# Submission to the Joint Select Committee of the Legislative Council and House of Assembly on ethical conduct, standards and integrity of the elected Parliamentary representatives and servants of the State

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**Commissioner of Police**

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## 1.0 INTRODUCTION

There is no single institution which can provide a panacea to the problem of corruption or misconduct. Instead, a diversity of agencies, laws, practices and ethical codes are required to effectively tackle misconduct and promote integrity (Brown, 2005).

The existing mechanisms available in Tasmania to respond to misconduct and promote integrity include:

- Parliament;
- The Ombudsman;
- The State Service Commissioner;
- The Auditor-General;
- The Director of Public Prosecutions;
- Tasmania Police;
- Commissions of Inquiry; and
- Legislation – including the *Freedom of Information Act 1991*, the *Public Interest Disclosures Act 2002*, and relevant provisions of the *State Service Act 2000* and the *Local Government Act 1993*.

Mechanisms such as codes of conduct help to promote integrity, while mechanisms such as freedom of information legislation and the oversight provided by parliamentary committees and the Auditor-General promote transparency. A range of other mechanisms are available to respond to misconduct, depending on the level of seriousness, the parties involved and whether or not the alleged misconduct amounts to a criminal offence. In particular, Tasmania Police has played a key role over many years in conducting independent investigations and assessments of cases of alleged misconduct involving public sector executives and/or Members of Parliament.

Part 2.0 of the submission discusses the operational independence of the Commissioner of Police in response to a recent suggestion that the words “under the direction of the Minister” in section 7(1) of the *Police Service Act 2003* (Tas) may restrict the ability of the police to conduct independent investigations, particularly those involving Members of Parliament. Despite the extensive case law in England and Australia confirming the operational independence of constables, Chief Constables and Police Commissioners it appears that the law may need to be clarified to resolve any ambiguity about this issue.

The capacity of Tasmania Police to conduct independent investigations is discussed in part 3.0 of the submission. A number of case examples are provided to demonstrate the type and complexity of cases involving alleged

misconduct by public sector executives and/or Members of Parliament which Tasmania Police has investigated and/or assessed to determine whether any criminal offence has been committed.

More detail about other existing mechanisms available in Tasmania to respond to misconduct and promote integrity is provided in part 4.0 of this submission. Mechanisms discussed in this part include Parliament, the Auditor-General, the State Service Commissioner and the Ombudsman.

In part 5.0 of the submission a model is presented to augment the existing mechanisms in Tasmania through the establishment of a dedicated Misconduct Branch within Tasmania Police, oversighted by an independent Ethics Commission. The main purpose of the Misconduct Branch would be to investigate allegations of misconduct by public officers in performing the functions of their office or employment which amount to the probability of a criminal offence.

An important mechanism which is arguably lacking in Tasmania is a body which has a broad focus on the prevention of misconduct, particularly a function involving public education as to the available mechanisms for responding to misconduct depending on the level of seriousness. The proposed Ethics Commission would fulfil this role. The Ethics Commission would also have the capacity to refer allegations of misconduct which do not amount to a criminal offence to the relevant body (e.g. a local government council, State Government Department, State Service Commissioner or the Ombudsman) for investigation and appropriate action.

The proposed model recognises the capacity of Tasmania Police to investigate allegations of misconduct, and the desirability of an oversight body to review investigations, provide prevention advice and restore public confidence. The model incorporates features of other anti-corruption bodies, but is commensurate with Tasmania's size and avoids the large cost burden associated with establishing a separate investigative body (e.g. an *Independent Commission Against Corruption*) which would effectively need to duplicate the resources, expertise and legislative powers of Tasmania Police.

A summary of the recommendations made throughout the submission is provided in part 6.0. The recommendations include suggestions as to how some of the existing mechanisms in Tasmania could be improved in accordance with recommendations made by various parties, including Dr AJ Brown of Griffith University. Dr Brown conducted an assessment of integrity systems in Australia, and made a number of recommendations to ensure continual improvement in these systems (Brown, 2005). Some of these recommendations are relevant to aspects of the integrity system in Tasmania.

Concluding comments are provided in part 7.0 of the submission.

## 2.0 THE OPERATIONAL INDEPENDENCE OF THE COMMISSIONER OF POLICE

### Operational Independence – The View of the Courts

It is widely believed that policing in Australia has followed the English experience, but there is an alternative view that the Irish model of policing was followed. For the purposes of this paper, the discussion below is based on the assumption that Australian policing followed the English experience.

Courts in England and Australia have consistently recognised the operational independence of constables, Police Commissioners and Chief Constables at common law. One of the most frequently cited cases in support of this position is *R V Commissioner of Police of the Metropolis, Ex parte Blackburn*[1], particularly the comments of Lord Denning MR (at 135-1236) in discussing the duty of the Commissioner of Police of the Metropolis:

> I have no hesitation in holding that, like every constable in the land, he should be, and is, independent of the executive….No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement is on him. He is answerable to the law and the law alone.

It is accepted that while a Police Commissioner has a duty to enforce the law, he or she also has a wide discretion as to the way in which he or she decides to carry out the responsibilities of office[2]. Courts are extremely reluctant to interfere with the exercise of that discretion. For example, this view is illustrated by the comments of Lord Justice Roskill (at 262) in a subsequent case involving the Metropolitan Police Commissioner:

> It is not part of the duty of this court to tell the respondent how to conduct the affairs of the Metropolitan Police, nor how to deploy his all too limited resources…..[3].

