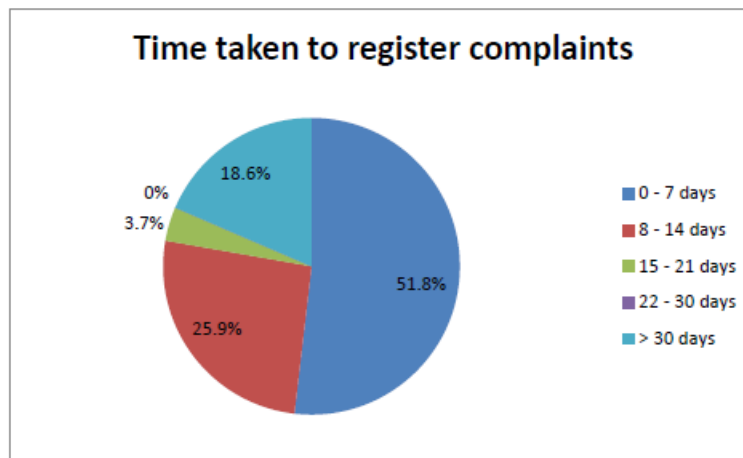
To measure the timeliness of registration of Class 2 complaints, the audit focused on the period between initial receipt of a complaint and the date on which it was registered on IAPro. Each Class 2 file provided to the Commission contained a printout from the IAPro system, containing the specific date of registration for each complaint.

So far as Class 1 complaints were concerned, this information was rarely available because Class 1 complaint files did not include an IAPro printout. Where possible, the audit therefore used the first date that appeared on a file referencing an action taken in response to the complaint as the registration date.

Using this method, a date was identified for a total of 27 files (Class 1 and 2) comprising 56 separate allegations. A breakdown of the time taken to register complaints with regards to these 27 files is shown in the chart below.

²² Tasmania, *Parliamentary Debates*, Legislative Council, 5 June 2013, 128 (Commissioner Darren Hine). Although this general rule may be disallowed where there are aggravating circumstances. For instance, an officer may be dismissed if they have been the subject of a series of Class 1 complaints.

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In summary, 81.4% of the above mentioned 27 complaints were registered within 30 days, but a significant proportion (18.6%) were registered more than 30 days after receipt. This number is taken only from a portion of the overall pool of complaint files. Most files, as explained above, did not contain sufficient information with which to determine how long the registration process had taken.

Tasmania Police comment

Tasmania Police stated that it had extracted data from IAPro for all audited complaints which indicated that only 10.5% of complaints were registered more than 30 days after receipt. As noted above, this data was not available from the files examined by the Commission during the audit.

Furthermore, Tasmania Police was of the view that, because the Commissioner has delegated his complaint registration function to the Commander, Professional Standards, the PS Act obligation to register a complaint does not arise until the file has been received by Professional Standards. Thus the more relevant measure would be the time taken to register the complaint from that point.

The Commission disagrees. The reason for measuring from the time the complaint is first made is to ascertain how long complaints take to 'get into the system' and to help identify if there are any blockages on the way. Additionally, a complainant would rightly expect that their complaint would be appropriately recorded and processed from the time that it is made, not from some indefinite time in the future when it makes its way to some part of the organisation tasked with undertaking its registration.

Tasmania Police also objected to the description of the 18.6% of complaints, which the audit assessed as taking longer than 30 days to be registered, as a 'significant proportion', on the basis that it was subjective terminology which should be acknowledged as such.

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All of the Commission's observations in this audit report are, of course, the Commission's and, to that extent, subjective.

Time taken to complete investigations

The GMM stipulates that, unless exceptional circumstances exist, all Class 1 complaints are to be finalised within 28 days. There is no similar limit for Class 2 complaints, which are more complex in nature and thus could be expected to take longer to deal with.

The audit revealed that Class 1 complaints took an average of 83 days to complete (58% were finalised within 28 days), while Class 2 complaints took an average of 241 days. The average complaint investigation process (from receipt of complaint to finalisation) took 117 days.

Although the majority of Class 1 complaints were finalised within the 28 day timeframe set out in the GMM, the audit indicates that a significant proportion were not. Appropriate timeframes for finalisation of complaints will be addressed in the review of the GMM.

Tasmania Police comment

It was noted that finalisation of Class 1 complaints within 28 days can be difficult, exacerbated in recent times by reductions in human resources. Tasmania Police also noted that Professional Standards tracks outstanding Class 1 investigations. Moreover, it is intended that IAPro will be expanded to provide access to all police districts, thereby permitting greater oversight and monitoring of complaint investigations.

**Case study 1
Timeliness**

A written complaint received by Tasmania Police on 11 February 2011 raised allegations about the behaviour of two officers responding to an alleged crime.

The complaint file indicates that a preliminary investigation was already in progress when the written complaint was received, and the matter was subsequently delegated for investigation as possible Class 1 misconduct.

Despite the fact a body of work had already been done to resolve the complaint, finalisation did not occur until 19 June 2012 – nearly 16 months after the initial receipt of the matter. No reason for the delay is apparent from the file.

The delay in this case was unreasonable. Indeed, it was a cause for such concern that it prompted the relevant Commander to issue a formal direction to the investigating officer to have the matter finalised. An unreasonable delay in conducting such an investigation can itself amount to a breach of the Code of Conduct.

