

Submission to the Joint Select Committee on Ethical Conduct

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"... the sense of a thing being changed from its naturally sound condition, into something unsound, impure, debased, infected ..."

(Mark Philp, Defining political corruption)¹

I welcome this opportunity to make a personal submission to the Joint Select Committee on Ethical Conduct. It is well past time we, as Tasmanians, were enabled to challenge the dominant political paradigm through a formal Parliamentary structure, and propose a more ethical way forward for our body politic, in the interests of good governance and the healthy functioning of democracy.

We cannot accept that a minimalist approach to redressing and overcoming an entrenched ethical malaise in Tasmanian public life, will suffice. I trust the Committee will make the most of this rare chance to establish a strong framework for defeating the culture of institutionalised corruption that has blighted Tasmanian society, to the detriment of us all.

As a newly elected Member, I wish to be part of a proudly ethical Parliament that truly serves the best interests of Tasmania and its people. The foundations of a reformed, decent, transparently governed Tasmania can and should be laid anew by the recommendations of this Committee.

In my submission, I will set out the possible framework for establishing a Tasmanian Integrity Commission that is empowered and resourced to investigate matters of corruption and misconduct in Tasmanian public life, as well as provide the necessary ethical guidance for public administration into the future.

¹ Philp, M., 'Defining political corruption', in P. Heywood (ed.), *Political Corruption*, Oxford, Blackwell, 1997, pp. 20 - 46

Introduction

Democracy is based upon trust - the trust placed by the community in those elected or selected for public offices to exercise the power granted to them honestly, openly and fairly. Trust that decisions are made for the public good and not for the personal gain of the decision-maker. Trust that the great institutions of government – the Parliament, the Executive and the Judiciary – exist and operate to further the common good of the entire community.

Trust in democracy in Tasmania has been deeply eroded by a repeated failure of the institutions of Government. These failures have severely diminished confidence that decision-making occurs in this State for the public good. It is clear that the current architecture of Government in Tasmania in terms of the basic measures of openness, accountability and honesty is inadequate to serve the needs and expectations of a modern democracy.

The structures of Government need urgent reform to re-establish public trust. As outlined in this submission, key in this goal is the establishment of a new institution to independently, openly and fearlessly pursue, expose and bring to account the instances of corrupt practices and public misconduct in the operation of Tasmanian governance which corrode the very workings of democracy in the State.

Overarching Principles

Improving and reforming the institutions of government are constant and ongoing tasks within a modern democracy. As society changes, so must the governance structures of society. Substantial reform has taken place in many Australian and overseas jurisdictions in the last decades to bolster responses to corruption and public misconduct. This wave of reform has, to date, not touched Tasmania and the institutions of the State are much poorer as a result.

In designing best practice governance structures, the starting point is the principles of good governance in public life. These principles were well-expressed by the House of Commons Committee on Standards in Public Life in its first report in 1995.

These principles are as follows:

- **Selflessness** - holders of public office should take their decisions solely in terms of public interest. They should not do so to gain financial or material benefits for themselves, their family or their friends.
- **Integrity** - holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- **Objectivity** - in carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holder of public office should make choices on merit.
- **Accountability** - holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** - holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the public interest clearly demands it.
- **Honesty** - holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - holders of public office should support these principles by leadership and example.

The Failure of Tasmania's Institutions

*"The whole point of the legislation was to combat a corrupt culture, a culture that regards nothing wrong with things like jobs for the boys, or giving a Government contract to a mate, and accepts corruption as part of the way things are done."*²

There are distinct echoes in the New South Wales experience for Tasmania, particularly during the Lennon era and specifically, as one example, the fall from grace of then Deputy Premier, Bryan Green, over the Tasmanian Compliance Corporation scandal.

Institutionalised corruption is defined as that in which the gain is political rather than personal. It is this form of corruption that manifests at regular intervals in Tasmanian public life.

For as long as I have lived and worked in Tasmania it has been clear there is a unique, often unhealthy, nexus between majority government, the bureaucracy and corporate influences.

There is a long history in Tasmania of dishonest dealings carried out beyond public scrutiny; privileged treatment to favoured corporate interests; the abuse of legislative process to further corporate agendas at the public's expense; bargain-basement sales of public assets; and lies, on the public record.

Rather than go into extensive detail on the breaches of public trust that are on the public record, I will highlight a few, outstanding examples of what can be regarded as institutionalised corruption in Tasmania in recent years.

Lack of accountability and transparency

While Premier David Bartlett is at pains to draw 'a line in the sand' over the actions of his predecessor, Paul Lennon, there remain matters unresolved and uninvestigated that are of concern.