The case of *R V Chief Constable of Devon*[4] concerned a decision by the Chief Constable of the Devon and Cornwall Constabulary to decline to intervene in a protest on the potential site of a nuclear power plant. Lord Denning MR (at 833) reiterated his position in *Blackburn* and stated that:

> I would not give any orders to the chief constable or his men. It is of the first importance that the police should decide on their own responsibility what action should be taken in any particular situation.

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[1] [1968] 2 QB 118
[2] *O'Malley v Keelty, Australian Federal Police Commissioner* [2004] FCA 1688
[3] R V Commissioner of Police of Metropolis; Ex parte Blackburn [1973] QB 241 (at 262)
[4] [1981] 3 All ER 826

A similar view has been expressed in the Federal Court in Australia in *O'Malley v Keelty*, *Australian Federal Police Commissioner*[5]:

> The Commissioner is not the servant of anyone save the law itself. Although the Commissioner is answerable to the law, there are nevertheless many fields in which the Commissioner will have a discretion with which the law will not interfere. It is for the Commissioner to decide on the disposition of the force and concentration of the resources available on any particular crime or area. No court can or should give the Commissioner direction on such a matter.

The courts have also held that because at common law there is no relationship of master and servant between a police constable and the Crown, the Crown is not liable for the negligent or wrongful acts of a police constable. Australian courts have held that the common law position has not been altered by statute, unless expressly stated. One of the earliest cases in Australia to examine this issue was *Enever v The King*[6], which involved an appeal from the Supreme Court of Tasmania to the High Court. The appellant was wrongfully arrested by a police constable and detained on a false charge that he had committed a breach of the peace. The appellant brought an action for damages against the Government of Tasmania, The Full Court of the Supreme Court, by majority, held that the constable was not acting as an officer, agent or servant of the Government, within the meaning of the *Crown Redress Act 1891* so as to make the Crown responsible for his act. The High Court dismissed the appeal, confirming the majority judgment of the Supreme Court. In considering the effect of the *Police Regulation Act 1898*, and the previous Act of 1865, Griffith CJ (at 979) stated the following:

> In my opinion, both the Act of 1865, and the Act of 1898 were intended merely to deal with the appointment and disciplinary control of constables, leaving the nature of their powers and duties and the responsibility for their actions to be governed by the common law as modified by the Statute (if any) dealing with that subject.

The nature of the relationship between the Crown and a member of the New South Wales police force under the provisions of the *Police Regulation Act 1899 (NSW)* was examined by the High Court in *Attorney-General for New South Wales v The Perpetual Trustee Company and Others*[7]. Kitto J (at 303) stated the following:

> The position of a police officer under provisions such as these has been examined by this Court in *Enever v the King* and *Ryder* v Foley. These cases establish that in the execution of his duties a constable has powers and discretions which he derives not by delegation from the Crown, but from the nature of his office, and which he exercises on his own independent responsibility.

[5] [2004] FCA 1688
[6] [1906] 3 CLR 969
[7] [1951-1952] 85 CLR

In the more recent decision of *Griffiths v Haines*[8], the court considered whether a police constable could maintain an action against the Government of New South Wales for injuries he sustained whilst in the performance of his duties as a constable. Lee J discussed the effect of section 4(1) of the *Police Regulation Act* which provides that "subject to the direction of the Minister" the Commissioner is charged with the superintendence of the police force of New South Wales. It is important to note that this wording is similar to that used in section 7(1) of the *Police Service Act 2003* (Tas). Lee J made the following observations (at 661):

> ..it can safely be concluded from the decision of the Privy Council in *Attorney-General for New South Wales v Perpetual Trustee Co Ltd)* that s 4 of the New South Wales Act also in no way operates to impinge upon the independence of a constable in the exercise of his duties as a constable….It is unnecessary to seek to define what area – and it would I should think, be a very limited area - in which the Minister could direct the Commissioner in regard to a matter concerning the police force, but it is clear from the authorities cited in this judgment that such a direction could not be given so as to affect the exercise by the Commissioner of his discretion in regard to the enforcement and upholding of the laws of this land. (NB: emphasis added)

## Is the View of the Courts Reflected in Practice?

Despite the extensive case law confirming the operational independence of Police Commissioners in Australia, concerns have been expressed that the position remains unclear. The wording of some legislative provisions is thought to contribute to the ambiguity, and there have also been examples interstate of Police Ministers attempting to intervene in operational matters.

In the final report of the Wood Royal Commission, Wood J expressed concern at the terms of s. 8(1) of the NSW Act which provided that the responsibility of the Commissioner of Police for the management and control of the Police Service is 'subject to the direction of the Minister'. Wood J reports that in the course of roundtable discussions it was said that there is a recognised convention that the Minister is concerned with matters of 'policy' and not with 'operational matters'. He suggests that if this is so, then 'the statute should reflect that situation, defining what is policy and what is operational, and providing for resolution of any overlap' (Wood 1997: 237). Wood J recommends replacing s 8(1) with a provision to the same effect as s. 37 of the *Australian Federal Police Act 1979* which specifies the type of directions the Minister can give to the Commissioner, and the type of reports the Minister can request the Commissioner to provide. The wording of s. 37 is as follows:

> **General administration and control**
>
> (1) Subject to this Act, the Commissioner has the general administration of, and the control of the operations of, the Australian Federal Police.