Contact with complainants

The GMM provides that a letter is to be sent by Tasmania Police to a complainant acknowledging receipt of the complaint and stating which district will deal with the matter. The officer to whom the complaint is allocated is to contact the complainant within 24 hours of receiving the complaint file; furthermore, best practice dictates that a complainant should be notified of an outcome.

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The level of contact with complainants was first measured by determining whether such contact had in fact occurred, then by considering what opportunity existed for such contact. Finally, the audit looked at the notification provided to the complainant about the investigation outcome. All three issues went to determining whether the level of customer service given to complainants by police was adequate.²³

The audit revealed that in 75.6% of complaints there was some level of contact with the complainant(s). Of the remaining 24.4% of matters, most evidenced some attempt by police to contact the complainant – albeit that the attempts were ultimately unsuccessful. One investigation involved 14 separate, but unsuccessful, attempts to make contact with the complainant.

Only one file failed to contain any explanation as to why a complainant had not been contacted.

Further, in 66.4% of matters, the complainant had been provided with an opportunity to discuss and clarify the complaint, and in 81.7% of matters the outcome was communicated to the complainant. Of the remaining matters where complainants were not made aware of the investigation outcome, the Commission noted that the circumstances were such that contact was not possible.

In most cases where contact with a complainant was made, that contact was in the form of an interview, acquisition of a statutory declaration, or telephone conversation. In many cases, contact occurred on more than one occasion.

Case study 2
Contact with complainant

An incident occurred in August 2011 where Tasmania Police officers applied force to affect an eviction notice. The person evicted alleged that police had used excessive force, but did not lodge a 'formal' complaint until February 2012, after about six months had passed. Prior to the lodging of the formal complaint, there had been efforts to conciliate the issue.

Upon its receipt, the written complaint was assigned to an investigating officer. Within 24 hours of receipt, the complainant had been contacted via telephone and a further conversation had been organised.

Ten days after receiving the file, the investigating officer met with the complainant to discuss the complaint. A further meeting, again to attempt conciliation, was organised.

Another meeting was held two weeks later, at which the complainant was given the opportunity to discuss the matter with an officer who had been present at the eviction in August 2011. Yet further communication followed, but efforts to conciliate the matter were not successful.

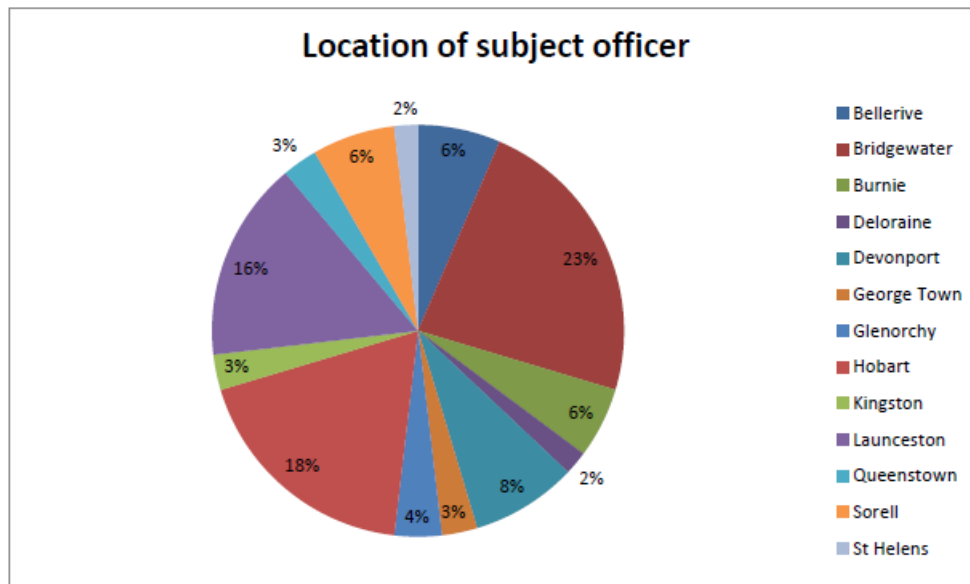
Despite the failure to achieve a conciliated outcome, this case demonstrates that considerable effort was invested in attempting to address the complainant's concerns. The ultimate outcome was that the complaint was found to lack substance, but the investigating officer was still able to conclude communications with the complainant on amicable terms.

²³ These statistics do not include allegations arising from internally generated 'complaints'.

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Contact with subject officers

The chart below shows the divisional location of each subject officer (in matters where it was possible to identify the subject officer). All thirteen Tasmania Police divisions were the subject of at least one complaint, with the three largest divisions in terms of subject officers being Bridgewater (23%), Hobart (18%) and Launceston (16%).



The audit examined whether there had been compliance with the requirements of procedural fairness for subject officers. This was achieved by testing whether there had been contact with subject officers. Additionally, the PS Act requires that each subject officer be notified of the outcome of an investigation where a determination has been made to take action for a breach; this was also assessed.²⁴

In most instances, subject officers were interviewed or provided statutory declarations or internal reports to the investigating officer.

Of the complaint files subjected to audit, the subject officer was identified in almost all allegations. The remaining files featured allegations against Tasmania Police generally, or a complaint against police in a specific work area.

Similarly, it appeared that the subject officer was notified of the determination to take action for a breach of the Code of Conduct in most matters. However, two files involved

²⁴ PS Act s 47(3)(b).

