



OUR REF: 2022/001100
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1 April 2022

The Honourable Gerald Edward (Tony) Fitzgerald AC QC
Chairperson and Commissioner
The Honourable Alan Wilson QC
Commissioner
Commission of Inquiry relating to the Crime and Corruption Commission

By email: submissions@cccinqury.qld.gov.au

Dear Commissioners,

**Submission: Commission of Inquiry into specific matters relating to
the Crime and Corruption Commission**

Thank you for the opportunity to make a submission to the Commission of Inquiry. This submission addresses the questions in response to your letter of 2 March 2022.

Background

The Tasmanian Integrity Commission began operating on 1 October 2010. In accordance with section 3(2) of the *Integrity Commission Act 2009* (Tas) (IC 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.

Our jurisdiction is significantly different to similar bodies in other Australian jurisdictions. The Tasmanian Integrity Commission does not have dedicated functions to investigate or prosecute criminal matters. We do not undertake joint taskforces, or use specific investigative powers such as telecommunications intercepts or assumed identities.

There are two main prosecuting authorities in Tasmania: Tasmania Police and the Director of Public Prosecutions (DPP). The Local Government Division (LGD) investigates potential breaches of

the *Local Government Act 1993* (Tas). We seek advice from these authorities when we identify potential breaches of the law.

Response to questions

1. ***Any use of seconded police officers in investigations conducted by your Office and in the processes connected with decisions to commence prosecutions arising from those investigations***

From time to time we have seconded police officers from Tasmania Police. However, they have never had anything to do with a prosecution, or been part of any decision-making process to seek advice on potential breaches of the law. Police are seconded to the Commission to conduct inquisitorial fact-finding misconduct investigations. They are not seconded to conduct criminal investigations.

Sections 21(4), 21(6)–(9) of the *IC Act* gives our Chief Executive Officer the power to second police officers to undertake investigations and assist with inquiries. This includes the provision of technical assistance. Pursuant to section 21(10), we have in place a Letter of Understanding (LOU) which confirms our arrangements with Tasmania Police.

Under section 21(6) of the *IC Act*, a seconded police officer is authorised under written notice from the Chief Executive Officer to ‘perform the functions or exercise the powers of an investigator or inquiry officer under this Act’. There are no powers in the *IC Act* for an investigator or inquiry officer to make criminal charges on behalf of the Commission. However, section 21(7) of the Act provides:

*While undertaking work on behalf of the Integrity Commission, an authorised person who is a police officer **continues to have the functions and powers of a police officer** but reports to the chief executive officer, or other person nominated by the chief executive officer, in relation to the work being undertaken on behalf of the Integrity Commission. (emphasis added)*

Section 21(8) of the *IC Act* relieves any seconded police officer of the responsibility ‘to report to, provide information to or take direction from the Commissioner of Police or any senior officer within the meaning of the [*Police Service Act 2003* (Tas)]’.

Despite these provisions, our view is that it is unlikely that a seconded police officer could charge a person on behalf of the Commission.

2. ***Issues arising from any use of seconded police officers and how those issues are managed by your organisation***

Some police may struggle with the difference between adversarial (criminal) and inquisitorial (disciplinary) systems. This can include having the requisite skills, particularly the ability to write detailed investigation reports.

There are also the inevitable short-term issues of adapting to our particular case management and operational systems.

3. The expertise, qualifications and training required by your organisation for persons involved in your Office's investigations and decisions to commence prosecutions arising out of those investigations (including the required expertise, qualifications and training in areas of law other than criminal law that may affect investigations and decisions to prosecute, such as administrative law, public law, employment law and public sector corporate governance)

Given that we do not have a prosecutorial function (refer above) we would liaise with Tasmania Police, the DPP or other prosecuting authority.

4. Any relevant law, policies, procedures and practices affecting decisions to commence prosecutions arising out of Integrity Commission Tasmania investigations

We do not initiate or conduct prosecutions, or investigate potential offences. As noted above we regularly seek advice – both informally and formally – from the DPP or Tasmania Police on matters that may amount to criminal offences. In the past, Tasmania Police have been briefed about evidence collected during Commission investigations when suspicions arise that a crime might have been committed, providing Police with an opportunity to seek referral of the matter for Police investigation. The DPP would usually undertake the process of charging and prosecuting on behalf of the Commission.