[8] [1984] 3 NSWLR 653

> (2) The Minister may, after obtaining and considering the advice of the Commissioner and of the Secretary, give written directions to the Commissioner with respect to the general policy to be pursued in relation to the performance of the functions of the Australian Federal Police.
>
> (3) In addition to his or her power to give directions under subsection (2), the Minister may give written directions (either specific or general) to the Commissioner in relation to the use of common services in accordance with an arrangement made under subsection (5).
>
> (4) The Commissioner must comply with all directions given under this section.
> (5) The Minister may, after obtaining and considering the advice of the Commissioner and of the Secretary, make an arrangement with the appropriate Minister of a State for the provision or development of common services and for the use of such common services by the Australian Federal Police and the Police Force of the State.
>
> (6) The Commissioner must give to the Minister such reports as the Minister requests relating to the administration and the performance of the functions of the Australian Federal Police.

The relationship between the Victorian Chief Commissioner and the Government was examined in the Ministerial Administrative Review conducted by John Johnson. Johnson points out that the Minister for Police and Emergency Management has almost no formalised role within the *Police Regulation Act 1958*, although the Minister's responsibility is clearer in relation to financial management of Victoria Police through the *Financial Management Act 1994* (Johnson, 2001).

Unlike other jurisdictions, such as NSW and Tasmania, the *Police Regulation Act 1958* (Vic) does not include a Ministerial direction power. Instead, section 5 of the Act provides that the Chief Commissioner is, subject to the directions of the Governor in Council, responsible for the 'superintendence and control' of Victoria Police.

Johnson notes that:

> The 'rule of thumb principle often cited in relation to the respective roles of the Government (Minister) and Victoria Police (Chief Commissioner) is that the Government is responsible for policy and Victoria Police for policing operations or enforcement. While this principle of operational independence is widely accepted, its application in specific instances can be quite vexed and create confusion because it relies on convention and accepted practice rather than legislation (Johnson, 2001: 4).

To address this lack of specificity in terms of the respective roles of the Minister and the Chief Commissioner, Johnson recommended that the Victorian legislation include a Ministerial direction power broadly defined to ensure operational independence. He suggested that:

> Consideration should also be given to incorporating within the proposed Ministerial direction power a non-exhaustive list of matters on which the Minister cannot direct the Chief Commissioner including, for example, decisions to investigate, arrest or charge in a

> particular case; or to appoint, deploy, promote or transfer individual sworn staff members (Johnson, 20001: 5).

Fleming (2004) examined the relationship between Police Commissioners and Ministers in three Australian jurisdictions: South Australia, Queensland and New South Wales. She suggests that the law in these jurisdictions is ambiguous, and that there is no uniform understanding of what to expect. She also observes that local custom and practice varies between states and over time.

In his PhD thesis titled *Police Minister and Commissioner Relationships*, Pitman (1998) examines the relationship between various Police Ministers and Commissioners in Queensland and New South Wales from 1970-1995. His findings suggest that in many cases the parties did not have common understanding of their respective roles and responsibilities which in some cases led to irreconcilable differences.

**Does the law need to be clarified in Tasmania?**

The concerns outlined above suggest it may be beneficial to clarify any ambiguous legislative provisions, even though strictly speaking this is unnecessary given the clear position at common law in relation to the operational independence of police commissioners.

It has recently been suggested that the words “under the direction of the Minister” in section 7(1) of the *Police Service Act 2003* (Tas) give the Minister the power to issue operational directions to the Police Commissioner and hence may restrict the ability of the police to conduct independent investigations. Certainly the wording is very similar to that used in section 8(1) of the NSW Act about which Wood J raised concerns and recommended replacement to ensure that it was clear the Ministerial power to issue directions was limited to policy matters.

Michael Stokes and Rick Snell, Senior Lecturers from the University of Tasmania Law School, disagree that section 7(1) of the Tasmanian Act gives the Minister the power to issue operational directions to the Commissioner of Police (personal communication 27 June 2008). However, they suggest that the law could be clarified to remove any potential for ambiguity by amending the provision along the following lines:

> “Subject to directions from the Minister on policy matters, the Commissioner is responsible for the efficient, effective and economic management and superintendence of the Police Service.

They also suggest (despite the obvious difficulties in doing so) that guidelines could be produced to clarify the difference between policy and operational matters, and that if the Commissioner of Police had serious doubts about whether a particular direction related to a policy or operational matter, he or she could seek direction from the Supreme Court.

**Guidelines Governing the Release of Information in Political Investigations**

The operational independence of the Commissioner of Police means that he or she is under no obligation to provide information to the Minister for Police and Emergency Management, the Premier or any other Minister or Member of Parliament, concerning police investigations, particularly those which relate to allegations of misconduct which involve, or could implicate, public sector executives and/or elected representatives.

The main concern in relation to investigations which involve, or could implicate, public sector executives and/or elected representatives, is that early advice to the Police Minister, or another Member of Parliament, about the commencement of an investigation, or its progress, has the potential to compromise the investigation if the advice is subsequently communicated to any party who could be implicated in the allegation of misconduct. These concerns apply equally to the release of information about an investigation to the media.