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determinations to take action for a breach, and did not include evidence of notification to that effect to the subject officers.²⁵

Best practice with respect to procedural fairness indicates that subject officers should be notified in writing of the outcome of an investigation, regardless of the nature of that outcome. The audit noted that 31 complaint files - including the two mentioned above - contained no evidence of notification to the subject officer.

Evidence gathering

The process by which Tasmania Police gathered evidence in internal investigations was examined to see if relevant lines of inquiry were pursued, whether relevant witnesses were contacted, and whether findings were made on an appropriate evidentiary basis.

Lines of inquiry

In 93% of matters (134 allegations contained in 81 files), it appeared that all reasonable lines of inquiry were pursued. Therefore, in 7% of matters some relevant inquiries had not been made.²⁶

Three files (containing four separate allegations) did not contain sufficient information for a determination to be made as to whether all reasonable lines of inquiry had been pursued.

Tasmania Police comment

The subjective nature of assessing if all relevant evidence was gathered or lines of inquiry pursued was commented on at length by Tasmania Police.

While such judgements are indeed subjective, oversight agencies can and do make such assessments about the adequacy of police investigations.²⁷

²⁵ The reason for the lack of notification in one file may have been that the subject officer admitted to the conduct constituting the breach and was provided verbal guidance as a result. The admission and verbal guidance may have occurred at the same time, thereby negating the requirement for written notification.

²⁶ In general terms, this meant that a particular witness had not been approached, or that an obvious evidentiary matter had not been addressed.

²⁷ See, for example, Corruption and Crime Commission, *Report on the Management of Misconduct by Western Australia Police* (2 September 2011) ; Commonwealth Ombudsman, *Annual report on the Commonwealth Ombudsman's activities under Part V of the Australian Federal Police Act 1979 for the Period 1 July 2011 to 30 June 2012* (November 2012).

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Case study 3

Contact with witnesses

One complaint concerned an allegation that police had used excessive force in making an arrest. The complainant had been detained by security officers at a music festival and subsequently arrested by police.

The alleged misconduct took place in a police vehicle as it transported the complainant to a police station, but events surrounding the complainant's interaction with police at the time of arrest were also in issue and were relevant.

It was noted in the complaint file that witnesses to the complainant's arrest at the festival were not interviewed because they would not have witnessed the alleged assault in the police vehicle. The security officers, however, were interviewed. Witnesses to the complainant's arrest may not have seen events unfold in the police vehicle, but would have assisted investigators to test the complainant's account of interaction with police at the time of the arrest.

In the Commission's view, it was not appropriate to draw a distinction between the security officers (who were interviewed) and other witnesses to the complainant's arrest (who were not contacted).

Interviewing the other witnesses would have been a relatively simple line of inquiry, and would have given the investigative process greater transparency.

Tasmania Police comment

In its response, which disagreed with the Commission's view of this case, Tasmania Police provided contradictory reasons for the decisions it made about who to interview. On the one hand, it was asserted that the complaint was about conduct that had occurred en route to the police station and thus that conduct was not visible to persons present where the complainant was taken into custody (and so it was not relevant to interview bystanders). On the other hand, the security officers were said to have been interviewed because 'they were directly involved in the circumstances leading to the complainant being taken into custody and would have been very closely positioned to observe any police misconduct'.

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Case study 4

Narrow scope

A Class 2 investigation was conducted into an allegation that a police officer had been present when drugs were purchased by a criminal offender.

The initial allegation was determined to be unfounded. While this appears to be an appropriate outcome based on the evidence, the investigation established that the police officer otherwise had an association with a person involved in the supply of drugs and unlawful activity.

The audit showed that the offender involved in the alleged drug transaction was not interviewed, that the police officer downplayed his association with the criminal, and that no intelligence analysis was attached to the file.

Aspects of the police officer's association appear suspicious and reflect more than 'poor judgment' on the part of the officer; further enquiries were warranted.

Tasmania Police comment

The Commission's reference to the person associated with the police officer as a 'criminal' was described by Tasmania Police as 'unwarranted'. It stated that, 'Whilst the individual in question has some drug convictions, they are minor in nature, were dealt with in the lower courts and occurred some time previously. He has no criminal convictions.'

The Integrity Commission is unaware of 'drug convictions' (or indeed any 'convictions') which would not be appropriately described as 'criminal convictions'.

Tasmania Police further advised that the police investigation also identified the concerns raised by the Commission, and an order was issued to the officer to immediately 'cease to associate, either directly or indirectly, with the person in question'.

Contact with relevant parties

In the interests of transparency, it is important that all relevant parties to a complaint are contacted and, where appropriate, formally interviewed. The audit focused on this issue by asking whether such contact had occurred and, where it had not, whether the complaint file recorded why that was so.

Of the files audited, 79% contained a record of contact with all relevant parties (this generally included the complainant, subject officer and witnesses). The remaining files (21%) included two complaints that had been withdrawn soon after being submitted, and two others that contained insufficient information to determine whether contact had occurred.

Evidence

In terms of the adequacy of evidence gathering, it was important that the audit examine the use to which evidence was put. This is because complaint outcomes should be based solely upon relevant and cogent evidence.

Encouragingly, almost all files indicated that determinations had been based on the evidence obtained.

