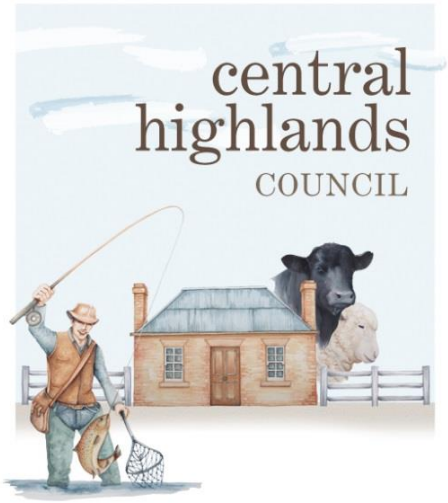

SUPPLEMENTARY AGENDA

19th July 2022

18.1 INTEGRITY COMMISSION ACT LEGISLATIVE REFORM

Council have received an email from Mr Dion Lester, Chief Executive Officer for the Local Government Association of Tasmania regarding the Integrity Commission Act Legislative Reform.

Mr Lester states the following:

"The Department of Justice is progressing the reforms to the Integrity Commission Act 2009, started with the Hon William Cox's Report in 2016, which Local Government Association of Tasmania made a submission to.

The Government accepted the majority of Mr Cox's recommendations, in full or in principle, noting that some required further consideration and consultation. It has also identified additional reforms since the Cox report. The attached letter provides more detail and the discussion paper is also provided for reference.

Please provide specific or general feedback through to Ben Morris, Policy Director, ben.morris@lgat.tas.gov.au, by Friday 12 August 2022 to allow Local Government Association of Tasmania to make a submission on behalf of the sector. We would welcome council case studies of issues and problems you've experienced with the current Act. We note, in particular how the Code of Conduct interacts, or overlaps, with the Integrity Commission Act 2009."

RECOMMENDATON

THAT Councillors provide their comments on the Integrity Commission Act Legislative Reform papers to the Deputy General Manager by Friday 5 July 2022 so that Council can provide comments to Local Government Association of Tasmania.

Department of Justice
STRATEGIC LEGISLATION AND POLICY

GPO Box 825 Hobart Tas 7001
Phone 03 6165 4930
Email HaveYourSay@justice.tas.gov.au Web www.justice.tas.gov.au

Tasmanian Government

Mr Dion Lester
Chief Executive Officer
Local Government Association of Tasmania

reception@lgat.tas.gov.au

Dear Mr Lester

Consultation on the *Integrity Commission Act 2009* legislative reform discussion paper

Please find enclosed a copy of a discussion paper prepared by the Department of Justice regarding legislative reform of the *Integrity Commission Act 2009*.

The Hon William Cox's report 'The Independent Review of the Integrity Commission Act 2009' was tabled in Parliament in 2016. The Government accepted the majority of Mr Cox's recommendations, in full or in principle, noting that some required further consideration and consultation.

A first tranche of amendments, to address technical and other relatively straightforward matters from the first six recommendations, commenced in 2017.

The Government has progressed consideration of outstanding recommendations. This discussion paper outlines the current position. Stakeholder views are sought in particular on recommendations that are under final analysis and consultation.

Remaining recommendations are outlined in Appendices A (those appropriate for the next stage of legislative reform) and B (those not requiring legislative amendment or not accepted by the Government).

Submissions are also sought on other potential reforms raised since the Cox Review, on which the Government does not have a decided position. These include potential reforms to the Act arising from consultation with the Commission, and other potential reforms arising from the Commission's:

- 2018 report recommending review of Tasmania's "Disclosure of official secrets" and "Unauthorised access to a computer" offences; and
- 2021 decision on its jurisdiction over members of parliament regarding election campaigns.

The Department of Justice will work closely with the Commission during the broad consultation on this paper, and also undertake targeted consultation with key stakeholders. This will inform the development of a Bill to progress necessary reforms. The draft Bill will be released for a further round of consultation.

Submissions on the discussion paper can be made until close of business **Friday, 16 September 2022** in one of the following ways using the subject line "Integrity Commission discussion paper":

1. Online via our Public Consultation website
2. Via email at haveyoursay@justice.tas.gov.au
3. Via post to:

   Department of Justice

   Office of the Secretary

   GPO Box 825 Hobart TAS 7001

Please note that this consultation process is subject to the Government's 'Publication of Submissions Received by Tasmanian Government Departments in Response to Consultation on Major Policy Issues' policy, which can be accessed through the Department of Premier and Cabinet's website.

Under this policy, submissions will be made publicly available on the Department of Justice website unless, for instance, the submitting party requests that their submission remain confidential, or it contains material that is defamatory or offensive.

If you would like your submission to be treated as confidential please indicate this in writing at the time of making your submission, including the reasons why.

Submissions that have not been marked as confidential and which meet publication guidelines will be published following consideration by Government.

If you have any questions in relation to the discussion paper please contact Vinton Pedley, Senior Legislative and Policy Officer, via email at vinton.pedley@justice.tas.gov.au.

Thank you for your consideration of this important issue.

Yours sincerely

Bruce Paterson
Acting Director

8 July 2022

Attachment 1. Integrity Commission Act 2009 Legislative Reform Discussion Paper July 2022

Integrity Commission Act 2009

Legislative Reform

DISCUSSION PAPER

July 2022

Department of Justice

Tasmanian

Contents

Executive Summary

The object of the *Integrity Commission Act 2009* (the Act) is to promote and enhance standards of ethical conduct by public officers by the establishment of an Integrity Commission.

The Act provides the Commission with a number of functions and powers including to educate public officers about integrity in public administration and to investigate complaints about misconduct.

An independent review of the Act was undertaken by the Hon William Cox AC, RFD, ED, QC. Mr Cox's report 'The Independent Review of the Integrity Commission Act 2009' (the Cox Review Report) was tabled in Parliament on 24 August 2016. The then Tasmanian Hodgman Liberal Government accepted the majority of Mr Cox's recommendations, in full or in principle, noting that some of the recommendations required further consideration and consultation.

In 2017, the Government introduced a first tranche of amendments to address technical and other relatively straightforward matters dealt with in the first six recommendations of the report. These amendments were passed by Parliament and commenced on 13 June 2017.

The Government has progressed consideration of outstanding recommendations, and the Department of Justice has prepared this discussion paper to outline the current position. The discussion in the body of the paper relates to recommendations that are under final analysis and consultation, and stakeholder views are sought on these matters in particular. Remaining recommendations are outlined in two appendices:

- Cox Review Report recommendations already identified as appropriate for inclusion in the next stage of legislative reform (Appendix A); and
- A small number of Cox Review Report recommendations that do not require legislative amendment or that have not been accepted by the Government (Appendix B).

The discussion paper also seeks submissions on other potential reforms raised since the Cox Review Report. These include:

- other general matters relating to the Act identified through consultation with the Commission, some related to the Cox Review Report;
- potential reforms arising from the Commission's 2018 own-motion report that recommended review of Tasmania's 'Disclosure of official secrets" and "Unauthorised access to a computer' offences. The offences referred to are in sections 110 and 257D of schedule 1 of the *Criminal Code Act 1924* (Tas) and section 43C of the *Police Offences Act 1935* (Tas); and
- potential reforms arising from a 2021 decision of the Commission in respect of its jurisdiction over members of parliament in relation to election campaigns.

Unlike the Cox Review Report recommendations, the Government does not have a decided position on these matters, and invites submissions.

The Department of Justice will work closely with the Commission during the broad consultation on this paper, and also undertake targeted consultation with key stakeholders. This will inform the development of a Bill to progress necessary reforms. The draft Bill will be released for a further round of consultation.

Feedback

In order to develop legislation to implement recommendations of the Cox Review Report and address further issues that have arisen since the Cox Review Report, this paper seeks stakeholder and community feedback to allow the proposals to be further considered before legislation is drafted.

How to make a submission

Submissions should be made in writing and must be received by close of business on Friday 16 September 2022. Written submissions may be made as outlined below.

Email

Email your submission to: haveyoursay@justice.tas.gov.au.

Post

Mail your submission to:

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

Submit online

Submissions can be submitted online via the Department of Justice's Community Consultations web page: https://www.justice.tas.gov.au/community-consultation.

Publishing submissions

Other than indicated below, submissions will be treated as public information and will be published on the Department of Justice website. Submissions will be published once the Government's consideration of the submissions has concluded.

No personal information other than an individual's name or the organisation making a submission will be published.

For further information, please contact Strategic Legislation and Policy by email to Legislation.Development@justice.tas.gov.au or read the Tasmanian Government Public Submissions Policy.

Important information to note:

1. Your name (or the name of the organisation) will be published unless you request otherwise.

2. In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), the Department will treat the submission as public.

3. If you would like your submission treated as confidential, whether in whole or in part, please indicate this in writing at the time of making your submission clearly identifying the parts of your submission you want to remain confidential and the reasons why. In this case, your submission will not be published to the extent of that request.

4. Copyright in submissions remains with the author(s), not with the Tasmanian Government.

5. The Department will not publish, in whole or in part, submissions containing defamatory or offensive material. If your submission includes information that could enable the identification of other individuals, then either all or parts of the submission will not be published.

Accessibility of submissions

The Government recognises that not all individuals or groups are equally placed to access and understand information. We are therefore committed to ensuring Government information is accessible and easily understood by people with diverse communication needs.

Where possible, please consider typing your submission in plain English and providing it in a format such as Microsoft Word or equivalent.

The Government cannot however take responsibility for the accessibility of documents provided by third parties.

The Right to Information Act 2009 and confidentiality

Information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish all or part of your submission to be treated as confidential, your statement detailing the reasons may be taken into account in determining whether or not to release the information in the event of an RTI application for assessed disclosure. You may also be contacted to provide any further comment.

Cox Review Report recommendations

Overview of the Integrity Commission Act and Review

The *Integrity Commission Act 2009* (the Act) was passed by Parliament in 2009 and commenced on 1 October 2010. Section 3(1) of the Act states that:

> *The object of this Act is to promote and enhance standards of ethical conduct by public officers by the establishment of an Integrity Commission.*

The Integrity Commission (the Commission) was established upon the commencement of the Act. Under the Act, the objectives of the Commission are 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.[1]

The Act provides the Commission with a number of functions and powers including to educate public officers about integrity in public administration and to investigate complaints about misconduct.[2]

Section 106 of the Act required an independent review of the Act to be undertaken five years after its commencement to consider:

(a) the operation of the Act in achieving its objects and the objectives of the Integrity Commission; and

(b) the operation of the Integrity Commission, including the exercise of its powers, the investigation of complaints and the conduct of inquiries; and

(c) the operation of the Parliamentary Standards Commissioner; and

(d) the operation of the joint Committee; and

(e) the effectiveness of orders and regulations made under this Act in furthering the object of this Act and the objectives of the Integrity Commission; and

[1] *Integrity Commission Act 2009,* section 3(2)

[2] *Integrity Commission Act 2009,* section 8(1)

(f) any other matters relevant to the effect of this Act in improving ethical conduct and public confidence in public authorities.

The Hon William Cox AC, RFD, ED, QC was appointed to undertake the independent review. Mr Cox's report 'The Independent Review of the Integrity Commission Act 2009' (the Cox Review Report) was tabled in Parliament on 24 August 2016.