Where information about a political investigation enters the public domain through the media or in Parliament, it may be necessary for the Commissioner of Police, or his nominee, to authorise the release of limited information about that investigation to the media, or to the Minister or another Member of Parliament, including a member of an opposition party, to minimise the level of media and public speculation, particularly where it has the potential to interfere with the conduct of the investigation, prejudice subsequent criminal proceedings, or damage the reputation of an innocent party.

As an investigation progresses, and there appear to be sufficient grounds for believing that a Member of Parliament and/or public sector executive has committed an offence, it may be necessary in the public interest to inform the relevant Minister and/or the Premier so that steps can be taken to stand down the individual concerned in order to prevent any further misconduct and maintain public confidence in the Government.

The proposed guidelines in Attachment A have been drafted to reinforce the operational independence of the police in relation to investigations concerning public sector executives and/or elected representatives. The guidelines recognise that the senior investigator is in the best position to advise the Commissioner of Police whether the release of information has the potential to compromise the investigation by providing early warning to a suspect, or potential suspect.

## 3.0 The Capacity of Tasmania Police to Conduct Independent Investigations

### The Role and Function of Tasmania Police

Tasmania Police has been responsible for the protection of life and property of Tasmanians since 1 January 1899 (Easton, 1999). The passage of the *Police Regulation Act 1898* created a single Tasmania Police Force, replacing the many small forces which had previously been operating around Tasmania. The *Police Regulation Act 1898* was later replaced by the *Police Service Act 2003*, reflecting the transition from a police force to a police service.

The core activity of Tasmania Police is the maintenance of law and order. Key components of this core activity include crime prevention and the detection and investigation of crime. Tasmania Police has continuously strived to remain at the forefront of law enforcement by ensuring that police officers have the resources, expertise, technology and legislative powers to effectively respond to emerging crime trends and investigative challenges.

### The Investigative Resources of Tasmania Police

Tasmania Police comprises around 1,247 police officers, many of whom have specialist skills and expertise in particular aspects of policing including investigation, crime scene examination and technical surveillance. There are Criminal Investigation Branches in each of the four geographical police districts, which include officers who have developed expertise in the investigation of particular types of crime (e.g. fraud, computer crime, drug offences and sexual offences).

Tasmania Police has a number of specialist support areas which can be utilised in investigations including Forensic Services, State Intelligence Services and the Technical Surveillance Unit. A range of special powers are also available to Tasmania Police, including the power to conduct telephone intercepts. It is also anticipated that Tasmania Police will soon have the power to install surveillance devices, the power to use assumed identities and the power to conduct controlled operations[9].

If a separate investigative body were to be established to investigate allegations of misconduct it would effectively need to duplicate the resources, expertise and legislative powers of Tasmania Police in order to carry out its functions. This would be a significant cost burden for a small jurisdiction like Tasmania.

[9] The *Police Powers (Assumed Identities) Act 2006*, *Police Powers (Controlled Operations) Act 2006* and *Police Powers (Surveillance Devices) Act 2006* received Royal Assent in December 2006 and it is anticipated that they will be proclaimed in the near future.

**Examples of Independent "Political" Investigations Conducted by Tasmania Police**

Tasmania Police has conducted a number of assessments of, and investigations into, cases of alleged misconduct involving Parliamentarians, including Ministers and Premiers, and public sector executives. Examples of some of these cases are provided below and demonstrate that Tasmania Police has the organisational capacity and expertise to conduct thorough, independent assessments and investigations into allegations of misconduct by public officers, including elected representatives.

Allegations relating to the appointment of public positions

Tasmania Police has been engaged in investigating allegations relating to two legal appointments.

Removal of documents from the office of Steven Kons

Tasmania Police recently conducted an investigation into the removal of documents from the office of the former Attorney-General, Mr Steven Kons, by Mr Nigel Burch.

All relevant file material was referred to the Director of Public Prosecutions for consideration. Mr Ellis advised that while on the evidence available a case for stealing could be made against Mr Burch, he did not consider the public interest required that a prosecution be pursued. Relevant considerations included:

- Mr Burch's breach of confidentiality in telling someone what Mr Kons did in signing then shredding a recommendation was not, itself, criminal as Mr Burch's employment was outside the State Service and he was not a "public officer" as defined by the Criminal Code, s 110;

- It would be a case about stolen paper and not a case about stolen secrets and the value of shredded paper is too trivial to bring the criminal law into play;

- In the event Mr Burch was prosecuted and found guilty he would almost undoubtedly not have a conviction recorded; and

- There was no indication of any motive of financial gain or profit on the part of Mr Burch.

In light of the advice from Mr Ellis, Tasmania Police did not initiate criminal proceedings against Mr Burch.

Gunns Pulp Mill – RPDC Process

In March 2007 solicitors acting for the Wilderness Society of Tasmania in the Gunns Pulp Mill Process wrote to the Commissioner of Police asking him to investigate whether the Premier, Mr Paul Lennon, had breached section 17A of the *Resource Planning and Development Commission Act 1997* during a meeting on 27 February 2007 with Mr C. Wright, the Chairman of the committee of the Resource Planning and Development Commission assessing the Gunns Pulp Mill Proposal.