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Case study 5

Findings based on evidence

The Commission examined a complaint in which the conclusion was considered not to be justified on the basis of the evidence obtained in the course of investigation. Ironically, the complaint in question involved an allegation that a police officer had failed to conduct an adequate investigation. The internal investigation appeared to the Commission to lack clarity, yet had nonetheless concluded that the allegation was 'not sustained'.

This conclusion was in spite of comments from a supervisor, included in the file, stating that the investigation 'could have been handled better' and that 'there were some investigative techniques and procedural issues which should have been undertaken'. In the Commission's view, these comments were at odds with the conclusion that the allegation was not sustained.

Tasmania Police comment

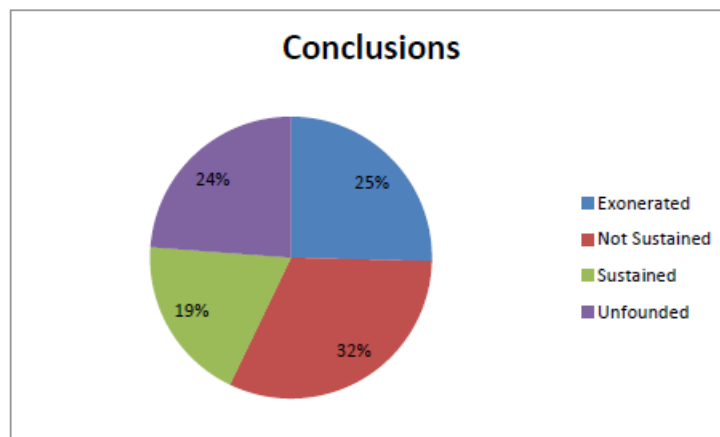
Tasmania Police disagreed with the Commission's view of this matter.

Outcomes of investigations

The GMM provides that complaints against police should be concluded as being exonerated, not sustained, sustained or unfounded, described as follows:

- exonerated: the allegation is true but the behaviour was lawful;
- not sustained: there is insufficient evidence to prove or disprove the allegation;
- sustained: evidence proves the allegation; and
- unfounded: the allegation is false or not factual.

Below is a breakdown of allegation conclusions in the audited files. Note that some complaints had several allegations with different conclusions.



Not included in the above chart were 17 complaint files (containing 20 allegations) that did not register a conclusion. Of these files, six (with eight allegations) were conciliated (with no

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'conclusion' as such). The remainder were either withdrawn or otherwise did not document an outcome.

The audit determined that almost all of the recorded conclusions were appropriate.

<p>Case study 6</p> <p>Investigation conclusions</p> <p>One complaint concerned an allegation of unauthorised disclosure of confidential information. In the process of investigation, two potential exculpatory explanations were put forward in the investigation report, but neither had any evidentiary basis and both were entirely speculative.</p> <p>The outcome was a finding of 'unfounded'. This was despite the fact that the evidence did not prove the matter one way or the other.</p> <p>In the Commission's view, a finding of 'not sustained' would have been more appropriate.</p>

Tasmania Police comment

Tasmania Police disagreed with the Commission's view of this matter. It noted that (some time after the complaint investigation was closed) the allegation had been withdrawn by the person who made it, and that the stated reason for making the false allegation was consistent with one of the speculative explanations advanced by the investigator.

The Commission remains of the view that whatever may have later been revealed, neither the speculative explanations nor the outcome were warranted based on the evidence available at the time.

Systemic issues

The audit considered whether the internal investigation process was able to identify systemic issues that emerge from complaints or during an internal investigation.

Tasmania Police identified three allegations (from three separate complaints) as raising systemic issues; each matter involved internal procedures that required clarification or amendment. Of the remaining 98% of complaints, the Commission could find no matters in which a systemic issue had definitively emerged but had not been identified.

However, two complaints (comprising three allegations) were identified as raising *possible* systemic issues. Both complaints concerned a failure to adhere to established internal procedures, and may have warranted further inquiries to address the possibility of a wider inadequacy.

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Case study 7

Systemic issue: emergency calls

An officer received a call on the Triple Zero emergency line that did not satisfy the criteria for an emergency call. A complaint was later received about the officer's conduct, with an allegation that the officer had failed to act with care and diligence.

The internal investigation concluded that the officer had followed the existing procedures for dealing with Triple Zero calls and the matter was concluded as 'not sustained'. Notwithstanding the finding, the subject officer received guidance in respect of poor customer service.

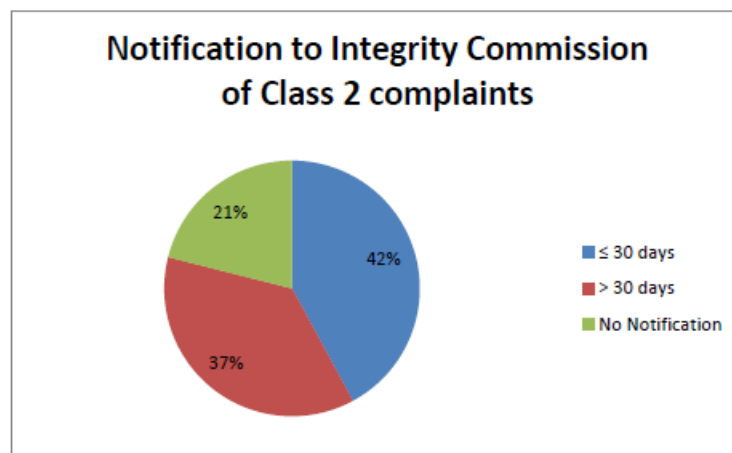
The complaint file shows that there was disagreement between senior officers as to the preferred outcome. The investigation highlighted inadequacies in the procedures surrounding Triple Zero calls, and the investigating officer was ultimately tasked with developing improved procedures to accommodate similar situations in future.