The Cox Review Report made 55 recommendations. Most of these recommendations proposed legislative change to the Act. Recommendation 50 of the Cox Review Report considered proposals for 45 technical or administrative amendments.

The then Tasmanian Hodgman Liberal Government accepted the majority of Mr Cox's recommendations, in full or in principle, noting that some of the recommendations required further consideration and consultation. In 2017, the Government introduced a first tranche of amendments to address technical and other relatively straightforward matters dealt with in the first six recommendations of the report. These amendments were passed by Parliament and commenced on 13 June 2017.

The Government has progressed consideration of outstanding recommendations, and the Department of Justice has prepared this discussion paper to outline the current position. The discussion below relates to recommendations that are under final analysis and consultation, and stakeholder views are sought on these matters in particular. Remaining recommendations are outlined in two appendices:

- Cox Review Report recommendations already identified as appropriate for inclusion in the next stage of legislative reform (Appendix A); and
- A small number of Cox Review Report recommendations that do not require legislative amendment or that have not been accepted by the Government (Appendix B).

1. **Recommendation 7 –** That the Act be amended so that an assessor is to submit his or her report to the CEO within 40 working days of the assessor's appointment pursuant to section 35 or within such further time as the Board may allow having regard to all the circumstances.

The Cox Review Report includes a discussion of the provisions relating to assessments under the Act. It is noted that the Joint Standing Committee Three Year Review recommended an amendment to the Act to require assessments to be completed within 20 working days, and matters referred on as appropriate, with power in the Board to extend the time for a further 20 working days. At the time, the Commission did not agree with the recommendation, considering 20 working days was not workable.

The Independent Reviewer commented:

> *I appreciate that the circumstances could vary considerably. However the laying down of an initial timeline should reinforce the sense of urgency and alert the Board to the delay. The Board should have the power to extend time generally rather than to an arbitrary limit of 20 days.*[3]

[3] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009*, p33

He recommended that the Act be amended to require an assessor to submit their report to the CEO within 40 working days of the assessor's appointment or within such further time as the Board may allow having regard to all the circumstances.

The Government has accepted this recommendation in principle noting:

> *The Government recognises the importance of ensuring that matters are dealt with efficiently, so that persons and organisations (i.e. public authorities) involved can arrange their affairs and not be the subject of lengthy processes. The Government will consult on the best means to ensure the timely completion of assessments so as to avoid undue delay.*[4]

2. **Recommendation 9** - That the interpretation section of the Act be amended by adding a definition of "offence of a serious nature" as one punishable by X years' imprisonment (or a fine not exceeding Y penalty units, or both).

Under the Act, the definition of 'serious misconduct' means misconduct by any public officer that could, if proved, be-

- a crime of an offence of a serious nature; or
- misconduct providing reasonable grounds for terminating the public officer's appointment.

The Independent Reviewer suggested that there should be guidance in the Act as to what constitutes 'an offence of a serious nature' noting that the penalty is usually indicative of the seriousness that the legislature attaches to the offence. He therefore recommended that the Act include a definition of 'offence of serious nature' as one punishable by a specified number of years of imprisonment and/or a specified fine.

The Commission has raised this recommendation as of priority to implement. Options include specific figures for the number of years of imprisonment or the amount of the fine, or a suitable definition such as 'one punishable by imprisonment, including suspended sentence'.

The Government accepted this recommendation in principle, but reserved the right to consider alternatives to drafting, for example, potentially a list of offences prescribed through regulation, or reference to Appendix D of the Criminal Code) or other description of serious offences. It is proposed that there will be further consideration and consultation with the Commission and other relevant stakeholders in relation to the appropriate definition.

3. **Recommendation 11** - That the Act be amended to require mandatory notification by public authorities of serious misconduct and misconduct by Designated Public Officers to the Commission in a timely manner.

[4] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009,* p13

The Cox Review Report noted the findings of the Joint Standing Committee Three Year Review that mandatory notification of serious misconduct is important in assisting the Commission to achieve its investigative and educative functions.

The Commission has identified this recommendation as being of priority to implement.

The Government has accepted this recommendation noting that it would require further consultation with a wide range of stakeholders and careful consideration to ensure that any legislative obligation or requirement does not unduly fetter the responsibilities of the Heads of Agency, Tasmania Police or other investigative authorities.

4. **Recommendation 12(a) –** That where the Commission is assessing or investigating misconduct of a public officer involving a breach of the State Service code of conduct, the CEO shall, unless he or she is of the opinion that to do so might compromise such assessment or investigation, promptly advise the Head of Agency of that officer of the nature of that misconduct on a confidential basis.

As with recommendation 12(b), this recommendation is aimed at reducing duplication in investigations relating to alleged misconduct.

This recommendation has been raised by the Commission as being of priority for implementation. The Commission has suggested that any advice provided to a Head of Agency about an assessment or investigation be in a formal notice that is protected by the confidentiality provisions under section 98 of the Act.

This recommendation was accepted by the Government noting that it is important for state service agencies as they have legal responsibility for the employment and welfare of their staff. It was noted that further consideration is required in relation to the interaction with the *State Service Act 2000* and Employment Direction 5.

5. **Recommendation 14 -** That the Act be amended to require that before any referral by the CEO pursuant to section 38 of a complaint to a public authority for investigation and action, any adverse material contained in the assessor's report be disclosed to the officer the subject of the complaint, that the latter be given the opportunity to comment upon it and that any submission or comment in relation thereto by the subject officer be attached to the material referred to the public authority.

This recommendation relates to procedural fairness. The Cox Review Report noted that where a matter is investigated, the investigator is obliged to observe the rules of procedural fairness under section 46(1)(c). Under section 56, the subject of the investigation is, where appropriate, to be given the opportunity to comment on the investigator's report. There are no such protections during the assessment process or in relation to the assessor's report which may be referred to the principal officer of the relevant authority for further investigation and action.

Whilst the Government has accepted this recommendation, noting that it is an important element of natural justice, the Commission had a differing view, concerned that implementation of this recommendation could jeopardise an investigation. It is proposed that there will be further consideration and consultation with the Commission and other relevant stakeholders in relation to the appropriate amendment.

6. **Recommendation 15** - That in accordance with item 9 of Attachment 2, Parts 5 and 6 of the Act be amended so that the Commission retains jurisdiction over a complaint even after referral to an appropriate person or entity for action, such jurisdiction to include powers within those Parts.

During the Review, the Commission submitted a table of suggested technical amendments to the Act. This table appears at Attachment 2 of the Cox Review Report. At item 9, the Commission submitted that Parts 5 and 6 of the Act should be amended so that the Commission retains jurisdiction over a complaint after referral to an appropriate person or entity for action, such jurisdiction to include the use of powers.

The Commission submitted that once it refers a complaint to another person or entity for action, it cannot exercise any powers in relation 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.*
>
> *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.*[5]

The Cox Review Report recommends amendments in line with the Commission's submission.

The Commission has identified this recommendation as being of priority to provide clarity, noting that it has received advice indicating that the Commission retains jurisdiction after referrals in limited circumstances.

In its response to the Cox Review Report, the Government did not accept this recommendation on the basis that once a matter is referred for action to another body, that body should have the responsibility to handle the matter without the Commission being able to influence or direct any investigation or handling of the matter. The Government was concerned that if this recommendation were to be implemented, it would not provide the relevant authority or the subject officer with sufficient clarity as to how the matter should proceed and the powers that may be exercised against or by them. It may also cause a conflict with the legal duties of the entity. The Government's response noted that the Commission has powers to monitor referred investigations, call for reports and to bring matters of concern to the attention of the relevant head of a pubic authority. However, in its response, the Government noted:

[5] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009,* pp127-128

However, it is agreed that investigating agencies should however, have the option to refer a complaint back to the Integrity Commission. The Government will also consider the option that the Integrity Commission may, in limited and specified circumstances recall a referred investigation (this is related to recommendation 18).[6]

It is proposed that there will be further consideration and consultation with the Commission and other relevant stakeholders in relation to the appropriate amendment.

7. **Recommendation 16 –** That the Act be amended to require that if criminal conduct by a public officer other than a designated public officer or a police officer is suspected by the Commission during its triage of a complaint, the matter must immediately be referred to Tasmania Police.

The Independent Reviewer recommended that suspected criminal conduct identified during the triage of a complaint to the Commission must be referred to Tasmania Police with the exception of complaints made about designated public officers or police officers.

The Government agreed with the recommendation in part noting that any criminal conduct, regardless of the status of the alleged perpetrator, should in the first instance be referred to Tasmania Police, or other competent authority, unless there are compelling reasons not to – for example, evidence to indicate that the complaint involves very senior police officers and there is reason to believe it would be inappropriate to refer the matter to Tasmania Police. The Government response noted that the Commission has the ability to oversight and audit the conduct of Tasmania Police in such investigations and Tasmania Police has the option of referring a matter back to the Commission.[7]

The Commission did not accept this recommendation at the time, taking the view it would undermine the Commission's jurisdiction and is in conflict with recommendation 10.

It is proposed that there will be further consideration and consultation with the Commission and other relevant stakeholders in relation to the appropriate amendment.

8. **Recommendation 18 -** That the Act be amended to provide for the Commission to retain jurisdiction over matters referred to public authorities where after action by a public authority (or a failure by a public authority to take appropriate action) it is apparent that further action by the Commission is required.

In its submission to the Cox Review, the Commission noted that when it refers a complaint to a person for action, the CEO can require a report on what action the person intends to take in relation to the complaint, and monitor or audit any action taken. The Commission indicated that:

[6] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009,* pp8 -9

[7] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009,* p15

It has been the experience of the Commission that public authorities, on occasion, fail to take appropriate action in relation to referred complaints. This arises due to a number of factors, including a lack of capacity to properly investigate a complaint. For example, public authorities do not have any special powers to obtain evidence in the way the Commission does.

Under the Integrity Commission Act, the Commission has no capacity to compel action or to assume responsibility for dealing with the complaint where a public authority fails or refuses to take appropriate action.[8]

The Independent Reviewer recommended that the Act be amended to provide for the Commission to retain jurisdiction over matters referred to public authorities where, after action by a public authority (or failure to take appropriate action), it is apparent that further action is required.

The Government did not accept this recommendation for the same reasons indicated in relation to Recommendation 15, i.e., that the Integrity Commission should not retain jurisdiction over a complaint that has been referred elsewhere. It is noted that the Integrity Commission did support this recommendation.

However, the Government did state in relation to this recommendation that it would examine amendments to allow a power to recall a referred matter in certain limited and specified circumstances. It is proposed that there will be further consideration and consultation with the Commission and other relevant stakeholders in relation to this matter.

9. Protections for subjects of complaints and witnesses in relation to coerced information.

During the Cox Review, concerns were raised about the protection of the rights of subjects and witnesses, particularly the abrogation of the right to silence.