5. Any relevant law, policies, procedures and practices affecting any referral of matters by your Office to the Director of Public Prosecutions (Tas), including details about the types of matters that are referred; the form of the referrals; when matters are referred and why referrals are not made at an earlier stage (if known)

Section 8(1)(h) of the *IC Act* allows us to 'refer complaints or any potential breaches of the law to the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate for action'. We can use this section to refer potential breaches at any stage of dealing with a matter.

For the purposes of gathering evidence for prosecution section 8(1)(m) allows us to collect evidence for proceedings relating to monitoring and compliance functions.

Also, at various points in our investigative process we can refer matters to the Commissioner of Police and/or the DPP:

- ▼ on receipt of a complaint – section 35(1)(c)
- ▼ after an assessment – sections 38(1)(e)–(f)
- ▼ after an investigation – section 58(2)(b)(iv), and
- ▼ after an integrity tribunal – section 78(3)(d).

6. Practices regarding interaction between your Office and the Director of Public Prosecutions (Tas), including:

a. practices in respect of advice given (either formally or informally) by the Director of Public Prosecutions (Tas) before and after the commencement of criminal prosecutions

If we have evidence of an offence may have been committed, we seek advice from the DPP and/or Tasmania Police before proceeding with our assessment/investigation, and especially before conducting coercive interviews of respondents under notice (section 47(1)(b) of the IC Act).

b. practices concerning how evidence obtained by use of coercive powers is managed given the legal principles regulating the use of that evidence (such as those identified in *X7 v Australian Crime Commission (2013) 248 CLR 92*, *Lee v New South Wales Crime Commission (2013) 251 CLR 196*, and *Lee v The Queen (2014) 253 CLR 455*)

We seek advice from the DPP at the earliest opportunity so that our work does not prejudice a potential prosecution. We are cognisant of the significant case law in other jurisdictions emphasising that coercively obtained interview evidence must not be shared with prosecuting authorities. This includes evidence that is found as a result of coercively obtained interviews.

7. Any steps that your Office can take, and any steps that it has taken, in the course of investigations or hearings to minimise inappropriate impacts on affected parties (for example, steps taken to mitigate adverse mental health outcomes suffered by witnesses by reason of their involvement in such investigations or hearings)

We talk to affected parties and explain the process and the purpose of confidential notices issued by the Commission. We advise that they are able to speak to another person such as a counsellor or general practitioner, obtain assistance from their employer's Employee Assistance Program (EAP), and/or obtain advice from a lawyer about the notice. At times we have also organised a welfare contact person for the complainant or subject officer within the agency, and arranged for a different welfare contact for others. We have also made available our own EAP where required.

We also take into account, when deciding on when to serve a notice, the time of year such as Christmas and other holiday periods, or dates of significance for the person involved.

We provide information sheets with all notices. We also provide updates when appropriate and provide the contact details of the Investigator should they have any concerns or questions (I have attached the Information sheet for you reference).

8. Any body or bodies established by law that provide independent oversight of the activities of your office (such as bodies equivalent to the Parliamentary Crime and Corruption Committee, the Parliamentary Crime and Corruption Commissioner and the Public Interest Monitor established by the Crime and Corruption Act 2001 Act 2001 (Qld)), and the effectiveness of any such body or bodies.

The parliamentary Joint Standing Committee on Integrity (Joint Committee) was established under section 23(1) of the *IC Act*. The Joint Committee is the Commission's oversight body, and its functions and powers are provided in section 24 of the Act.

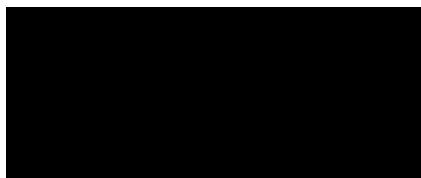
The Commission attends the Joint Committee twice per year, with meetings held in accordance with Schedule 5 of the *IC Act*.

Sections 24(2)(a)–(c) of the Act specifically limit the Joint Committee's ability to investigate matters before the Commission, review a decision to investigate or inquire into a complaint, or make findings on matters dealt with by the Commission.

Although the Joint Committee cannot formally review our decisions or complaints about us, they could hear and consider such matters. We would not dissuade anyone from approaching the Joint Committee if they are dissatisfied with us, and we include such information in correspondence to complainants who are dissatisfied with the outcomes of their matters.

I hope the above may be of some assistance. I would be happy to provide further information if that would assist.

Yours sincerely,



Greg Melick AO SC
Chief Commissioner