Section 17A of the *Resource Planning and Development Commission Act 1997* provides the following:

> **17A. Obstruction or improper influence of hearing**
> A person must not obstruct or improperly influence the conduct of a hearing of the Commission or attempt to do so.
>
> Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months.

It was asserted that Mr Lennon may have breached this provision of the Act by improperly pressuring Mr Wright to shorten the period for the assessment of the Proposal. The assertion was based on statements made by Mr Wright at a press conference held on 20 March 2007 concerning his meeting with the Premier on 27 February.

The Commissioner of Police received legal advice from the Principal Legal Officer of Tasmania Police that Mr Wright's account of the meeting did not describe conduct which could be said to constitute a breach of section 17A. Therefore, a police investigation into the matter was not considered to be warranted.

Elwick Racecourse Biosecurity Barriers and Measures

In November 2007, Mr Kim Booth MHA wrote to the Commissioner of Police requesting a police investigation into an alleged breach by the Premier, Mr Paul Lennon, of "biosecurity barriers and measures" at Elwick Racecourse on 30 September 2007.

The Commissioner of Police received advice from the Principal Legal Officer of Tasmania Police, Mr Mark Miller, that the only offence provision which could be relevant in the circumstances was s 41 of the *Animal Health Act 1995*, and that it was clear Mr Lennon had not breached this provision. Section 41 of the Act makes it an offence for persons to contravene a notice under section 40, but as there were no were no notices under section 40 in force on 30 September 2007, no offence under section 41 could be committed on that date.

Mr Miller also advised that although there were biosecurity protocols in force on 30 September 2007 which restricted the movement of persons on racecourses, breach of these protocols would not constitute an offence. Furthermore, Mr Miller stated that it would seem clear from the material forwarded with Mr Booth's letter that Mr Lennon did not breach any of the protocols.

A subsequent investigation was conducted into an alleged false statutory declaration relating to the alleged breach of the biosecurity barrier by Mr Lennon. On the advice of the Office of the Director of Public Prosecutions, no proceedings were instituted against the person alleged to have made the false declaration.

Rouse Bribery Case

The Rouse case involved an attempt to bribe a Member of Parliament and led to a Royal Commission. An extensive police investigation was conducted by Tasmania Police in cooperation with Victoria Police, resulting in the successful prosecution of two individuals, prominent Tasmanian businessman Mr Edmund Rouse, and Mr Tony Aloi, the sales manager of a Melbourne radio station.

The bribery attempt occurred after the 1989 election for the House of Assembly which resulted in the Green Independents holding the balance of power with 5 seats, while the Liberals held 17 seats and the ALP held 13. After the poll result was officially declared, the Governor accepted the advice of the Premier, the Hon Robin Gray MHA, that the Liberal Party should remain in office in minority government. However, the Liberal Government's survival was threatened by the prospect of a non-confidence motion when Parliament resumed on 28 June, and the emergence of the Labor-Green Accord.

Mr Rouse was concerned about the impact of a Labor-Green Accord on his business interests, and made arrangements for Mr Tony Aloi to offer Mr Jim Cox MHA, a new ALP member for Bass, the total sum of $110,000 to 'cross the floor' of the House of Assembly and vote with the Liberal Party. Mr Cox was told that he would receive $5,000 "as a show of good faith", a further sum of $5,000 after he had made a phone call to Mr Gray, with the balance to be paid at the rate of $25,000 per year. In making and following up the bribe offer, Mr Aloi made nine phone calls to Mr Cox from Melbourne. He also posted a package containing $5,000 to Mr Cox's home. The package had been prepared by Mr Rouse in Launceston, and given to Mr Aloi at Tullamarine Airport in Melbourne.

The investigation was of a particularly sensitive nature, given the possible involvement of the Premier, and potentially other Ministers as well, in the bribe attempt. Mr Gray, members of his staff and various other members of Parliament were spoken to by police and/or formally interviewed throughout the course of the investigation. The police investigation also involved monitoring Mr Cox's telephone calls, and surveillance of Mr Aloi in Melbourne until his arrest during his ninth phone call to Mr Cox on 22 June.

The Commissioner of Police, Mr Bill Horman, demonstrated the independence of his position by revealing very limited information to the Police Minister, Mr Ron Cornish, when the first arrest was made on 22 June, refusing to reveal Mr Aloi's name to Mr Cornish. Commissioner Horman also refused subsequent requests for information from Minister Cornish, and refused to accept a phone call from Mr Gray.

As a result of the police investigation, Mr Rouse and Mr Aloi were both convicted of offering a bribe. In November 1990, Mr Aloi pleaded guilty in the County Court of Victoria to the offence under common law of offering a bribe to a public officer. He was sentenced to 12 months imprisonment, of which 8 months were suspended. On 3 November 1989, Mr Rouse pleaded guilty in the Supreme Court of Tasmania to one count of offering a bribe to a Member of Parliament contrary to s 72 of the *Criminal Code*, and one count of improper use of position as an officer of a company contrary to s 229(4) of the *Companies (Tasmania) Code*. He was sentenced to three years imprisonment on the first charge and fined $4,000 on the second charge. The subsequent appeal against the sentence by the Crown was dismissed.