The Cox Review noted:

It might be said that the privilege against self-incrimination is sufficient protection against any harm which might ensue from coercive interrogation, but the reality is that many people are ignorant of the extent of the privilege, do not understand the circumstances which constitute a waiver of the privilege, or the consequences of that waiver, and can be compromised by the perception that a claim to privilege is tantamount to an irrevocable admission of guilt. It is not surprising that it is rarely claimed, especially if the person questioned is not represented by a solicitor.[9]

The Independent Reviewer considered that better protection would be provided by abolishing the privilege against self-incrimination and providing that any statement or document made or produced by a witness under compulsion shall be inadmissible against that person in any civil or criminal proceedings against him or her, other than proceedings for an offence against the Act or perjury. Recommendation 19 addresses the first part of this issue by recommending the exclusion of the privilege against self-incrimination. The second part is addressed in recommendation 20.

[8] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009,* p45

[9] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009,* p49

Recommendation 19 – That the privilege against self-incrimination be excluded from the Act. This might be achieved by amending section 4 to except that particular privilege from paragraph (a) of the definition of "privilege".

The Government accepted this recommendation, noting concerns raised by many, including the legal community, about the operation of privilege against self-incrimination particularly where people make admissions without understanding their rights. The Government indicated it would amend the Act to exclude the privilege of self-incrimination and provide the protections in Recommendation 20.

Recommendation 20 - That the Act be amended to provide that any statement or document made or produced by a witness under compulsion shall be inadmissible against that person in any civil or criminal proceedings against him or her, other than proceedings for an offence against the Act or perjury in respect of that statement without his or her consent.

In its response to this recommendation, the Government indicated that this protection is an important safeguard:

> *Given the Government's position that the Commission should only investigate or deal with criminal conduct in very exceptional circumstances, the inclusion of such an amendment will protect subject officers and clarify the Commission's role.*[10]

The Government noted that there had been recent High Court authorities about the use and derivative use of evidence that is coerced in an investigative process and stated that any amendments would need to be drafted in light of these High Court decisions. There will be further consideration and consultation with the Commission and other relevant stakeholders in relation to this matter.

10. Handling of complaints in relation to misconduct or serious misconduct of police officers (Recommendations 26, 27 and 28):

The Cox Review considered sections 87 and 88 of the Act which relate to complaints of alleged misconduct and serious misconduct by police officers.

It noted that in the case of Designated Public Officers (DPOs), which includes commissioned police officers, section 87(1) states that the Commission is to assess, investigate, inquire into or otherwise deal with complaints relating to misconduct by DPOs in accordance with Parts 6 and 7 of the Act. Parts 6 and 7 of the Act relate to investigations and inquiries by the Integrity Tribunal but not assessments which are covered under Part 5 of the Act.

Section 88 of the Act sets out the Commission's role in relation to police misconduct. Under section 88(1):

> *(1) The Integrity Commission may, having regard to the principles stated in section 9 –*
>
> *(a) assess, investigate, inquire into or otherwise deal with complaints relating to serious misconduct by a police officer in accordance with Parts 6 and 7 ; or*

[10] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009,* p16

(b) provide advice in relation to the conduct of investigations by the Commissioner of Police into police misconduct; or

(c) audit the way the Commissioner of Police has dealt with police misconduct, in relation to either a particular complaint or a class of complaint; or

(d) assume responsibility for and complete in accordance with Parts 6 and 7 an investigation commenced by the Commissioner of Police into misconduct by a police officer.

The Independent Reviewer made three recommendations (recommendations 26, 27 and 28) to clarify the process in relation to complaints of misconduct and serious misconduct by DPOs and non-commissioned police officers. These recommendations are set out below.

Recommendation 26 – That complaints of misconduct by designated public officers, once identified as such, be immediately made the subject of investigation under Part 6, and those of misconduct by non-commissioned police officers be referred in the first instance to the Commissioner of Police for action.

Recommendation 27 – That complaints of serious misconduct by a police officer not a designated public officer which are not dealt with by the Commission under section 88(1)(a) be referred to the Commissioner of Police for action. A way of achieving this would be to add a new paragraph (ab) in section 88(1) to the following effect "(ab) refer a complaint relating to serious misconduct by a police officer to the Commissioner of Police for action; or".

Recommendation 28 - That the Act be amended to delete the words "assess" and "assessing" wherever they appear in sections 87 and 88.

The Government has accepted all three recommendations in principle, but noted that consideration and implementation of Recommendation 26, will require further consultation with a range of stakeholders, particularly in relation to the intersection with Recommendations 10, 11, 13 and 16.

In relation to Recommendation 26, the Commission has identified this matter as being of urgency to resolve. In relation to the first part of Recommendation 26, the Commission has expressed the view that the Act should be amended to provide discretion for the Commission to refer certain complaints against DPOs to public authorities for action and investigation. This would allow the Commission to refer matters involving DPOs who are not the head of the public agency and where the alleged misconduct may be relatively minor. In relation to the second part of Recommendation 26, the Commission considers that it should have discretion to retain misconduct matters relating to non-commissioned police officers, as it does for all other public officers. This is important in cases where it may not be possible for police to objectively investigate the matter, or where there may be systemic issues, or in other circumstances relating to the public interest.

11. **Recommendation 40 –** That section 94 of the Act be subject to further consideration of the proper definition of what material needs the protection of confidentiality and the limits of appropriate disclosure.

Section 94 of the Act imposes confidentiality obligations on members of the Integrity Board and Integrity Tribunal the CEO and staff and appointees as well as the Parliamentary Standards Commissioner and Joint Standing Committee on Integrity in relation to information received in the course of their duties. There are penalties for breaching these obligations.

During the Cox Review, the Commission noted that it is possible for confidential information held by the Commission to be obtained under a subpoena for court proceedings. It suggested that there should be protection from production under the subpoena, noting that the *Ombudsman Act 1978* protects the Ombudsman from being compelled to produce documents under subpoena. The Commission also pointed to the confidentiality provisions in integrity legislation in other jurisdictions.

The Independent Reviewer made reference to section 46 of the Independent Broad-Based Anti-Corruption Commission Act 2011 noting that it:

> *….defines a protected document or thing not to be disclosed by reference to its likelihood of revealing the identity of an informer or witness, or other person at risk of personal safety; of placing at risk an investigation under that Act or being conducted by other authorities or of risking the disclosure of any secret investigative method used by the investigators; and a general catch-all is that which "is otherwise not in the public interest". The presiding judge is charged with the responsibility of determining whether or not the document or thing is protected and, if so, it is not admissible.*[11]

The Independent Reviewer was of the view that a provision along the lines of the Victorian Act would be best to address the issue but considered that it needed 'careful study'. Accordingly, the Independent Reviewer recommended that section 94 be subject to further consideration of the proper definition of what material needs the protection of confidentiality and the limits of appropriate disclosure.

The Government accepted this recommendation, noting that further work is required.

12. **Recommendation 48** - That the *Local Government Act 1993* be amended to provide for referrals from the Commission to be dealt with without the requirements of sections 28V(3)(b), (f) or (g) of that Act, and that amendments be made to that Act to ensure that such referrals be made directly to the Executive Officer and (as has been recommended in Recommendation 12(b) in relation to ED5) on such referral the Code of Conduct Panel may treat the evidence gathered by the Commission as part of its investigation.

During the Cox Review, the Commission raised concerns in relation to the referral of complaints involving Local Government councillors back to the authority. The Commission noted that if the Board determines to refer the report of an investigation in relation to a councillor back to the authority it has to go to the relevant Mayor (as the principal officer). On receipt of such a referral, the Mayor has no means of action other than to initiate a Code of Conduct process under the *Local Government Act 1993* (the Local Government Act) as a complainant. The Commission noted that the Code of Conduct process under the Local Government Act does not align with the Integrity Commission Act in requiring the name and address of the complainant (i.e., not allowing anonymous complaints (section 28V(3)(b)), providing a 6 month time limit (section 28V(3)(f) and requiring payment of a fee (section 28V(3)(g)).

The Commission submitted that an alternative would be to provide for a referral by the Commission to be made directly to the Executive Officer of the Code of Conduct Panel as if the referral had been made under section 28Z(1)(a) of the Local Government Act, making it clear that the referral

[11] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009,* p106

would not need to comply with the requirements of section 28V(3). The Commission also suggested that it may be appropriate to specifically provide for evidence obtained by the Commission to be utilised by the Code of Conduct Panel.

The Independent Reviewer agreed with these suggestions and made recommendations for amendments to the Local Government Act accordingly.

The Government indicated that it would consult with Local Government and the Local Government Association of Tasmania, but was not minded to agree to this recommendation noting that:

> *Accepting this recommendation would allow referrals directly from the Integrity Commission to the Code of Conduct Panel Executive Officer, without going through the normal process of a complainant making a complaint, with the prescribed fee, to the general manager of the relevant council. While the concept of allowing direct referrals to the Panel from the Commission may have some merit, there is concern that the proposed amendments may lead to complainants circumventing the framework established in the Local Government Act and allow abuse of the provisions that were brought in following significant consultation with local government and the Integrity Commission.*[12]

13. Recommendation 49 - That Audit Panels be included explicitly in the definition of a local authority in section 4(1) of the Act.

In its submission to the Cox Review, the Local Government Association of Tasmania raised the issue of whether the definition of 'local authority' in section 4(1) of the Act should include audit panels established under section 85 of the Local Government Act.

The Local Government Act requires a council to establish an audit panel (section 85). Under section 85A of the Local Government Act, an audit panel has the function of reviewing the council's performance in relation to various matters in relation to the council's administration, including its financial system, financial governance arrangements and financial management.

The Independent Reviewer recommended that audit panels be explicitly included in the definition of 'local authority'.

The Government accepted this recommendation in principle but noted that the proposed amendment would bring independent members of Audit Panels within the remit of the Act. The Government noted that there will need to be further consultation with Local Government.

14. Recommendation 50 – Technical Amendments

As noted above, the Independent Reviewer considered a number technical issues that had been raised by the Commission during the Joint Standing Committee Three Year Review and were referred to the Independent Reviewer for further consideration. These amendments are set out in the table at Attachment 2 of the Cox Review Report.

[12] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009,* p11

The Independent Reviewer recommended that a number of these technical amendments be implemented. The items below have been accepted by the Government in principle but require further consideration and consultation, or in part relate to other recommendations as noted.

Item 2 – Amend s 16 to make it clear that all of s23AA of the *Acts Interpretation Act 1931* applies.

The Government accepted this recommendation in principle but commented that:

> *…it was the intention of the Government at that time and the Parliament in 2009 to restrict the application of the Acts Interpretation Act 1931 section 23AA(6) so that any power delegated by the Board could not also be used concurrently by the Board. The making of the technical amendment will provide that where a function or power that has been delegated may, notwithstanding the delegation, also be exercised by the delegator i.e. the Board. Further by including section 23AA(7) of the Acts Interpretation Act the following will also apply to delegations of the Board. This section applies to a sub-delegation of a function or power in the same way as it applies to a delegation of a function or power, but only so far as the Act that authorises the delegation of the function or power also authorizes the sub-delegation of the function or power.*[13]

Item 9 - 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.

In response to this item, the Independent Reviewer noted that he had addressed this issue in Recommendation 15. It is noted that further consideration and consultation is required in relation to Recommendation 15 as noted above.

Item 17 – Amend s 46 with respect to the mandatory obligations to observe the rules of procedural fairness during the investigation/assessment stage of a complaint.

In response to this item, the Independent Reviewer noted that he had dealt with procedural fairness in respect of assessors' reports in recommendation 14. He also recommended in recommendation 52 that section 46(1)(c) of the Act be repealed and in lieu thereof a requirement to observe the rules of procedural fairness should be included in section 55.