This case demonstrates that the internal investigation process is capable of identifying a possible systemic issue and the steps necessary to address it.

Notification to the Integrity Commission

As previously stated, an MOU between Tasmania Police and the Integrity Commission provides that the Commissioner of Police will notify the Commission of any complaint against a designated public officer, or any allegation of serious misconduct.

The audit therefore examined the notification process for Class 2 complaints. The following chart shows how long it took for the Commission to be notified of each complaint.



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It should be noted that the MOU does not specify a timeframe with respect to notifications, providing only that a notification should be made 'as soon as practicable'.

The 21% of matters in which no notification was made to the Commission included four complaint files.

Case study 8
Notifying the Integrity Commission

An inspector (i.e. a designated public officer) was formally counselled and reprimanded by a commander pursuant to s 43(3)(b) of the PS Act for failing to act with care and diligence in the discharge of his duties. The matter appears to have involved an ongoing issue and to have been caused, at least in part, by health issues experienced by the Inspector.

The matter was first raised in January 2012 and finalised by February 2012.

This was a complaint of misconduct involving a designated public officer in which the Integrity Commission has an interest, yet the Commission learnt of the matter only as part of the audit process.

Tasmania Police comment

Tasmania Police advanced reasons for the failure to notify the Commission in this case, including that this complaint did not arise in the usual way, and that it had occurred early in the appointment of a new Professional Standards commander.

Record keeping

The audit identified issues with respect to the adequacy of complaint file management, with some records missing and others suggesting an inadequacy in record keeping.

The paucity of information contained in some files (both Class 1 and 2) made it impossible to assess decision making processes and timeliness.

Further, in some cases the lack of documentation pointed to a lack of compliance with the GMM and/or the PS Act. One example was the lack of documented notifications to subject officers of the outcomes of investigations. Such a notification is a legislative requirement under the PS Act,²⁶ as well as being essential in ensuring procedural fairness. Even where there was no statutory obligation to notify (because no determination to take action had been made), there were a number of instances of the investigation report recommending the subject officer be notified of the outcome, and the complaint file lacking evidence of any such notification.

²⁶ Where it is determined to take action for a breach, see PS Act s 47(3)(b).

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Case study 9
Record keeping

One file concerned a complaint alleging that a police officer had brought discredit to Tasmania Police. The file contained no record of a finalisation date (causing some difficulty in determining whether, in fact, the file should have been included in the audit), no obvious record of the registration date, and it was not clear whether the subject officer had been notified of the investigation outcome.

From the material available on the complaint file, this matter appears to have related to a relatively minor complaint that was ultimately withdrawn. Nonetheless, the lack of documentation made it difficult for the audit to make accurate determinations, particularly as to the adequacy of the investigation.

Although much of the record keeping was sufficient to allow auditors to navigate through files, the adoption of a uniform process would be useful. Several complaint files included well-documented running sheets, while others lacked such a document. Running sheets allowed for easier navigation through complaint files, and offered positive evidence of the investigating officer's decision making process.

Case study 10
Record keeping

An acting inspector was tasked with investigating a complaint alleging unprofessional conduct. The acting Inspector made extensive use of a running sheet to trace attempts to contact relevant parties and to record the receipt of documents. The complaint file accurately recorded the investigative process and filed all necessary documents in an easy-to-read fashion.

Not only did this allow for the auditor to quickly and accurately examine the contents of the file, the well-organised file ensured transparency.

Tasmania Police comment

In relation to record keeping, Tasmania Police drew attention to the difficulties arising from: the number of related files which are required to be kept separate from complaint investigation files (e.g. court prosecution files, ministerial correspondence files); the combination of hard copy files (kept by Professional Standards in relation to Class 2 investigations, and within districts for Class 1 investigations); and electronic files being held across two IT systems (IAPro and TRIM). It noted that a move to greater utilisation of IAPro across the organisation would enhance record keeping in future.

Miscellaneous findings

Some issues, whilst not extensive throughout the audit pool, are worthy of note.

Quality assurance

The audit revealed that Tasmania Police is operating a relatively well functioning complaints system. Several files evidenced high levels of oversight on the part of senior officers in Tasmania Police. The complaint file referenced in Case study 1 indicated a willingness on

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the part of commanders to deal effectively and robustly with an investigating officer to ensure investigations were conducted efficiently. Such an approach encourages public confidence that complaints against police will be dealt with appropriately.

Case study 11

Quality assurance

A Class 2 internal complaint concerned a junior ranking police officer who had been involved in a collision while driving in excess of the .05% blood alcohol limit. The police officer was charged and did not contest the matter. An internal legal review of the disciplinary investigation noted with concern that no attempt had been made by the investigating officer to interview a witness, or to investigate evidentiary discrepancies.

The legal review included recommendations to remedy these deficiencies, which the Deputy Commissioner directed to be implemented.

Scope

The audit revealed some matters in which investigators went about their work with an overly narrow focus, particularly with respect to Class 2 complaints. The Commission considers that some investigations focused on particular issues at the expense of other (in some cases, potentially more serious) issues.