The Evans Case

The Evans case related to the circumstances surrounding the appointment of Mr Neil Batt to the position of Ombudsman on 18 August 1989.

Mr Batt had been re-elected to Parliament in 1985 and installed as Leader of the Opposition. During December 1988 he was deposed as Leader by Mr Michael Field, and subsequently lost his seat in the May 1989 election. During discussions after the election with the Premier, Mr Robin Gray, about his employment prospects, Mr Batt was encouraged to apply for the position of Ombudsman and submitted a late application. He was interviewed for the position and was one of two applicants selected by the Interview Panel as being suitable to be appointed as the Ombudsman. Before any appointment could be made the Liberal Government was defeated on the floor of the House of Assembly and the Field Labor Government was installed.

On 3 June 1991 Mr Batt spoke to the Secretary of the Department of Justice and alleged that soon after the Labor Government had been commissioned, Mr Allan Evans, the head of the Premier's office had approached him suggesting that the office of Ombudsman would be available for him in return for him agreeing not to contest a recount if a sitting Member for Denison were to resign. Mr Batt said that he was required to sign an undated letter to the Chief Electoral Officer informing him that he had decided not to seek election or be included in a recount. Mr Green requested and received a copy of the letter and then referred the matter to the Director of Public Prosecutions (DPP) who advised that the allegations disclosed possible breaches of s 206 of the *Electoral Act 1985* and s 11 of the

*Criminal Code 1924*. The DPP subsequently sought a police investigation of the allegations.

The DPP's advice was that in addition to Mr Evans and Mr Batt, possibly the Premier and other Members of Cabinet were implicated in a conspiracy to commit a crime. This meant that it was not possible to advise the Attorney-General, the Minister for Police, or the Premier as to the existence of the investigation, otherwise the investigation may have been compromised. Security and secrecy were considered to be among the highest priorities of the investigation and several security measures were implemented, including restricting any press comments to the Detective Superintendent in charge of the investigation.

On the evening of 19 June 1991, *Tas TV* broke the news that an investigation was in progress and that police had interviewed a political identity at Wrest Point Casino. The story resulted in a frenzy of media activity. As a consequence it was considered appropriate to advise the Premier later that evening that an investigation had been commenced, without providing any specific details, and requesting him to order the cooperation of State Service employees to provide documents and information. Limited information was also provided to the media confirming that an investigation was taking place.

In July 1991, Mr Evans was arrested and charged with 'bargaining for office' in contravention of s 111 of the *Criminal Code*. In December 1991, committal proceedings were held before Magistrate Estcourt who considered that on a number of separate bases the evidence against Mr Evans was insufficient to put him on trial for any indictable offence.

In the course of his decision, Mr Estcourt made the following observations about the police investigation:

> It is clear to me that the standard of police investigation was nothing other than the very highest and it seems equally clear that a difficult and delicate investigation was conducted with great skill and diplomacy. The need for such investigatory work to be carried out in such a manner is clear and that it can be so carried out should be a matter of great comfort to all Tasmanians[10].

[10] Johnston v Alan Hanson Evans C/No. 63014/91, Magistrate S.P. Estcourt, Court of Petty Sessions Hobart, 24 December 1991, at page 20.

## 4.0 OTHER EXISTING MECHANISMS

### PARLIAMENT

Matters of concern can be raised in either the House of Assembly or the Legislative Council and/or be the subject of a parliamentary committee.

Government activities are subject to scrutiny through various parliamentary committees such as the budget estimates committees, government business scrutiny committees and standing committees. In addition, committees can be formed to examine particular issues of concern (e.g. the Legislative Council Select Committee on Public Sector Executive Appointments).

There is a Code of Ethical Conduct for Members of the House of Assembly which was adopted into the House of Assembly's Standing Orders in 1996. Newly elected Members of Parliament are required to agree to the Code of Ethical Conduct when being sworn in during the first session of Parliament after an election (www.parliament.tas.gov.au).

A Register of Interests of Members is to be maintained for both Houses of Parliament pursuant to the *Parliamentary (Disclosure of Interests) Act 1996*. The registers are available for inspection by any person at the office of the Clerk of each House of Parliament between the hours of 10am and 4pm on weekdays (excluding public holidays)

Despite the existence of the code of conduct and register of interests, and similar mechanisms in other Australian jurisdictions, Dr AJ Brown is critical of the 'lack of effective ethical standard-setting and enforcement regimes governing elected parliamentarians and ministers' (Brown 2005: 72). He recommends a number of measures to address this deficiency, including a statutory requirement for a code of conduct for each House of Parliament, for presiding officers of each House, and for Ministers (including ministerial staff), and the appointment of a parliamentary integrity advisor and a parliamentary standards commissioner.

### LEGISLATION

#### Freedom of Information Act 1991

Section 7(1) of the *Freedom of Information Act 1991* provides that:

> A person has a legally enforceable right to be provided, in accordance with this Act, with information contained in records in the possession of an agency or a Minister unless the information is exempt information.

The Tasmanian Ombudsman is of the view that the FOI Act needs review now that it has been in operation for over 16 years (Ombudsman, 2007).