Further consideration is to be given to the procedural fairness issue.

Item 21 - 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.

The Independent Reviewer dealt with this issue in Recommendation 53 below.

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[13] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009,* p18

Item 28 – Amend s 56(1) so that the CEO need only provide relevant information on the outcome of the investigation to public authorities etc and s 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.

Whilst the Independent Reviewer agreed with this suggested amendment and recommended it be made, further consideration is required.

The Government accepted this recommendation in principle noting that it supports amendment that ensures that only the relevant parts of the investigator's report are shown to the parties specified in s56(1), accepting that such reports may cover a range of matters and issues that are not relevant to one or more of those parties. The Government also noted that it supports amendments that enable the CEO to report to the Board on the outcomes of investigations and to make observations and recommendations on the investigation and future action, noting that the Board can require the CEO to provide the full investigation report should any member of the Board wish to see it in its entirety.

Item 35 - 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**.**

The Independent Reviewer noted that he had dealt with a similar issue in relation to item 21 above. He repeated his recommendation at Recommendation 53.

Item 39 – 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.

The Independent Reviewer did not endorse this item but referred to recommendations 26, 27 and 28 as addressing these issues. The Government accepted in principle recommendations 26, 27 and 28.

However, it is noted that the Commission has expressed a different view in relation to recommendations 26 and 27. Further consideration is required in relation to these issues.

15. **Recommendation 52 –** That section 46(1)(c) of the Act be repealed and in lieu thereof a requirement to observe the rules of procedural fairness should be included in section 55.

At item 17 of the technical amendments appearing in Attachment 2 of the Cox Review Report, it was submitted that:

> *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).*

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.

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.

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. The obligations for procedural fairness during the investigation/assessment stage can be contrasted with other integrity agencies.

See for example:

Law Enforcement Integrity Commissioner Act 2006 (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.

Independent Commission Against Corruption Act 1988 (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.

Corruption and Crime Commission Act 2003 (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 report is tabled.[14]

It was suggested that section 46 be amended with respect to the mandatory obligations to observe the rules of procedural fairness during the investigation/assessment stage of a complaint.

In relation to item 17, the Independent Reviewer stated:

I have dealt with procedural fairness in respect of assessors' reports in Recommendation 14. With respect to the investigative stage, as the subject of the complaint is afforded the opportunity by section 55 to comment on the CEO's report which is compiled in reliance upon the investigator's report before it goes to the Board, I think the requirement for procedural fairness laid down in section 44 is unnecessary at that stage. However, the opportunity for comment is still discretionary under section 55 and if s 46(1)(c) were repealed, a requirement to observe procedural fairness should be inserted in section 55.[15]

The Government accepted this recommendation in principle. However, as is noted in Recommendation 14, further consideration is to be given to procedural fairness under the Act

[14] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009,* pp131-132
[15] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009,* p114

16. **Recommendation 53 -** That an amendment to the Act to ensure the confidentiality of events arising out of the execution of a search warrant, or the exercise of any powers of an investigator under s 52 of the Act, be formulated by the Commission and implemented if approved by the Joint Standing Committee.

At item 21 of the technical amendments appearing in Attachment 2 of the Cox Review Report, it was submitted that:

> *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. 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.*[16]

It was suggested that section 52 be amended so that the confidentiality provisions under section 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.

The Independent Reviewer agreed with the general thrust of this suggestion but queried its practicality noting that the confidentiality provisions contained in section 98 are all dependent upon the giving of notices which have been made confidential documents. He stated:

> *I am uncertain what it is that the Commission wants to clothe with confidentiality. Is it a document (the warrant)? Is it the fact that it has been issued and/or executed? Is it all the circumstances surrounding its execution, including the questions asked or orders given which were or were not complied with by the bystanders? Some of these matters may be kept confidential by an appropriate notice, but I think the concept needs further consideration. I note that although the warrant issued under section 73 may be made subject to section 98, there is now no such provision in respect of one issued under section 51, it having been removed therefrom by Amendment Act No 55 of 2011.*[17]

The Independent Reviewer recommended that the Commission formulate an amendment for implementation, if approved by the Joint Standing Committee.

17. **Recommendation 55** – That an amendment to the Act to ensure confidentiality over the actions of the Commission of those persons subject to any lawful requirements made by it under the Act be formulated by the Commission and implemented if approved by the Joint Standing Committee.

At item 44 of the technical amendments appearing in Attachment 2 of the Cox Review Report, it was submitted that:

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[16] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p134*

[17] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p114*

> *The use of s 98 is limited to those sections which specifically refer to the ability of the Commission to make a particular 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. 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. 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.*[18]

It was suggested that section 98 be amended to so that the Commission can ensure confidentiality over its actions beyond the notices referred to at particular sections of the Act.

The Independent Reviewer noted that this item raises issues similar to those under item 21 and repeated the substance of his recommendation at Recommendation 53.

As with Recommendation 53, the Government accepted this recommendation noting that it is a matter for the Joint Standing Committee.

[18] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009,* pp146-147

Matters raised since the Cox Review

In the time since the Cox Review Report was handed down, the following issues and potential areas of amendments have been identified for discussion as part of the next tranche of reform to the Integrity Commission Act.

18. General issues relating to the Act

The Department of Justice will be working closely with the Commission in relation to the following matters, additional to the Cox Review Report recommendations:

1. Whether an amendment should be made in relation to the regulation of publication of complaints by complainants.
    - A range of recommendations noted in this discussion paper relate to confidentiality which will be considered as part of this issue (see recommendations 12(a), 40-47, 50 (items 21, 29, 35, 44), 52, 53 and 55).

2. Whether an investigator's statutory power to issue a notice under s 47 should be extended to a person assisting the investigator. Currently, only the investigator appointed under s 44(1) can issue s 47 notices with no ability to delegate this power. In practice, however, the CEO may authorise "any person" to assist an investigator under s 46(3). Section 47 notices are written notices issued by the investigator directing a person to provide information, an explanation (and on oath or affirmation), attend and give evidence, and/or produce any record, information, material or thing in their custody or possession or under their control. Failure to comply without reasonable excuse is an offence.
    - Relevant recommendations are 19 and 20 (abolition of privilege against self-incrimination and consequent inadmissibility of evidence) and 50 (item 2 – amend section 16 to make it clear that all of section 23AA of the *Acts Interpretation Act 1931* applies as regards delegation).
    - Recommendation 21 would amend s 47 so that "any coercive notice issued under section 47 be signed by the Chief Commissioner, but that he or she may delegate this power to the CEO to be exercised when he or she is not available". The Cox Review Report noted that:
      ……the issue of coercive notices, though necessary, is so much of an interference with civil rights that it should be seen to be under the direct control of an official of considerable standing. Just as the issue of search warrants requires, even under the Act, the authority of a magistrate, so, in my view, does the issue of a coercive notice under section 47 require the imprimatur of an official of the same minimum standing at the bar as is required of a magistrate.

3. Amendments to allow the Board to dismiss an own motion investigation and for the CEO to make a recommendation to that effect. The Board cannot currently dismiss an own-motion investigation. Nor can the CEO make a recommendation to that effect under s 57(2)(a). The Board can however decline to make a determination. This may be consistent with Recommendation 39.

4. Amendments to allow the Integrity Commission to accept referrals from the Local Government Association Code of Conduct Panel.

5. Clarification of the term 'report of the investigation' for the purposes of sections 56 and 57.

6. Repeal of section 106, which required a statutory independent review of the Act as soon as possible after 31 December 2015. This provision is now redundant given that the review has been completed.

7. Section 36(1) states that the CEO may dismiss "a complaint for investigation" on certain grounds. It will be considered whether this section should be amended to relate to 'before an investigation' or 'without conducting an assessment' as these matters are not 'for investigation' until after section 38 (actions of Chief Executive Officer on receipt of assessment) is engaged.

8. Clarify that the Chief Executive Officer may appoint more than one investigator in relation to the investigation of a complaint (s 44 refers to appointment of "an investigator").

9. Section 45(1) permits the Board to determine to conduct an investigation of its own motion and sets out a non-exhaustive list of matters in respect of which the investigation can be founded. Section 45(2) then requires the Board to advise the CEO of its determination, and the CEO is to appoint an investigator to investigate one of four listed matters. An amendment could address any inconsistency with an investigator's powers under section 45(2), so that the CEO may appoint an investigator to investigate in such terms endorsed by the Board.

10. Amending the fixed timeframe for compliance with section 47 coercive notices. The offence provision in section 54(1) effectively fixes 14 days as the timeframe for compliance in every case, by stating that a person who, without reasonable excuse, fails to comply with a requirement under section 47 within 14 days of receiving it, commits an offence. Amendments could be considered as to when to allow the Commission to set a shorter time, and also clarify how a longer period than 14 days is granted. Currently, the investigator may write an advance letter advising the person of the impending notice and seeking a date by which they could comply with such a notice.

11. Clarification of section 49, which states that "a person required or directed to give evidence or answer questions as part of an investigation may be represented by a legal practitioner or other agent". Amendments will be considered as to whether to clarify this does not convey a right to insist on a particular lawyer or agent who is unavailable within a reasonable time, in circumstances where that would unduly delay the handling of a matter.

12. Amendments to clarify the Board can amend an investigator report once it has been submitted (section 57 – Report by Chief Executive Officer), to ensure the report can meet procedural fairness requirements such as those carried out by the CEO under section 56. Issues raised by respondents and others under section 56 have the potential to affect the content of the investigator report. While these submissions are provided to an entity as part of any referral of the matter, the investigator report may not be read in conjunction with those submissions. This could lead to a misunderstanding of the facts or Board's views on the matter. An amendment could achieve greater accuracy and better outcomes if the Board could amend an investigator report as part of its determination of a matter. This would ensure that the report that is referred to any entity under section 58 (Determination of Board) would reflect both the Board's views on the matter, and the issues raised by respondents as part of the procedural fairness process. This issue relates to Recommendations 52 and 50 (item 30; related to Recommendation 54).

19. Application of the Act to Members of Parliament during election campaigns

A decision of the Commission in 2021 related to the application of the Act to Members of Parliament, including Ministers, during election campaigns.

Members of Parliament come under the jurisdiction of the Act under the definition of 'designated public officer'[19]. However, upon the dissolution of a House of Parliament for an election, the sitting members no longer hold seats in Parliament and cease to be Members of Parliament. The effect of this is that they do not fall within the definition of 'designated public officer' during the election period and are not within the jurisdiction of the Act.

The same applies in relation to Government Ministers. Government Ministers only come within the jurisdiction of the Act by virtue of their status as Members of Parliament. Therefore, whilst Ministers retain their ministerial role during the election period, and remain subject to the Ministerial Code of Conduct, they are not within the jurisdiction of the Act due to ceasing to be Members of Parliament at that time.

Accordingly, the Commission has indicated that it does not have jurisdiction to deal with complaints made against Ministers (or Members of Parliament) for conduct which is alleged to have occurred during the period between the dissolution of the relevant House and the declaration of the polls.

In consideration of this matter, the Department is considering interjurisdictional approaches to the jurisdiction of integrity bodies in relation to candidates at elections.