Care needs to be taken to ensure that investigators tasked with Class 2 complaints thoroughly examine every issue of possible misconduct – whether or not the allegation was specifically raised by the complainant.

Investigators should further ensure that an account is obtained from all relevant witnesses, including the complainant.

Case study 12

Investigative scope

A Class 2 investigation was conducted by Professional Standards into an internally generated allegation that a police officer had been paid by a drug offender. Following investigation, the allegation was recorded as 'unfounded'.

Upon commencement of the investigation, a number of avenues of inquiry had been identified in a document prepared by a senior officer for the Commander Professional Standards.

The audit revealed that many of these suggested lines of inquiries had not been followed, and that there were no records detailing why they had not been actioned.

Tasmania Police comment

Tasmania Police disagreed with the Commission's view about this matter.

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Conclusion

The results of the audit indicate that, overall, Tasmania Police is managing its complaint system well. Complaints were appropriately classified, good contact was made with complainants, investigations were adequately undertaken and possible systemic issues were identified.

There is room for improvement in respect of timeliness of complaint finalisation, particularly because a significant proportion of Class 1 complaints are taking more than 28 days to finalise. Record keeping could also be improved in both Class 1 and Class 2 matters, and the use of a running sheet was noted as a useful tool in this regard.

The timeliness and the occurrence of notification of all relevant complaints to the Integrity Commission could also be improved.

APPENDIX 7

Comparative analysis – privilege and self-incrimination

	Can a person be directed to divulge privileged information (especially in regards to self-incrimination)?	If yes, what can/cannot be done with that information?	Source
Qld: Crime and Misconduct Commission (CMC)	<p>Yes. A witness who holds privileged information (including on the grounds of self-incrimination) may be directed to answer.</p> <p>Legal professional privilege, parliamentary immunity and public interest immunity are preserved to some extent in limited cases.</p>	<p>Any answer given cannot be used against the person in criminal, civil or administrative proceedings - except under certain circumstances: <i>Section 197</i></p> <p>(3) ... is admissible ...</p> <p>(a) with the individual's consent; or</p> <p>(b) if the proceeding is about—</p> <p>(i) the falsity or misleading nature of an answer, document, thing or statement ... ; or</p> <p>(ii) an offence against this Act; or</p> <p>(iii) a contempt of a person conducting the hearing.</p> <p>(4) Also, the document is admissible in a civil proceeding about a right or liability conferred or imposed by the document.</p>	<i>Crime and Misconduct Act 2001</i> (Qld) ss 184 – 197.
NSW: Independent Commission Against Corruption (ICAC)	<p>Yes. Legal professional privilege is preserved (s 37), and parliamentary privilege preserved to some extent (s 122).</p> <p>Excerpt from the ICAC Bill Second Reading Speech: <i>In this respect the commission's powers will be similar to those of Ombudsman. The commission, like the Ombudsman, will be able to override claims of privilege by public officials in obtaining documents and information ... As with Royal Commissions, the commission will have the power to summon persons to give evidence or to produce documents. A person summoned to give evidence is obliged to answer questions notwithstanding any ground of privilege or any other ground. An answer which tends to criminate the person cannot, however, be used in subsequent proceedings against the person. The commissioner will also be able to recommend to the Attorney General that a witness assisting the commission be granted an indemnity.</i>[our emphasis] http://www.icac.nsw.gov.au/about-the-icac/legislation/second-reading-speech</p>	Under section 26, the incriminating statement, document or other thing may not be used in any proceedings against the person (except proceedings for an offence against the ICAC Act or internal disciplinary proceedings).	<i>Independent Commission Against Corruption Act 1988</i> (NSW) ss 24, 25, 26, 37, 122
NSW: Police Integrity Commission (PIC)	<p>Yes - sections 27, 28 and 40 of the PIC Act are substantially the same as sections 24, 26 and 37 of the ICAC Act.</p> <p>According to the PIC, the Act has the broad effect of abrogating privileges, including the privileges against self-incrimination and legal professional privilege, save and except to the limited extent to which a legal practitioner or "other person" may assert the privilege pursuant to section 40(5) (http://www.pic.nsw.gov.au/files/File/Practice%20Notes%202012.pdf).</p>	Under section 28, the incriminating statement, document or other thing may not be used in any proceedings against the person (except proceedings for an offence against the PIC Act).	<i>Police Integrity Commission Act 1996</i> (NSW) ss 27, 28, 29, 40, 145
WA: Corruption and	Yes – there is no privilege against self-incrimination under the Act (s 145).	An incriminating statement made by a witness may not be used against them in any criminal or other proceedings except contempt,	<i>Corruption and Crime Commission Act 2003</i> (WA) ss 27A, 94, 100, 144, 145,