Dr AJ Brown maintains that while all Australian governments now have freedom of information (FOI) laws, 'their operation in practice is frequently at odds with the principle of access' (Brown, 2005: 76). He suggests a number of ways in which to restore the principle of a public 'right to know'. These include limiting the requirement for formal FOI applications when it is readily within the discretion of administrators to simply release documents, and reversing the current onus on applicants to challenge the non-release of records so that the agency must first make its own successful application for the non-release of records to the Ombudsman.

Whilst it may be desirable to review the FOI Act, and consider whether it is possible to increase the transparency of government business by enhancing public access to documents, it is also important to protect the reputation of individuals who disclose information which could be prejudicial to them during the course of an investigation. For example, in some cases individuals will make admissions during the course of a misconduct investigation (which does not involve a criminal offence) and submit themselves to appropriate disciplinary procedures on the condition that their conduct is not made public thereby avoiding any potential damage to their reputation. It is desirable that individuals are not discouraged from making such admissions and therefore some restriction should be placed on the public 'right to know'. Similarly, the release of information which discloses that an individual was subject to an investigation, even if there was no finding of misconduct, has the potential to unfairly tarnish that person's reputation.

**Public Interest Disclosures Act 2002**

The *Public Interest Disclosures Act 2002* commenced on 1 January 2004. The purpose of the Act is to encourage and facilitate disclosures of improper conduct by public officers and public bodies. The Act provides protection for persons making a disclosure, and establishes a system whereby the matters disclosed will be properly investigated and dealt with.

Public bodies include State Government Departments, Local Government Councils and Government Business Enterprises. Public officers include Members of Parliament, State Government employees and Local Government Councillors.

**State Service Act 2000**

The *State Service Act 2000* specifies the State Service Principles and Code of Conduct which apply to State Service employees, senior executives and Heads of Agencies. Sanctions can be applied to individuals who breach the Code of Conduct.

## Local Government Act 1993

The *Local Government Act 1993* provides that local government councils must adopt a code of conduct for local councillors, and that complaints to a council alleging a councillor's failure to comply with a code of conduct are to be referred to the Council's Code of Conduct Panel or a Standards Panel convened by the Local Government Association of Tasmania. The *Local Government Act (General) Regulations 2005* outline the matters to be addressed by a council code of conduct and the complaints procedure to be followed in relation to alleged breaches of the code of conduct which do not involve the commission of an offence or a crime.

Pursuant to s 215 of the Act, the Minister may establish a Board of Inquiry to investigate a council, and may suspend all the councillors of the council from office for a period not exceeding 6 months if, in the opinion of the Minister, the circumstances are such that a suspension is necessary in the interests of the community. A Board of Inquiry has the power to summon a person to appear before it to give evidence and produce any documents specified in the summons. The Board of Inquiry is not bound by the rules of evidence and may inform itself on any matter in any way it considers appropriate. A Board of Inquiry is to submit a report of its findings and recommendations to the Minister. The Minister must advise the council of the Board of Inquiry's findings and invite the council to make any further submissions. After considering any submissions, the Minister may direct the council to rectify or mitigate the effects of its actions, discontinue its actions, give reasons for its actions or take such other steps as the Minister deems necessary. Alternatively, the Minister may recommend that the Governor by order dismiss the councillors if the Minister considers that the failure of the council to perform any function has seriously affected the operation of the council, or the irregularity of the conduct of the council has seriously affected the operation of the council.

## Criminal Code Act 1924

The *Criminal Code* in Tasmania is established by s 2 of the *Criminal Code Act 1924* and is located in schedule 1 of the Act. Various crimes concerning Members of Parliament or public officers are specified in the Criminal Code, including the following:

- Member of Parliament receiving bribes (s 71)
- Bribery of Member of Parliament (s 72)
- Corruption of public officers (s 83)
- Disclosure of official secrets (s 110)
- Bargaining for public offices (s 111)
- False accounting by a public officer (s 265)

These are indictable offences dealt with by the Supreme Court. Many of these Criminal Code provisions are ambiguous, which means that cases involving individuals charged with these offences can involve complex legal argument and be difficult to prove. An integrity system which is supported by a complicated and poorly understood set of misconduct offences concerning public officers which are rarely utilised because they are difficult to prove is unlikely to inspire public confidence. The Criminal Code offences concerning Members of Parliament and public officers should be reviewed and where appropriate either replaced with new provisions or reworded to remove any ambiguity.

What is also currently lacking in Tasmania is a suite of clear and unambiguous simple offences which cover misconduct by public officers in performing the functions of their office or employment which is criminal, but less serious in nature and could be dealt with by the Magistrates Court. Individuals convicted of such offences would ordinarily be permitted to remain in their position, but could be required to undergo ethics training or to take other remedial action.

## AUDITOR-GENERAL

The Auditor-General provides independent oversight of the management of public funds and the achievement of agreed outputs by the Government. The Auditor-General is the auditor of the accounts of the Treasurer, all Government departments and public bodies.

The Auditor-General's functions and powers are specified in the *Financial Management and Audit Act 1990*. Pursuant to s 44 of the Act, the Auditor-General may at any time conduct any investigation that he considers necessary concerning any matter relating to the accounts of the Treasurer, a Government department, or a public body or to public money. He may also carry out examinations of the economy, efficiency and effectiveness of Government departments, State-owned companies and public bodies.

The Auditor-General has a range of powers under the Act to assist him in the performance of his functions, including the power to require information from an officer and the power to call for a person to appear before him to answer questions and/or produce documents.