20. Review of offences related to 'disclosure of official secrets' and 'unauthorised access to a computer'

In 2018, the Commission conducted an own-motion investigation into the management of information in Tasmania Police. As an own motion investigation, it did not arise from a complaint but was initiated by the Commission in recognition that advances in technology had increased the risk of information abuse within the public sector. The Commission chose to investigate Tasmania Police in relation to this issue due to its significant reliance on information and the importance of protecting this information from unauthorised access and misuse.

The own-motion investigation report described 'unauthorised access to information' as occurring when a public sector employee accesses information available to them through their work for personal reasons, e.g., looking up friends, family and potential partners on a database. 'Misuse of information' was described as occurring when a public sector employee mistreats information gained through their work, for example, by leaking information to the media, inadvertently or carelessly losing information, sharing sensitive information on social media, using information to harass or bully another employee, adding false information to public sector records or exchanging confidential information for money or other benefits.

The report was provided to the then Premier and tabled in Parliament on 20 June 2018.

[19] *Integrity Commission Act 2009*, s6

The investigation found Tasmania Police's policies, practices and procedures adequate overall. However, the own-motion investigation report made one recommendation for legislative review regarding the offences in relation to serious information abuse:

> *It is recommended to the Premier that Tasmania's 'Disclosure of official secrets" and "Unauthorised access to a computer' offences be reviewed, with a view to amending them to make the law more certain, and/or to align them with equivalent offences in other jurisdictions.*
>
> *The offences referred to are in sections 110 and 257D of schedule 1 of the Criminal Code Act 1924 (Tas) and section 43C of the Police Offences Act 1935 (Tas).*

Sections 110 of the Criminal Code provides:

> ***110. Disclosure of official secrets***
>
> *Any public officer who discloses (except to some person to whom he is authorized to publish or communicate the same) any fact which comes to his knowledge, or the contents of any document which comes to his possession, by virtue of his office and which it is his duty to keep secret, is guilty of a crime.*
>
> *Charge: Disclosing official secrets.*

In relation to this offence, the report noted that there are a number of elements which, in practice, are very difficult to prove:

- The definition of public officer – which does not appear to extend to all public service employees;
- It can be difficult to prove that there was a duty not to disclose the information – this is due to the phrases 'by virtue of his office' and 'duty to keep secret' and the complexity in proving what is a duty of an office, as opposed to what may be incidental to that office.

In the report, the Commission suggested that any new provision relating to disclosure of official secrets should encompass a broad definition of who is a public officer, should require the improper disclosure of information to be established (i.e. there must be a mental element to the offence) and should not be limited to the use of a computer.[20]

In relation to unauthorised access to a computer, section 257D of the Criminal Code provides:

> ***257D. Unauthorized access to a computer***

[20] *Report of the Integrity Commission 'Report of an own-motion investigation into the management of information in Tasmania Police no 3 of 2018,* pp 17-18

A person who, without lawful excuse, intentionally gains access to a computer, system of computers or any part of a system of computers, is guilty of a crime.

Charge: Unauthorized access to a computer.

The *Police Offences Act 1935* provides a summary offence in respect of unauthorised access to a computer:

43C. Unauthorized access to a computer

A person who, without lawful excuse, intentionally gains access to a computer, system of computers or any part of a system of computers, is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units and imprisonment for a term not exceeding 2 years.

The report noted that the Director of Public Prosecution has agreed that there is uncertainty in relation to how these offences would be interpreted and it would be useful to clarify this with legislation.[21]

It is proposed to address this issue in the next tranche of legislation reforms, noting that the amendments are to be made to the Criminal Code and Police Offences Act rather than the Integrity Commission Act.

[21] *Report of the Integrity Commission 'Report of an own-motion investigation into the management of information in Tasmania Police no 3 of 2018, p16*

Appendix A – Cox Review Report recommendations to proceed in the next stage of legislative reform

The Commission has identified a number of Cox Review Recommendations as being of high priority with some being considered to be of greater urgency due to operational impact. In addition, there are also a number of recommendations which were accepted by the Government and appear to involve relatively straightforward amendments. It is proposed to address these recommendations, as discussed below, in the next tranche of legislative reforms.

21. **Recommendation 8** – That section 35(4) of the Act be amended to permit the assessor to exercise only the power of an investigator under section 47(1)(c) if the assessor considers it reasonable to do so.

    Section 35(4) of the Act allows an assessor to exercise any of the powers of an investigator under Part 6 of the Act if the assessor considers it is reasonable to do so.

    The Independent Reviewer recommended that an assessor's ability to utilise the powers granted to an investigator under Part 6 should be limited to the powers in section 47(1)(c) – to require the production of records, information or things.

    The Government accepted this recommendation, but in addition, considered that instead of allowing the assessor to exercise these powers if he or she considers it appropriate, the test of reasonableness should be objectively determined.

    It is proposed that the next tranche of amendments to the Act include an amendment to section 35(4) of the Act to permit an assessor to exercise the powers of an investigator under section 47(1)(c) (rather than the powers under Part 6) and to change the test of whether it is reasonable to exercise those powers to an objective test.

22. **Recommendation 10** – That the Commission expedite the processing of complaints by: (a) adopting a robust attitude to the triaging of complaints; (b) so far as practicable confining its investigative function to serious misconduct by public officers, misconduct by designated public officers (DPO), and serious misconduct by police officers under the rank of inspector.

    This recommendation has been identified by the Commission as being of priority.

    The Government has accepted this recommendation noting that (a) is a matter for the Commission and cannot be set out in legislation. In relation to part (b) of the recommendation, the Government response indicated that consultation would be required with the Commission to determine the best means of implementing this recommendation (including potential legislative amendment).

23. **Recommendation 12(b)** - That when any such assessment or investigation is concluded and a determination by the CEO under section 38, or one by the Board under section 58, or one by the Integrity Tribunal under section 78 has been made, and the complaint referred back to the Head of

Agency, the latter may treat the evidence gathered by the Commission as part of any code of conduct investigation.

Employment Direction 5 provides that should a Head of Agency have reasonable grounds to believe that a breach of the State Service Code of Conduct may have occurred, the Head of Agency must appoint a person to investigate the alleged breach. In the Cox Review Report, it was noted that this could result in duplication, where the matter may also be referred to the Commission.

Noting that the Commission has powers in relation to investigation that are not available to public authorities, it was submitted to the Review that the evidence collected by the Commission should be able to be used by the Heads of Agency in proceedings relating to breaches of the State Service Code of Conduct. The Cox Review Report made recommendation 12(b) in response.

The Commission has raised this recommendation as being of particular urgency to resolve. Government had accepted this recommendation in its response to the Cox Review Report. It is possible that this recommendation may be able to be addressed through amendments to Employment Direction 5. However, should it require an amendment or amendments to the Act, it is proposed that it be included in the next tranche of legislative amendments.

It is proposed that, if required, the next tranche of amendments to the Act include an amendment in accordance with recommendation 12(b) so that where the Commission, Integrity Board or Integrity Tribunal refers a complaint back to a Head of Agency, the Head of Agency can treat evidence gathered by the Commission as part of any code of conduct investigation. If legislative amendment is not required, this amendment will be made to Employment Direction 5.

24. **Recommendation 21** – That the Act be amended so that any coercive notice issued under section 47 be signed by the Chief Commissioner, but that he or she may delegate this power to the CEO to be exercised when he or she is not available.

Under section 47 of the Act, an investigator can issue a notice requiring a person to:

- provide the investigator or any person assisting the investigator with any information or explanation that the investigator requires;
- attend and give evidence before the investigator or any person assisting the investigator;
- produce to the investigator or any person assisting the investigator any record, information, material or thing in the custody or possession or under the control of a person.

It is noted that by virtue of section 35(4) of the Act (which is to be amended under Recommendation 8), an assessor also has the power to issue such a notice.

In the Cox Review Report, the Independent Reviewer expressed the view that:

> *……the issue of coercive notices, though necessary, is so much of an interference with civil rights that it should be seen to be under the direct control of an official of considerable standing. Just as the issue of search warrants requires, even under the Act, the authority of a magistrate, so, in my view, does the issue of a coercive notice under section 47 require the imprimatur of an official of the same minimum standing at the bar as is required of a magistrate. The*

restriction of this function to the Chief Commissioner would therefore be appropriate and would provide a further desirable opportunity for Board oversight.[22]

He therefore recommended that section 47 be amended to require that notices issued under section 47 be signed by the Chief Commissioner of the Commission. Noting that the Chief Commissioner is a part-time officer and may not always be readily available, he recommended that this power be able to be delegated to the CEO.

This amendment was accepted by the Government.

It is proposed that the next tranche of amendments to the Act include an amendment in accordance with recommendation 21 to provide that any coercive notice issued under section 47 be signed by the Chief Commissioner, but that he or she may delegate this power to the CEO to be exercised when he or she is not available.

25. Recommendation 22 – That the Act be amended to afford any witness required to attend and give evidence at an Integrity Tribunal hearing, and who may be subject to allegations of wrong-doing thereat, protection similar to that provided by section 18 of the *Commissions of Inquiry Act 1995*, including the right to representation by counsel and not being made the subject of any adverse finding as provided therein.

During the Cox Review, concerns were raised about the protections provided by the Act in respect of the right to legal representation for witnesses.

The Cox Review Report noted that section 66(2) of the Act provides the Integrity Tribunal with discretion to allow a witness to be represented by counsel as is the case under section 15 of the *Commissions of Inquiry Act 1995*. However, it was noted that the *Commissions of Inquiry Act* provides additional protections under section 18 as follows.

18. Allegations of misconduct

(1) If a Commission is satisfied that –

(a) an allegation of misconduct involving a person has been or should be made in its inquiry; and

(b) that person should be required, or is likely to be required, to give evidence in the inquiry in relation to the allegation –

the Commission must give that person notice of –

(c) the allegation; and

(d) the substance of the evidence, or nature and substance of anticipated evidence, supporting the allegation.

(2) The notice is to be given a reasonable period, to be not less than 48 hours, before the person is called to give evidence in relation to the allegation.

[22] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, pp51-52*

(2A) Subsection (2) does not apply in respect of a person given a notice under subsection (1) if –

(a) the allegation specified in the notice relates to misconduct by the person in respect of the giving, or presentation, of evidence in the inquiry; or

(b) the person waives the reasonable period, referred to in subsection (2) , in respect of the allegation specified in the notice.

(3) A person who receives notice of an allegation of misconduct may respond to that allegation by doing all or any of the following:

(a) making oral or written submissions to the Commission;

(b) giving evidence to the Commission to contradict or explain the allegation or evidence, including the giving of oral evidence under examination by the person's counsel;

(c) cross-examining the person making the statement constituting the allegation or evidence;

(d) calling witnesses on matters relevant to the allegation or evidence.

(4) For the purposes of subsection (3) –

(a) the Commission must allow the person a reasonable period in which to prepare the response; and

(b) the person may be represented by counsel as of right.

(5) In determining what constitutes a reasonable period for the purposes of subsections (2) and (4)(a) , the Commission may have regard to such matters as it considers relevant in the circumstances.

(6) A Commission must not make a finding of misconduct against a person unless the person has been given notice of the misconduct and an opportunity to respond to the notice in accordance with this section.