The circumstances surrounding the ex-gratia payment to former Governor, Richard Butler, in 2004 have never been scrutinized. After a late night meeting between then Premier Lennon and then Governor Butler, \$650 000 was granted, from the public purse, to effectively remove Richard Butler from office. There was no obvious mechanism for this extraordinary display of largesse on the Tasmanian Government's part, other than the then Premier's stated justification that it was in order to protect 'the good name of Tasmania.'

Another prime example is the downfall of former Deputy Premier, Bryan Green. The circumstances surrounding the attempt by government to cover up the Tasmanian Compliance Corporation scandal have not been fully investigated, nor has the role of the parties – including Ministerial advisers - involved in the sealing of the monopoly deal.

The Federal Hotels' Monopoly license

In 2003, a short period after the 2002 State Election, and without a mandate to do so, the Bacon Labor Government granted a free (gratis), exclusive monopoly poker machine license to Federal Hotels – five years before their current agreement with the Tasmanian Government was to expire. This effectively extended their monopoly for an additional fifteen years, without reference to the Tasmanian people. The deal was uncontested in the national market.

² ICAC, *Second Report on Investigation into the Metherell Resignation and Appointment*, Sydney ICAC September 1992, p. 3

Bargain basement sales

There has never been any public or Parliamentary scrutiny, or proper explanation, of the sale to a private developer of the former Transport Department building at 1 Collins St in 2003, for the sum of \$100 000. This price was well below what was regarded as an appropriate market value at the time of sale. Post-development, units in the complex were on the market for up to \$3 million. Coincidentally, the purchaser was later revealed to be a donor to the Tasmanian ALP.

There is also the matter which raised enormous community concern at the time and to this day, and a deep personal revulsion concerning the Tasmanian Government 2004 'in-principle agreement' to make available to private developer, Walker Corporation Pty Ltd, a parcel of Crown Land and designated Conservation Area at Ralphs Bay for the construction of an 800 home canal housing estate. I will always argue that this agreement was ethically, and environmentally, corrupt.

Abuse of the legislative process

As an active member of the Save Ralphs Bay Inc. community group, I witnessed the perversion of the legislative process – initiated and perpetuated by the Lennon Government at a private developer's behest – that was known as the *Ralphs Bay Conservation Area (Clarification) Bill 2006*.

Introduced by the government at the same time as the Walker Corporation Project of State Significance Bill, the so-called Clarification Bill was in fact an attempt to eliminate the Ralphs Bay Conservation Area to further the corporate agenda of Walker Corporation, and enable its plan to construct Tasmania's first canal housing estate inside the footprint of the Conservation Area.

There was no dispute about the boundary of the Ralphs Bay Conservation Area until Walker Corporation's lawyers raised the matter with the Tasmanian Government in 2005. The Hansard debates in both Houses reveal the Tasmanian Government's complicit role in seeking to overturn standard surveying law and practice, as well as the unquestioned acceptance by Tasmanian Government mapmakers, concerning the boundary of the Ralphs Bay Conservation Area.

<http://www.parliament.tas.gov.au/HansardHouse/isysquery/cf061eff-30df-4ead-89a8-b7f514364247/4/doc/>

Then, of course, there is the *Pulp Mill Assessment Act 2007* – a special piece of legislation that bypassed all proper planning process, and evidenced the ongoing and 'special' relationship between the State Labor Government and forestry corporation, Gunns Pty Ltd. It remains to this day, a gross abuse of the legislative process, initiated and perpetuated by the Lennon Labor Government - with the support of the Liberal Opposition at the expense of Tasmania's people and its natural environment.

It was but one of many betrayals of the public interest that point to the unquestionable need for a new structure to restore public faith in the workings of government, and its representatives.

To rebuild the trust Tasmanians once had in their political leaders and ensure public faith in politicians, and government we need an anti-corruption body that has full investigative powers, is independent of executive government, accountable to the Parliament and sufficiently resourced to carry out its roles and responsibilities. It must also have the capacity to investigate matters retrospectively.

Building Tasmania's Integrity Systems

Within Australia's Federal system of government, a variety of integrity models have emerged in individual States. Viewed on an historical continuum, all States, including Tasmania, have over time established some common institutional arrangements, firstly an independent Auditor-General to provide oversight of public financial affairs and subsequently Ombudsman offices.

The Tasmanian Ombudsman plays a vital role in investigating and resolving the grievances experienced by individuals against particular decisions taken in relation to their affairs. However, the Ombudsman is not empowered, equipped or resourced to deal with corruption and misconduct of public officials.