	Can a person be directed to divulge privileged information (especially in regards to self-incrimination)?	If yes, what can/cannot be done with that information?	Source
Crime Commission (CCC)	Public interest immunity and legal professional privilege in right of the State also are not applicable (s 94(4)). However, legal professional privilege is preserved (other than for public authorities or public officers in that capacity) (s 144).	offences under the CCC Act or disciplinary action. It may also be used in proceedings under s 21 of the <i>Evidence Act 1906</i> (WA) in cross-examination about prior inconsistent statements (s 145).	197, 223
Vic: Independent Broad-based Anti-corruption Commission (IBAC)	Yes – the privilege against self-incrimination is abrogated (s 144). Legal professional privilege is preserved (s 149).	Anything which might incriminate the person or make them liable to penalty may not be used in evidence against them before any court or person acting judicially, except in proceedings for perjury or giving false information; an offence against the IBAC Act; an offence against the <i>Victorian Inspectorate Act 2011</i> ; an offence against section 72 or 73 of the <i>Protected Disclosure Act 2012</i> ; contempt of the IBAC under the IBAC Act; or a disciplinary process or action (s 144(2)).	<i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic) ss 97, 98-101, 121, 143-149
Cth: Australian Commission for Law Enforcement Integrity (ACLEI)	Yes - witnesses are not entitled to refuse to answer a question except on the grounds of parliamentary privilege (not mentioned in the Act therefore preserved) or, to a limited extent, legal professional privilege (ss 79, 95) or public interest immunity (ss 80, 96). There is no privilege against self-incrimination (ss 80, 96). However, certain evidence must be given in private (i.e. not in public at a public hearing- s 89). There is no privilege against spousal incrimination. http://www.aclei.gov.au/Documents/ACLEI%20Practice%20Notes%20-%2028%20September%202012%20ed.pdf ; http://www.aclei.gov.au/Documents/Hearings%20notices%20and%20information%20guidelines/ProductionGuidelines-November2009.pdf	None of the (self-incriminating) evidence given by a witness is admissible in any proceedings, apart from confiscation proceedings; disciplinary proceedings; proceedings for certain criminal offences (such as dealing with false or misleading information or documents, and for obstruction of Cth public officials); and offences relating to non-compliance with a summons or notice to produce issued under the LEIC Act (ss 80, 96).	<i>Law Enforcement Integrity Commissioners Act 2006</i> (Cth) ss 79-80, 89, 95-96, 138
SA: Independent Commission Against Corruption	Yes, a person may be required to divulge self-incriminating evidence (Schedule 2, s 8(4)); parliamentary privileges (s 6) and legal professional privilege (Schedule 2, s 8(3)) are preserved.	Self-incriminating evidence may not be used in a subsequent criminal proceeding or a proceeding for the imposition of a penalty, unless it is a proceeding under the <i>Criminal Assets Confiscation Act 2005</i> ; or a proceeding in respect of the falsity of the answer/ statement contained within the document (Schedule 2, s 8(5)).	<i>Independent Commissioner Against Corruption Act 2012</i> (SA) s 6, Schedule 2 s 8.
Tas: Integrity Commission	No.	N/A	<i>Integrity Commission Act 2009</i> (Tas) ss 92, 100

Please note that each of these powers is subject to complex variations, and may be subject to exemptions, within each jurisdiction. Readers are advised to refer to the enabling legislation of each integrity entity for more detailed information

APPENDIX 8

2013/14 Budget – Integrity Commission

14 INTEGRITY COMMISSION

AGENCY OUTLINE

The Integrity Commission was established by the *Integrity Commission Act 2009* and started operation on 1 October 2010. The Integrity Commission's role is to improve the standard of conduct, propriety and ethics in the public sector through:

- education and training to prevent misconduct and develop resistance to misconduct;
- building the capacity of the public sector to prevent and address misconduct; and
- providing an effective mechanism for misconduct complaints to be addressed.

The Integrity Commission's primary focus, under its legislation, is on education, advice and prevention of public officer misconduct to strengthen the confidence of Tasmanians in the capacity of the State's public authorities to operate ethically and with propriety.

The Commission also deals with complaints of misconduct which, in some instances, may lead to investigations. The Commission has the power to monitor and audit internal investigation processes conducted by public authorities.

The Commission is overseen by a Board that includes the Chief Commissioner, the Ombudsman, the Auditor-General and three other members with specialist expertise.

This chapter provides financial information about the Outputs (goods and services) to be delivered by the Integrity Commission in 2013-14 and over the Forward Estimates period (2014-15 to 2016-17). Further information about the Commission is provided at www.integrity.tas.gov.au.

MAJOR INITIATIVES

The major initiatives for the Commission include:

- working with the public and key stakeholders to enhance trust and confidence in public authorities within Tasmania;
- working cooperatively with public authorities, other integrity entities and the Parliamentary Standards Commissioner to prevent misconduct and enhance capacity-building in dealing with misconduct;
- educating public authorities and raising public awareness about integrity and ethical conduct; and
- dealing with misconduct issues in a timely, effective and fair way in accordance with the public interest.

OUTPUT INFORMATION

The individual Output of the Integrity Commission is provided under:

- Output Group 1 – Integrity Commission.

Table 14.1 provides an Output Group Expense Summary for the Integrity Commission.

Table 14.1: Output Group Expense Summary¹

	2012-13	2013-14	2014-15	2015-16	2016-17
	Budget	Budget	Forward Estimate	Forward Estimate	Forward Estimate
	\$'000	\$'000	\$'000	\$'000	\$'000
Output Group 1 - Integrity Commission					
1.1 Integrity Commission	3 125	3 018	3 039	3 091	3 144
	3 125	3 018	3 039	3 091	3 144
TOTAL	3 125	3 018	3 039	3 091	3 144

Note:

1. Expenditure estimates include the impact of the cessation of the payment of payroll tax by agencies. This reduces both agency revenues and expenditure. Further information on this policy change and its impact on agencies is included in the Introduction to Budget Paper No 2, *Government Services*.