Whilst the Independent Reviewer was of the view that if Recommendations 19 and 20 are adopted (and coerced evidence is to be inadmissible in any subsequent trial) this would reduce the risk of harm to witnesses, he noted that:

……witnesses may be called who are not the direct subject of a complaint and who may not even be public officers, and they may be accused of wrongdoing in the course of a Tribunal hearing. There may be suggestions of complicity with the subject of the complaint, or claims by the latter, that the witness is solely to blame for the misconduct alleged against him.[23]

The Independent Reviewer therefore recommended amending the Act to provide protections to witnesses similar to those in section 18 of the *Commissions of Inquiry Act 1995*.

The Government accepted this recommendation.

It is proposed that the next tranche of amendments to the Act include an amendment in accordance with recommendation 22 to afford witnesses who are required to attend and give evidence at an Integrity Tribunal hearing, and who may be subject to allegations of wrong-doing thereat with

[23] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p54*

protections similar to those under section 18 of the *Commissions of Inquiry Act 1995*, including the right to representation by counsel and not being made the subject of any adverse finding.

26. Recommendation 23 - That section 49 of the Act be amended to enable the investigator to prohibit a person required to give evidence or answer questions, as part of an investigation from being represented by a person who is already involved in an investigation or is involved or suspected to be involved in a matter being investigated.

Section 49 of the Act allows a person who is required or directed to give evidence or answer questions as part of an investigation to be represented by a legal practitioner or other agent.

The Commission submitted to the Cox Review that the Commission should have discretion, in relation to assessments, investigations and tribunals, to prevent certain individuals from representing public officers or witnesses in certain cases. The Commission noted that it had encountered issues during investigations where a person required to give evidence had sought to be represented by an individual that the Commission considered to have a conflict of interest in relation to the investigation.[24]

The Independent Reviewer agreed with the Commission's comments on this issue and noted that the [Western Australian] *Corruption, Crime and Misconduct Act 2003* contains a provision addressing this matter (section 142) which could be adapted.

This recommendation was accepted by the Government in its response to the Cox Review Report. The Commission has submitted that this recommendation should be implemented as a matter of urgency.

It is proposed that the next tranche of amendments to the Act include an amendment in accordance with recommendation 23 to enable an investigator to prohibit a person required to give evidence or answer questions from being represented by a person who is already involved in an investigation or suspected to be involved in a matter being investigated.

27. Recommendation 24 - That the Act be amended to enable the Integrity Tribunal to refuse to allow a public officer who is the subject of an inquiry, a witness referred to in section 66(2), or a person permitted to participate in an inquiry pursuant to section 67(1) to be represented before the Tribunal by a person who is already involved or suspected to be involved in a matter being investigated.

This Recommendation relates to Recommendation 23 above, addressing the same concerns but in relation to inquiries before the Integrity Tribunal.

The Government has accepted this recommendation and the Commission has identified it as being of priority to implement.

[24] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p53*

It is proposed that the next tranche of amendments to the Act include an amendment in accordance with recommendation 24 to enable the Integrity Tribunal to refuse to allow a public officer who is the subject of an inquiry, a witness referred to in section 66(2), or a person permitted to participate in an inquiry pursuant to section 67(1) to be represented before the Tribunal by a person who is already involved or suspected to be involved in a matter being investigated.

28. **Recommendation 25** - That section 83(3) of the Act be amended to permit the CEO to agree the quantum of legal costs at his or her discretion in lieu of having to have them taxed in the Supreme Court.

Section 83(1) allows a witness to apply to the CEO for financial assistance in relation to the witness's legal costs. Section 83(3) requires the costs to be taxed by a taxing officer of the Supreme Court.

During the Cox Review, it was submitted by the Law Society that the taxing of costs is a cumbersome requirement, particularly if the costs are minimal. It was submitted that it would be preferable to provide a discretion to the CEO to refer the claimed costs for taxation rather than taxation being required in all cases and that there should be provision for costs to be agreed.

The Independent Reviewer found that there was merit in this suggestion and recommended that section 83(3) be amended to allow the CEO to agree costs in lieu of requiring them to be taxed.

The Government accepted this recommendation. The Commission has indicated that it considers this recommendation is of priority to implement.

It is proposed that the next tranche of amendments to the Act include amendments to section 83 to permit the CEO to agree the quantum of legal costs at his or her discretion in lieu of having to have them taxed in the Supreme Court.

29. **Recommendation 30** – That the Act be amended to permit the Parliamentary Standards Commissioner, at any time, to provide a report to Parliament on the performance of his or her function.

In considering the operations of the Parliamentary Standards Commissioner, the Independent Reviewer found that whilst the role is primarily to give advice to individual members of Parliament and the Commission which would generally be confidential, there may be issues where the Parliamentary Standards Commissioner may see a need to make a public statement of advice, for example on the interpretation of codes of conduct. Accordingly, the Independent Reviewer recommended an amendment to allow the Parliamentary Standards Commissioner to provide a report on the performance of their functions to Parliament at any time.

The Government has accepted this recommendation.

It is proposed that the next tranche of amendments to the Act include an amendment to permit the Parliamentary Standards Commissioner, at any time, to provide a report to Parliament on the performance of his or her function.

30. **Recommendation 31 –** That clause 3(2) of Schedule 5 to the Act be repealed.

Schedule 5 of the Act sets out procedures and voting processes at meetings of the Joint Standing Committee on Integrity. It also allows the Joint Standing Committee to summon witnesses to give evidence and produce documents. Clause 3(2) of Schedule 5 provides that a witness who is summoned to appear, or who appears, before the Joint Standing Committee has the same protection and privileges as a witness in an action tried in the Supreme Court.

During the Cox Review, the Clerk of the House of Assembly raised concerns in relation to clause 3(2) noting that the proceedings of Parliamentary committees are not conducted in the same manner as legal proceedings, the potential exposure to legal challenge and the capacity for a witness to refuse to answer a question is not afforded to witnesses in other Parliamentary Committees (except for the Public Accounts Committee).

The Independent Reviewer agreed that the Joint Standing Committee should be permitted to operate as other committees of Parliament operate with witnesses afforded the same rights and privileges as witnesses before other committees. He therefore recommended that clause 3(2) of Schedule 5 be repealed.

The Government has accepted this recommendation.

It is proposed that the next tranche of amendments to the Act include an amendment to repeal clause 3(2) of Schedule 5.

31. **Recommendation 32** – That an order be made under section 104(1)(b) to insert the University of Tasmania and under section 104(2) to insert the Vice Chancellor as principal officer into Schedule 1 of the Act, with a consequential amendment to Part 2 of Schedule 1 if required.

The Cox Review Report noted that the University of Tasmania was not originally within the jurisdiction of the Act but was added to the list of public authorities set out in section 5 of the Act by an amendment made a few years after the Act commenced. However, Schedule 1 of the Act, which specifies the principal officers of public authorities, had not been updated to include the principal officer for the University.

In discussing this issue, the Independent Reviewer noted the University had submitted that it should be removed from the jurisdiction of the Act, on the basis that universities are different from public sector bodies and local government authorities in nature, composition, purpose and endeavour and that oversight by bodies such as the Commission is inappropriate. The University noted that it is already subject to a number of other external bodies with investigative or similar powers.

The Independent Reviewer was not persuaded that the University should be removed as a public authority, noting that most other Australian universities have oversight from integrity bodies. The Independent Reviewer recommended that Schedule 1 be updated to include the Vice Chancellor as the principal officer for the University.

The Commission has submitted that this recommendation should be implemented as a matter of urgency and it is noted that the Government has previously accepted the recommendation.

It is noted that this change can be made by order pursuant to section 104 of the Act.

It is proposed that Schedule 1 of the Act be amended by order to insert the University of Tasmania as a public authority and the Vice Chancellor as the principal officer of the University of Tasmania and any consequential amendments that may be required.

32. **Recommendation 38** - That section 46 of the Act be amended to provide that where a person has been appointed to assist an investigator, the CEO may also authorise that person to exercise any of the powers of an investigator set out in section 47.

Section 46(3) of the Act provides that the CEO may authorise any person to assist an investigator. During the Cox Review, it was noted that a person authorised to assist an investigator does not have the capacity to exercise powers under sections 47 and 51 of the Act. It was submitted that it would be appropriate for the CEO to be able to authorise the person assisting the investigator to exercise those powers where appropriate.

The Independent Reviewer considered this appropriate and recommended that section 46 be amended accordingly.

The Government has accepted this recommendation and the Commission has indicated that it considers this recommendation to be of priority to implement.

It is proposed that the next tranche of amendments include an amendment to section 46 of the Act to provide that where a person has been appointed to assist an investigator, the CEO may also authorise that person to exercise any of the powers of an investigator set out in section 47.

33. **Recommendation 39** – That the Act be amended by adding the words "or own motion investigation, as the case may be" after the word "complaint" in section 58(2)(a).

Section 58 provides for the Board to make a determination on receiving a report or recommendation. Under section 58(2)(a) the Board can dismiss a complaint. It was noted in the Cox Review Report that there is no ability for the Board to dismiss where the report or recommendation relates to an own-motion investigation.

The Independent Reviewer found that this is an oversight that should be rectified and recommended that section 58(2)(a) be amended by adding the words 'or own motion investigation, as the case may be'.

The Government has accepted this recommendation and the Commission has identified it as being urgent.

It is proposed that the next tranche of amendments include an amendment to section 58(2)(a) of the Act to allow the Board to dismiss or cease an own-motion investigation.

34. **Recommendations in relation to section 98 of the Act – confidential documents**

Section 98 sets out the obligations relating to notices that are confidential documents. Notices can be issued under various sections in the Act, including under section 35 in relation to assessments, section 47 in relation to investigations and section 71 in relation to Integrity Tribunal inquiries. These

provisions specify that section 98 applies to the notice if the notice provides that it is a confidential document.

The Independent Reviewer recommended a number of amendments to section 98 to clarify its application and operation.

Recommendation 41 - That sections 98(1A) and 98(2) be amended so that confidentiality responsibilities are placed on persons to whom the existence of, contents of and matters relating to or arising from the notice have been disclosed, and further so that a person to whom any such information has been disclosed but who has not been informed by the person making the disclosure that it is an offence to disclose that information without a reasonable excuse to any other person, will him or herself have a reasonable excuse for the disclosure made by him or her.

Recommendation 42 - That the Act be amended so that "assessments" be included in section 98(1B)(d) of the Act and "assessors" be included in section 98(1B)(e).

Recommendation 43 - That section 98(2)(a)(i) of the Act be amended by adding after the words "offence against subsection (1)" the words "or subsection (1A)".

Recommendation 44 - That section 98(2) of the Act be amended to clarify that the list of reasons given is not exhaustive.

Recommendation 45 - That section 98(2) of the Act be redrafted to exonerate persons to whom disclosures have been made but who have not been informed that to disclose them further without reasonable excuse is an offence.

Recommendation 46 - That section 98 of the Act be amended to provide that where the Commission or Integrity Tribunal has finally dealt with a complaint or own motion investigation, a person served with a notice that it or any document referred to therein or attached to it is a confidential document, may apply to the Commission or Integrity Tribunal for advice that such document is no longer a confidential document.

