Supplementary Submission
to the Joint Standing Committee on Integrity Reviewing the powers, functions and operations of the Integrity Commission

On behalf of

CPSU (SPSFT) Inc.

October 2014

Tom Lynch
General Secretary
Executive Summary

This supplementary submission is presented in response to the ‘Tasmanian Government Submission’ provided to the Joint Standing Committee in September 2014.

About Us

The CPSU is a union representing Tasmanian public sector employees and workers in a number of Government Business Enterprises, Statutory Authorities and the University of Tasmania.

Who is the Tasmanian Government submission from?

The submission was provided to the Joint Standing Committee by the Secretary of the Department of Justice in response to a committee invitation for a submission from the Department of Justice, but the cover letter indicates it is from the ‘Tasmanian Government’.

It’s not clear what this actually means. Is it a submission from the Department of Justice? Is it a submission on behalf of all government Agencies? Is it a submission on behalf of the government? Is it a submission on behalf of the Tasmanian Liberals?

It’s interesting to note that, according to the submissions listed on the Committee website, none of these parties chose to make a submission in the original process.

This isn’t just an esoteric question. Removing the power of the Integrity Commission to conduct investigations, as proposed in the submission, would significantly reduce scrutiny on a number of key public officers - Heads of Agency, politicians, Ministers and Ministerial staff. So do those responsible for the ‘Tasmanian Government’ submission have a conflict of interest in having the investigatory powers of the Integrity Commission removed?
Would the changes actually save money?

Much is made in the ‘Tasmanian Government’ submission of the Integrity Commission’s operating costs and whether similar outcomes could be achieved ‘through more cost-effective and efficient means’. The reader is led to believe that changes that may reduce the effectiveness of the Integrity Commission are acceptable because savings would be made, but the CPSU does not accept the proposed changes would actually make savings.

The submission calls for the educative, advisory and preventative role of the Integrity Commission being retained or even enhanced. The submission also calls for the Integrity Commission to continue to triage complaints. The submission proposes the establishment of a new organisation to be known as the ‘Office of the Inspector General’. There’s potential for additional costs associated with boosting the investigatory functions of the Auditor General and the Ombudsman.

The only savings set out in the submission are those associated with the investigatory function being removed from the Integrity Commission and, given this is only a small part of the Integrity Commission’s current costs, these savings are unlikely to be sufficient to fund an enhancement of the educative, advisory and preventative role, an enhancement of the triage role, the funding of an Office of Inspector General and the boosting of the investigatory capacity of the Auditor General and Ombudsman.

Who would conduct future investigations?

If the investigatory powers of the Integrity Commission were removed and its role was just to allocate issues to other organisations it’s interesting to see who is responsible for each group of public officers.

The Police, Director of Public Prosecutions, Auditor General and Ombudsman roles are clear and the Integrity Commission already refers relevant investigations to these authorities. Issues concerning public sector workers, employees of government business enterprises and Councils are referred to the head of the relevant public authority and this would continue. The significant areas of change would be in relation to issues raised concerning Heads of Agency and heads of other public authorities, Ministers, parliamentary officers, politicians and Ministerial staff.
The CPSU understands that without an investigatory power the Integrity Commission would refer allegations made against Heads of Agency, Ministers and Ministerial staff to the Premier, allegations against parliamentary officers would be referred to the Speaker of the House of Assembly or the President of the Legislative Council and allegations against other heads of public authorities would be referred to their Boards. It’s far from clear how these people or organisations could conduct fair and transparent investigations into allegations, particularly as they lack resources and investigatory powers and in most cases are operating in a partisan political sphere.

Wasn’t this exactly why the Integrity Commission was established in the first place – so we didn’t have investigations being conducted in a political space?

**The importance of investigation**

It’s worth considering how issues are raised with an organisation such as the Integrity Commission as it highlights the importance of an independent body having the time and capacity for a full investigation.

The CPSU understands the initial complaint that triggered the comprehensive investigation into issues in the Department of Health & Human Services was about senior managers not complying with employment practices and guidelines. Without an investigatory power the Integrity Commission would have referred these issues to the relevant heads of Agency – in this case Jane Holden and Gavin Austin. It would then have been up to these two individuals to determine whether the matters were worth investigating.

We understand it took months of careful investigation using the full suite of powers available to the Integrity Commission to uncover all the matters that eventually came to light. It’s highly unlikely these important matters of public interest would have been revealed had the investigation have been left to the relevant Heads of Agency.

**Role of the 5 Year Review**

The *Integrity Commission Act 2009* includes a process at clause 106 for the Independent review of the Act. This must be initiated as soon as possible after 31 December 2015 and must be conducted by a judge. This independent review process was included in the legislation to ensure the powers and functions of the Integrity Commission were not undermined by the very people the Bill was designed to oversee.
The CPSU believes significant issues such as the power of the Integrity Commission to conduct its own investigations should only be considered through a completely independent process such as a judicial review, therefore these proposals should not be progressed through the current review conducted by the Joint Standing Committee on Integrity.