Since the late 1980s, throughout Australia the complexity of dealing with intentional wrongdoing or misconduct by appointed and elected public officials has contributed to the establishment of additional integrity systems in the form of anti-corruption commissions. The first such commission, namely the Independent Commission Against Corruption (ICAC) was created in New South Wales in 1988. The Fitzgerald Inquiry into possible illegal activities and associated misconduct in Queensland led to the formation of what is now the Crime and Misconduct Commission (CMC) in 1990. The Corruption and Crime Commission (CCC) of Western Australian commenced in 1989 and followed a series of poor and corrupt practices in public administration in that State.

It is submitted that it is not viable to task the Tasmanian Ombudsman's office with the responsibility to tackle the integrity issues which have become apparent in the State in recent times. Firstly, the focus of the Ombudsman is rightly on defective administration rather than corruption or public misconduct. It would dilute the role of the Ombudsman to shift its current focus to the field of corruption and misconduct.

Secondly, and critically, the Ombudsman does not have jurisdiction over the actions of Ministers and Members of Parliament. The recent history of Tasmania is sadly replete with examples of public misconduct at this level, with no existing body being able to adequately investigate the issues raised in the cases which have done so much to erode trust in the institutions of government.

I accept and endorse the contribution to ethical behaviour and culture which would flow from the establishment of a Parliamentary body or office which is focused upon ethical standards in the conduct of public life. It is recognised that bodies such as the Committee on Standards in Public Life, which operates in the United Kingdom, and the Queensland Integrity Commissioner have performed useful roles in providing advice and reviewing standards of behaviour in public life.

Equally, it is clear that these reforms are insufficient to deal with the instances of official misconduct which have been apparent in Tasmania and which are the focus of the activities of bodies such as ICAC, CMC and CCC in other Australian States.

What Tasmania needs is an addition to the governance structures of the State which will provide a mechanism which allows instances of corruption and misconduct to be investigated and dealt with.

An Ethics Commission or Office will not of itself address the fundamental and manifest weakness in the current governance arrangements of Tasmania.

For this reason, I submit that the principal recommendation of the Committee should be the establishment of the Tasmanian Integrity Commission. This Commission would:

- have a statutory foundation to provide for its independence,
- report to the Parliament,
- be oversighted by a Parliamentary Committee created for the purpose,
- have jurisdiction to investigate and report on issues of corruption and misconduct in public administration within Tasmania, inclusive of the operation of the Parliament and the Executive, in a contemporary as well as retrospective capacity, and;
- foster an ethical culture in public administration within Tasmania.

Dual role and functions

A possible model for the Tasmanian Integrity Commission would embody two divisions. The first centres upon public sector integrity and be responsible to identify, investigate and expose instances of corruption and misconduct in public administration. This would, like the jurisdiction of ICAC, CCC and CMC, cover the Executive government, Parliamentarians and the public service.

The second division of the Integrity Commission would be responsible for the promotion of ethical conduct across the Parliament and Executive and would incorporate a role similar to that performed by the Queensland Integrity Commissioner and the Committee on Standards in Public Life in the United Kingdom.

The full development of the model could be allocated to the Tasmanian Law Reform Institute at the University of Tasmania; however, some key principles to be embodied would include:

- independence from the Executive, with principal reporting and accountability directly to the Parliament,
- security of tenure for the Head of the Integrity Commission,
- adequate resourcing, with relative freedom of the Commission to set its own priorities within a triennial budget allocation,
- oversight of the Commission by a Parliamentary Committee with selection of the Commission's head on the recommendation of the Parliamentary Committee,
- investigative powers broadly equivalent to a Commission of Inquiry established under the *Commissions of Inquiry Act 1995*.

Conclusion

The Tasmanian community rightly expects that public administration in the State should be conducted in a manner consistent with and guided by the highest standards of integrity. It is plain that this is not currently the case and the failure manifested in the State's recent history is more than a few isolated incidents of wayward individuals. Rather, the problem is deep-seated and relates to a weakness in the structure of the governance arrangements of the State. New architecture is needed to equip the State to cope with the demands of a modern democracy.

This new architecture, in the tradition of the establishment of the Office of the Auditor-General and the Tasmanian Ombudsman, should be a Tasmanian Integrity Commission - an independent and robust body to both guide ethical behaviour, build a culture of integrity, but most fundamentally, investigate public misconduct.

Reforms, both in Australia and overseas, have recognised the need for an independent body to deal with corruption and public misconduct. If trust is to be restored in the Tasmanian institutions of government, then this moment must be seized for decisive and farsighted action by the establishment of a Tasmanian Integrity Commission.

Thank you again for providing the opportunity to contribute to this important debate on good governance in Tasmania.

Yours sincerely



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