Recommendation 47 – 'That section 98(1) of the Act be amended to read: *"(1) A person on whom a notice that it or any document referred to therein or attached thereto is a confidential document was served or to when such a notice was given under this Act must not disclose to another person – (a) the existence of that confidential document; or (b) the contents of the confidential document; or (c) any matters relating to or arising from the confidential document – unless the person on whom the confidential document was served or to whom it was given has a reasonable excuse.'"*

The Government accepted all recommendations. The Commission has indicated that it considers implementation of these recommendations to be of priority. It is noted that there may be some variations of wording from the recommendations in the drafting of the amendments.

It is proposed that the next tranche of amendments include amendments to section 98 to address recommendations 41 – 47.

35. Recommendation 50 - Technical amendments

The Independent Reviewer considered a number of technical issues that had been raised by the Commission during the Joint Standing Committee Three Year Review and were referred to the Independent Reviewer for further consideration. These amendments are set out in the table at Attachment 2 of the Cox Review Report.

The Independent Reviewer recommended that a number of these technical amendments be implemented. The items below have been accepted by the Government for implementation.

Item 1 – Amend the definition of premises of a public authority, s4(1) to be consistent with the *Search Warrants Act 1997*, such that a conveyance (vehicle) owned, leased or used by a public authority could be entered under s50 or s72.

Item 3 - Amend s21(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. Amend s21(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.

Item 4 - Amend either or both s11 and s26 so that there is sufficient time for the Joint Standing Committee to consider the report of each integrity entity before having to prepare its own report.

Item 5 – Amend s30(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.

Item 7 – 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 ss35, 38, 57 and 58.

The Commission has indicated that this item is of priority to implement.

Item 8 – Amend s35(2) to remove the inconsistency with s37, and the limitation on an assessor to only assess a complaint for determination of accepting for investigation.

The Commission has indicated that this item is of priority to implement.

Item 11 – 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.

The Commission has indicated that this item is of priority to implement.

Item 14 – Amend s39 so that the language is consistent with ss42 and 43, to enable the Commission to monitor the investigation rather than the 'conduct of the investigation'.

The Commission has indicated that this item is of priority to implement.

Item 15 – Amend ss42 and 43 to remove any possible limitations imposed by the use of the word 'or' on the actions of the CEO.

The Commission has indicated that this item is of priority to implement.

Item 18 – Amend s47 so that notices are issued by the CEO consistent with s50 where an authorisation must be from the CEO. Having s47 notices issued by the CEO is consistent with the exercise of similar powers in other integrity jurisdictions.

In response to this item, the Independent Reviewer referred to recommendation 21. As noted above, the Government has accepted recommendation 21.

Item 19 – Amend s49 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.

In response to this item, the Independent Reviewer referred to recommendation 23. The Government accepted recommendation 23 and it is noted above that recommendation 23 had been identified by the Integrity Commission as being of urgent priority.

Item 20 – Amend s51 so that the powers authorised by a search warrant are consistent with those stated in the warrant.

Item 22 – Amend s52 to be consistent with the remainder of Part 6, such that the form of a receipt is approved by the chief executive officer.

Item 23 – Amend s52 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 s51 for the exercise of powers under Part 6.

Item 24 – Amend s53 to enable a warrant to be applied for under Part 2 of the *Police Powers (Surveillance Devices) Act 2006* where there is a complaint, as well as an own motion investigation under ss45 or 89, subject to the own motion investigation concerning serious misconduct.

Item 25 – The issue of appropriate amendments to s53 and/or the *Police Powers (Surveillance Devices) Act 2006* was raised with the Department of Justice for consideration in September 2012. Consider similar amendments to s75.

Item 26 – Amend s54 to make it clear that the threat of violence or other detriment is included as an offence. 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 s21).

The Commission has indicated that this item is urgent.

Item 27 – Amend s55 to provide that the investigator should prepare a report of the investigation to the CEO.

The Commission has indicated that this item is of priority to implement.

Item 29 – Amend s56 to make it clear that the obligations of confidentiality imposed by s98 apply to the draft report, not just the notice accompanying the report. Consequential amendment may need to be considered for s98 so that it applies not just to the notice, but to any relevant documentation the notice is attached to.

The Independent Reviewer indicated that he had dealt with this matter in recommendation 47. The Government accepted recommendation 47 in principle subject to final wording.

The Commission has indicated that this item is urgent.

Item 31 – Amend s58(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.

It is noted that this issue is also dealt with in Recommendation 39 and has been accepted by the Government.

The Commission has indicated that this item is urgent.

Item 33 – Amend s74(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 s73.

Item 34 – Amend s74(3) so that the receipt is in a form approved by the chief executive officer, or the Chief Commissioner or the relevant Integrity Tribunal.

Item 36 - Amend s78 and consider any relevant consequential amendments to s58 so that the language as to what the function of an inquiry undertaken is consistent. Consider whether there should be an opportunity to dismiss or otherwise cease further consideration of an investigation which arose from an own motion investigation.

Item 37 – Amend s80 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.

Item 38 – Amend s81 to make it clear that the threat of violence or other detriment is included as an offence. Ensure that offences against persons assisting, appointed or designated in addition to inquiry officers, are captured.

Item 40 – Amend s94 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.

Item 41 – Amend s95 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.

Item 42 – Amend s96 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.

Item 43 - Amend s97 so that the destruction or alteration of records or things while an assessor is using the powers of an investigator, is an offence. 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.

Item 44 – Amend s98 so that the Commission can ensure confidentiality over its actions beyond the notices referred to at particular sections of the Act.

It is noted that this issue is also dealt with in Recommendation 55. The Commission has identified this amendment as being urgent.

Item 45 - Amend s99 so that the Commission can seek an injunction restraining any conduct which affects an allegation of misconduct within the jurisdiction of the Commission.

It is proposed that the next tranche of amendments include amendments to implement items 1, 3, 4, 5, 7, 8, 11, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 31, 33, 34, 36, 37, 38, 40, 41, 42, 43, 44, and 45.

36. Recommendation 51 - That s37(1) of the Act be amended by deleting the words "or review"

At item 10 of the technical amendments appearing in Attachment 2 of the Cox Review Report, it was submitted that:

> *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'.*[25]

It was suggested that section 35 be amended to enable the CEO to review a complaint and to appoint an assessor to review a complaint or alternatively that the reference to 'review' in section 37 be amended, and include a definition to reduce confusion as to an assessor's functions and powers.

The Independent Reviewer stated:

[25] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p128*

The suggested amendments seem to me to further confuse the problem stated. If this is a problem I would have thought the appropriate amendment would be to delete the words "or review".[26]

The Government has accepted this recommendation.

It is proposed that the next tranche of amendments include an amendment to section 37(1) to omit the words 'or review'.

37. Recommendation 54 - That ss57(2)(b) and 58(2)(b) of the Act be amended to allow the CEO in any recommendation to the Board and the Board in its determination to specify such parts of the report and any other information obtained in the course of the investigation should not be included in the referral to the persons mentioned in ss57(2)(b)(i-vi) and 57(2)(b)(i-vi), or s58(2)(b)(i-vi).

At item 30 of the technical amendments appearing in Attachment 2 of the Cox Review Report, it was submitted that:

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 (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.

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.

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.[27]

It was suggested that sections 57 and 58 be amended 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 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.

The Independent Reviewer was of the view that the suggested amendment is too heavily reliant on the discretion of the CEO. He noted that he had already recommended at Recommendation 52 that a requirement for procedural fairness be inserted in section 55 so that although the CEO has a discretion to seek comment on his or her draft report prior to submission to the Board, the

[26] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p113*
[27] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p139*

requirement of procedural fairness would in some cases demand that the discretion should be exercised so as to enable that comment to be made and considered by the Board.

The Independent Reviewer suggested that so as not to restrict the CEO's recommendations, section 57(2)(b) could be amended to provide that they could include a recommendation that only certain parts of the report or other material be referred. Likewise, section 58(2)(b) could be amended to enable the exclusion of parts of the report or other material from what is referred to another authority or entity. He recommended amendments to sections 57(2)(b) and 58(2)(b) accordingly.

The Government has accepted this recommendation.

It is proposed that the next tranche of amendments include amendments to sections 57(2)(b) and 58(2)(b) of the Act to allow the CEO in any recommendation to the Board, and the Board in its determination, to specify such parts of the report and any other information obtained in the course of the investigation should not be included in the referral to the persons mentioned in sections 57(2)(b)(i-vi) and 57(2)(b)(i-vi), or section 58(2)(b)(i-vi).

Appendix B - Cox Review Report recommendations that were not accepted or do not require legislative reform

There are a number of Cox Review Report recommendations that were not accepted by the Government and/or do not require legislative reform.

In relation to the recommendations proposing legislative reform, it is not proposed to include these recommendations in legislative amendments subject to final consultation with the Commission, and consideration of any submissions.

38. **Recommendation 13** - That Employment Direction 5 should be amended to provide: (a) That where the Head of Agency is advised by the Commission that it is assessing or investigating misconduct of a public officer of that agency involving a breach of the State Service code of conduct, the Head of Agency is not to proceed to appoint an investigator to investigate the alleged breach until advised to do so by the Commission. (b) That where, in accordance with Recommendation 11, the Head of Agency notifies the Commission of serious misconduct of a public officer involving a breach of the State Service code of conduct, the Head of Agency is not to proceed to appoint an investigator to investigate the alleged breach until advised to do so by the Commission.

    As with recommendation 12(a) and 12(b), this recommendation is aimed at reducing duplication in investigations relating to alleged misconduct. This recommendation has been raised by the Commission as being of priority for implementation.

    The Government accepted this recommendation in principle. Implementation of the recommendation does not require legislative amendment – the changes recommended relate to Employment Direction 5. There will be further consideration and consultation with the Department of Premier and Cabinet and other agencies in relation to making this change.

39. **Recommendation 17 –** That the Act be amended to delete the words "or DPP" from sections 57(2)(b)(iv), 58(2)(b)(iv) and 78(3)(d).

    In considering how the Commission should deal with suspected criminal conduct identified during the triage of a complaint, the Independent Reviewer indicated that if the Commission is to retain jurisdiction over criminal matters, then there should be consequential amendments to the Act to not require referral of such matters directly to the Director of Public Prosecutions (DPP).

    The Government did not accept this recommendation noting that there may still be a limited number of criminal allegations investigated by the Integrity Commission and it should be able to refer such matters directly to the DPP for advice or consideration.

40. **Recommendation 29** - That consideration be given to the adoption of the Model Codes of Conduct for Members of Parliament and Ministerial staff in Tasmania presented to Parliament by the Commission in June 2011.

The Cox Review Report noted that in 2010-2011 Draft Model Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff were prepared with collaboration between the Parliamentary Standards Commissioner, the Chief Commissioner of the Commission and members of the Commission's staff. The Codes were presented to members of Parliament in June 2011 but had not been adopted at that time.

It is noted that there is now a code of conduct for Members of Parliament.

No legislative amendment is required in relation to this recommendation. However, it is noted that consultation will be undertaken with the Department of Premier and Cabinet in relation to the recommendation to adopt a code of conduct for Ministerial staff.

41. **Recommendation 33 -** That the definition of "misconduct" set out in section 4 of the Act be retained.