Output Group 1: Integrity Commission

1.1 Integrity Commission

This Output provides:

- education and capacity-building for public officers and enhancing public confidence in the integrity and ethical conduct of the public sector;
- preventative and advisory functions to public officers; and
- complaint handling/assessment and the conduct of investigations and inquiries as outlined in the Act.

DETAILED BUDGET STATEMENTS

Table 14.2: Statement of Comprehensive Income¹

	2012-13	2013-14	2014-15	2015-16	2016-17
	Budget	Budget	Forward Estimate	Forward Estimate	Forward Estimate
	\$'000	\$'000	\$'000	\$'000	\$'000
Revenue and other income from transactions					
Appropriation revenue – recurrent	3 026	2 934	2 955	3 070	3 060
Total revenue and other income from transactions	3 026	2 934	2 955	3 070	3 060
Expenses from transactions					
Employee benefits	2 022	2 068	2 105	2 152	2 179
Depreciation and amortisation ²	68	53	53	53	53
Supplies and consumables	736	718	696	700	714
Other expenses	299	179	185	186	198
Total expenses from transactions	3 125	3 018	3 039	3 091	3 144
Net result from transactions (net operating balance)	(99)	(84)	(84)	(21)	(84)
Other economic flows included in net result	....	....	....	....	....
Net result	(99)	(84)	(84)	(21)	(84)
Other economic flows - other non-owner changes in equity	....	....	....	....	....
Comprehensive result	(99)	(84)	(84)	(21)	(84)

Notes:

1. Revenue and expenditure estimates include the impact of the cessation of the payment of payroll tax by agencies. This reduces both agency revenues and expenditure. Further information on this policy change and its impact on agencies is included in the Introduction to Budget Paper No 2, *Government Services*.
2. The decrease in Depreciation and amortisation in 2013-14 is due to the revision of the amortisation profile for intangible assets.

Table 14.3: Revenue from Appropriation by Output

	2012-13	2013-14	2014-15	2015-16	2016-17
	Budget	Budget	Forward Estimate	Forward Estimate	Forward Estimate
	\$'000	\$'000	\$'000	\$'000	\$'000
<i>Attorney-General and Minister for Justice</i>					
Output Group 1 - Integrity Commission					
1.1 Integrity Commission	3 026	2 934	2 955	3 070	3 060
	3 026	2 934	2 955	3 070	3 060
Integrity Commission					
Total Recurrent Services	3 026	2 934	2 955	3 070	3 060
Total Works and Services	----	----	----	----	----
	3 026	2 934	2 955	3 070	3 060
Total Revenue from Appropriation	3 026	2 934	2 955	3 070	3 060
Revenue from Appropriation	3 026	2 934	2 955	3 070	3 060
Administered Revenue from Appropriation	----	----	----	----	----
	3 026	2 934	2 955	3 070	3 060

Table 14.4: Statement of Financial Position as at 30 June

	2013	2014	2015	2016	2017
	Budget	Budget	Forward Estimate	Forward Estimate	Forward Estimate
	\$'000	\$'000	\$'000	\$'000	\$'000
Assets					
Financial assets					
Cash and deposits ¹	(8)	2	2	2	2
Receivables ¹	15	28	28	28	28
	9	30	30	30	30
Non-financial assets					
Property, plant and equipment ¹	14	24	17	10	3
Intangibles ¹	140	211	198	185	172
Other assets	513	463	430	397	364
	667	698	645	592	539
Total assets	676	728	675	622	569
Liabilities					
Payables ¹	96	24	24	24	24
Employee benefits	249	287	318	286	317
Other liabilities ¹	11	3	3	3	3
Total liabilities	356	314	345	313	344
Net assets (liabilities)	320	414	330	309	225
Equity					
Accumulated funds	320	414	330	309	225
Total equity	320	414	330	309	225

Note:

1. The increase in Cash and deposits, Receivables, Property, plant and equipment and Intangibles and the decrease in Payables and Other liabilities in 2014 reflect the actual closing balances of these items in the Integrity Commission's 2011-12 financial statements.

Table 14.5: Statement of Cash Flows

	2012-13	2013-14	2014-15	2015-16	2016-17
	Budget	Budget	Forward Estimate	Forward Estimate	Forward Estimate
	\$'000	\$'000	\$'000	\$'000	\$'000
Cash flows from operating activities					
Cash inflows					
Appropriation receipts – recurrent	3 026	2 934	2 955	3 070	3 060
Total cash inflows	3 026	2 934	2 955	3 070	3 060
Cash outflows					
Employee benefits	(1 825)	(1 836)	(1 868)	(1 952)	(1 934)
Superannuation	(168)	(201)	(206)	(232)	(214)
Supplies and consumables	(738)	(718)	(696)	(700)	(714)
Other cash payments	(299)	(179)	(185)	(186)	(198)
Total cash outflows	(3 026)	(2 934)	(2 955)	(3 070)	(3 060)
Net increase (decrease) in cash and cash equivalents held	----	----	----	----	----
Cash and deposits at the beginning of the reporting period	(6)	2	2	2	2
Cash and deposits at the end of the reporting period	(6)	2	2	2	2

INTEGRITY
COMMISSION