The Cox Review Report discussed the scope of the Commission's jurisdiction, noting that it 'is confined to what falls within the Act's definition of "misconduct"'.[28] The Independent Reviewer recommended that the definition of 'misconduct' be retained noting:

> *The Parliament in 2009 had to determine what kind of model it should establish. Various models had been canvassed by the Joint Select Committee on Ethical Conduct, ranging from an organisation tasked with rooting out what was understood as systemic corruption, and resourced accordingly, to a modest organisation primarily devoted to educating the public service in ethical standards. A compromise was reached in the Act by charging the Commission with both an ethical role and an investigative one. Conscious that the PID Act had set out the areas of wrongdoing by public officials and public bodies which should be investigated, and to which "whistle blower" protection should be offered in its definitions of corrupt and improper conduct, the ambit of the conduct within the remit of the IC Act was defined as "misconduct", a definition which may well fall short of what the public regard as "corruption", but in the absence of any evidence of entrenched wrongdoing within the public sector, I see no reason to expand the kind of wrongful conduct the Commission should target or to re-write its nomenclature as "corruption".*[29]

The Government has accepted this recommendation and therefore does not propose to make any legislative change in relation to this definition, noting that it is to consider options for defining 'offence of a serious nature' in accordance with Recommendation 9.

42. **Recommendation 34 -** That Treasurer's Instruction 1118 be amended such that where a conflict of interest exists, the Commission should have a discretion to brief and retain legal counsel outside of Crown Law, without the need for a specific exemption, as sought by the Commission.

The Government did not accept this recommendation noting that:

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[28] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p83*

[29] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p92*

The Treasurer's Instruction recognises that there are some circumstances where external legal services may need to be procured such as where there may be a conflict, specialist expertise is needed or there may be urgent time constraints that would mean outsourcing advice and legal support would be appropriate. As the Integrity Commission is an instrumentality of the Crown and for financial management purposes a government agency the Government does not support a departure from the rules that apply to other agencies.[30]

Conflicts of interest are managed under the current Treasurer's Instruction and the case to exempt the Integrity Commission has not been made.

Treasurer's Instruction FC-17 provides for the Engagement of Legal Practitioners. It applies to the Commission[31]. The Treasurer's Instruction provides that, unless lawfully permitted the Crown (which includes all of its agencies and instrumentalities) must obtain its legal advice from Law Officers of the Crown.

43. Recommendation 35 - That the Commonwealth be asked to amend the *Telecommunications (Interception and Access) Act 1979* (Cth) so as to grant the Commission the status of a criminal law enforcement agency for the purposes of that Act.

During the Cox Review, it was submitted that the Commission should be classified as a criminal law enforcement agency for the purposes of the Commonwealth *Telecommunications (Interception and Access) Act 1979*. This would allow the Commission to obtain telecommunications data under the Commonwealth Act. The Independent Reviewer found that there was merit in expanding the Commission's powers in this regard and recommended that the Commonwealth be asked to amend the *Telecommunications (Interception and Access) Act 1979* accordingly.

This recommendation does not require amendment of the Act (it would require the amendment of Commonwealth legislation). In any case, the Government did not accept this recommendation stating that it did not consider it appropriate that the Commission have access to intercepted materials and data:

Access to such data is currently strictly limited to national security and the investigation of serious criminal matters and the Government does not favour supporting access outside of these reasons.[32]

44. Recommendation 36 - That no compelling case has been made for the inclusion within the Criminal Code of an offence of Misconduct in Public Office.

The Cox Review considered whether there should be a new offence included in the *Criminal Code* (the Code) in relation to misconduct in public office. The Independent Reviewer noted the Director

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[30] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009, p10*

[31] *Treasurer's Instruction FC-17 states that it applies to an agency listed in Column 1 of Schedule 1, Part 1 Financial Management Act 2016. The Commission is listed in this Schedule.*

[32] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009, p10*

of Public Prosecution's submission that the existing provisions of the Code are adequate to cover misconduct by public officers which is sufficiently reprehensible to warrant punishment as a crime, pointing specifically to the crimes of official corruption of public officers and bribery of a public officer under section 83 of the Code, and the crime of fraud under section 253A as potentially being available for prosecution of more serious forms of conduct by public officers.[33] The Independent Reviewer also noted section 115 of the Code relating to the omission of a public officer to perform his or her duty.

The Independent Reviewer found that no compelling case had been made to include a new offence of Misconduct in Public Office in the Code.

The Government accepted this recommendation. No legislative amendment is required.

45. Recommendation 37 - That the definition in the Act of "public officer" be amended to specifically reference volunteers and officers exercising statutory functions or powers.

The Independent Reviewer recommended that the definition of 'public officer' be amended to specifically reference volunteers and officers exercising statutory functions or powers in response to concerns raised by the Commission that there is a lack of clarity and potential inconsistency in relation to whether volunteers and officers who exercise statutory functions and powers are covered.

Whilst the Commission has raised this recommendation as being of priority to implement, it is noted that the Government has not accepted this recommendation. In its response to the Cox Review Report, the Government noted:

> *The relationship between volunteers and public authorities is different from an employment relationship and it is not considered appropriate for volunteers to be brought under the remit of the Integrity Commission. This would create burdens for both public authorities and the volunteers in terms of performance management and the provision of legal assistance (noting that indemnities are already available in certain circumstances).*[34]

46. Recommendation 50 – Technical Amendments

As noted above, the Independent Reviewer considered a number technical issues that had been raised by the Commission during the Joint Standing Committee Three Year Review and were referred to the Independent Reviewer for further consideration. These amendments are set out in the table at Attachment 2 of the Cox Review Report.

The items below were either not endorsed by the Independent Reviewer and/or have not been accepted by the Government for implementation.

[33] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p96*

[34] *Tasmanian Government Response – Independent Review of the Integrity Commission Act 2009, p10*

Item 6 – Amend s32 to require public authorities to report each year on education and training in relation to ethical conduct.

It is noted that the Government did not accept this recommendation stating that it does not accept such a reporting requirement is analogous to annual reporting under the *Right to Information Act 2009* and *Public Interest Disclosures Act 2002* of statistical data about numbers of applications, how they are dealt with and in what timeframes.

Item 10 – Amend s35 to enable the CEO, on receipt of a complaint to 'review a complaint', or alternatively amend the reference to 'review' in s37 and include a definition to reduce confusion as to an assessor's functions and powers.

The Independent Reviewer recommended that the suggested amendments in this item seem to further confuse the problem stated. If this is a problem, the appropriate amendment would be to delete the words 'or review'. This was dealt with in recommendation 51. The Government has accepted Recommendation 51 and it has been identified for inclusion in the next tranche of amendments.

Item 12 - Amend s38 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 allegations.

The Independent Reviewer did not endorse this item noting that it was not recommended for implementation by the Joint Standing Committee Three Year Review. The Independent Reviewer commented:

> *In my view, it is imperative that the complaint be forwarded to the principal officer because that is the subject of the inquiry to be conducted. As to the report itself, the CEO has a discretion not to reveal it to the person the subject of the complaint, and s 98 can preserve confidentiality on the part of the principal officer who receives it.*[35]

Item 13 - Amend s38 so that it is consistent with s44 such that written notice of the CEO's determination is discretionary.

In relation to this item, the Independent Reviewer noted:

> *Under s 38(1), the CEO is to give written notice of his or her determination to the principal officer, and has a discretion to give it to the complainant and the officer the subject of the complaint. Under section 44, if the determination is to investigate, the CEO has a discretion to disclose to the same persons the fact that an investigator has been appointed to investigate the complaint. Under subsection (3) he may include details of the complaint and any report of the assessor. The principal officer, having received the advice under section 38 that the CEO has determined to refer the complaint and the report and any relevant material, by the time that the investigator has in fact been appointed, will probably have received this material as the CEO is obliged to provide him. The apparent grant of a discretion under s 44(2)(a) to provide it at this stage is inconsistent with section 38, but so far as the complainant and*

[35] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p113*

officer subject to the complaint are concerned, assuming the CEO exercises his or her discretion under s 38(2) to notify them, they will only have notice of the determination, not the documents which the principal officer is obliged to be given. Section 44 authorises their release to those persons. Section 44(2)(a), which includes the principal officer as the discretionary recipient of the material, is therefore otiose and inconsistent with the mandatory requirement in section 38 that he or she be a recipient of it. This may justify (although it is harmless) the repeal of s 44(2)(a) as otiose, but does not justify a repeal of the requirement to give the notice of determination and to supply the material which is to be referred to the principal officer under section 38 but to leave it discretionary.[36]

The Independent Reviewer did not endorse this item.

Item 16 - Amend s44 so that it is consistent with s38 and that any discretionary notice by the Commission about a determination is comprised of relevant material.

The Independent Reviewer did not endorse this item for reasons advanced under item 13 above.

Item 30 – Amend ss57 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 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 any part of the material that might be referred.

The Independent Reviewer commented that this recommendation is too heavily reliant on the discretion of the CEO. The Independent Reviewer noted his recommendations in relation to procedural fairness at recommendation 52 and confidentiality at recommendation 54.

Given the Independent Reviewer's comments in relation to this item and noting that it is proposed to address recommendations 52 and 54 in the next tranche of amendments, it is not proposed to deal with this item directly in legislative amendments.

Item 32 - Amend s68 so that the penalty is consistent with other penalties in the Act.

At item 32 of the technical amendments appearing in Attachment 2 of the Cox Review Report, it was submitted that:

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

- *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*[37]

[36] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p113*
[37] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p140*

It was suggested that section 68 should be amended to make its penalty consistent with other penalties in the Act.

The Independent Reviewer did not make any recommendation in relation to this item noting that:

> *I think there is a significant difference in the degree of gravity between failing to co-operate at a directions hearing which is designed to facilitate and expedite the principal hearing of an Integrity Tribunal and the other examples, but it is a matter for the Parliament to determine how grave the former is and what an appropriate penalty is.*[38]

Item 46 - Amend the *Personal Information Protection Act 2004* and/or the IC Act to enable access to appropriate Tasmania Police databases.

At item 46 of the technical amendments appearing in Attachment 2 of the Cox Review Report, it was submitted that:

> *The Commissioner of Police is a personal information custodian within the meaning of the PIP Act.*
>
> *The Commission seeks information from Tasmania Police database on a regular basis. The information is required to enable the Commission to fulfil 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 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.*
>
> *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.*
>
> *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.*
>
> *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.*
>
> *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.*

[38] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, pp115-116*

Authorisation for the Commission to have unlimited access to Police databases (electronic access, but limited to a function 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).

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 –

(a) for the purpose of any of its functions or activities; or

(b) for the enforcement of laws relating to the confiscation of the proceeds of crime; or

(c) in connection with the conduct of proceedings in any court or tribunal.

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 Australian Consumer Law (Tasmania) Act 2010).[39]

It was suggested that amendments be made to the *Personal Information Protection Act 2004* and/or the Act to enable access to appropriate Tasmania Police databases.

The Independent Reviewer did not endorse this item noting:

….I am not persuaded that classification as a law enforcement agency within the meaning of the Personal Information Protection Act 2004 is warranted. The information is available to the Commission on a case by case basis so long as, in each case, it is for the purpose of and in accordance with the Act (section 102). I do not endorse the Commission's recommendation.[40]

[39] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, pp149-151*

[40] *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009, p116*

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