## STATE SERVICE COMMISSIONER

The State Service Commissioner is appointed pursuant to s 17 of the *State Service Act 2000*. The functions of the State Service Commissioner include promoting adherence to the State Service Principles, evaluating the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct, and investigating alleged breaches of the Code of Conduct by Heads of Agencies and reporting to the Premier on the results of such investigations. In conducting an investigation, the Commissioner has the power to summon a

person whose evidence appears to be material, take evidence on oath or affirmation and require any person to provide documents or records in their possession.

Commissioner's Direction No. 5 – *Procedures for the investigation and determination of whether an employee has breached the Code of Conduct* – provides Heads of Agencies with the power and responsibility to both investigate and determine alleged breaches of the Code of Conduct in their Agency (State Service Commissioner, 2007).

The State Service Commissioner is required to send an annual report to both Houses of Parliament on the performance or exercise of his functions, and may at any time submit a report to the Minister with respect to any matter arising out of the performance or exercise of the Commissioner's functions or powers under the Act.

## OMBUDSMAN

### Investigation of Administrative Action

The Tasmanian Ombudsman's function under the *Ombudsman Act 1978* is to investigate administrative action taken by or on behalf of a public authority. Public authorities include State Government Departments, Tasmania Police, Local Government Councils, Government Business Enterprises and the University of Tasmania. Some persons and bodies are not public authorities for the purposes of the Act, including the Director of Public Prosecutions, the Solicitor-General, the Auditor-General and judges and magistrates.

Pursuant to section 20A(1) of the Act, the Ombudsman may make any preliminary enquiries that he or she considers necessary for the purpose of ascertaining if a complaint should be investigated.

In accordance with Division 3 of the Act, the Ombudsman may commence an investigation, and pursuant to section 24 of the Act has available to him/her the powers specified in Part 3 of the *Commissions of Inquiry Act 1995* (e.g. the power to require persons to appear before him/her to give evidence or produce any document or thing relevant to the investigation).

<u>Action the Ombudsman Can Take</u>

If after an investigation the Ombudsman finds evidence of defective administration he or she will prepare a report for the principal officer of the public authority which will include recommendations for action to rectify the situation (Ombudsman, 2007). A report may also be prepared for the relevant Minister.

Section 23A(7) of the *Ombudsman Act 1978* provides that if during or after an investigation the Ombudsman believes that there is evidence of a breach of duty or misconduct on the part of any member, officer or employee of a public authority, and that in all the circumstance the evidence is sufficient to justify his or her doing so, the Ombudsman is to bring the evidence to the notice of the responsible Minister (if the evidence concerns the principal officer of the public authority) or the principal officer of the public authority (in any other case).

If the Ombudsman feels that after a reasonable time the public authority has not taken appropriate steps in accordance with his or her recommendations, the Ombudsman may send a copy of the report to the Premier and responsible Minister, and ultimately lay a report concerning the matter before each House of Parliament.

While the Ombudsman does not have any power to enforce recommendations, it is rare for an authority not to accept the Ombudsman's recommendations (Ombudsman, 2007).

Complaints about Police

In accordance with guidelines developed several years ago, complaints to the Ombudsman about Police are initially referred to Police Internal Investigations for a decision about whether the complaint will be investigated at District level or by Internal Investigations, and the Ombudsman monitors the progress of the investigations. Once the investigation is complete, Internal Investigations reports to the Ombudsman who reviews the investigation and may conduct a fresh investigation.

The Ombudsman has stated that 'in the main, the investigations conducted by Tasmania Police under the eye of the Ombudsman have been thorough and fair, and if there have been any concerns about an investigation, these concerns have been conveyed to the Police to be addressed' (Ombudsman, 2007: 19).

**Other Relevant Functions of the Ombudsman**

The Ombudsman also oversights and investigates disclosures under the *Public Interest Disclosures Act 2002*, and reviews decisions under the *Freedom of Information Act 1991*.

Freedom of Information (FOI) Reviews

The role of the Ombudsman is to independently review decisions under the Act, including a decision that the person is not entitled to the information requested, or that the information requested is exempt information, or that the provision of the information should be deferred or refused.

Section 48 of the Act provides that when carrying out a review, the Ombudsman has the same power as the agency or Minister had when considering the original decision, and this includes the power to reconsider the application as it if were an original application.

Public Interest Disclosures

The *Public Interest Disclosures Act 2002* gives the Ombudsman a major role in both receiving and investigating disclosures, overseeing the way public bodies manage disclosures, and publishing guidelines to assist public bodies in complying with the Act (Ombudsman, 2007).

When a disclosure is made to the Ombudsman, he or she is required to determine whether it is a public interest disclosure. If a matter is determined to be a public interest disclosure, the Ombudsman may investigate the matter or refer it to the Commissioner of Police, Auditor General or a prescribed public body or the holder of a prescribed office for investigation. If the Ombudsman conducts the investigation, he or she has available the powers specified in Part 3 of the *Commissions of Inquiry Act 1995*. On completion of the investigation, the Ombudsman must report the findings of the investigation to the relevant party and may make recommendations as to the action to be taken as a result of the investigation. If after considering any comments of the relevant party the Ombudsman considers that insufficient steps have been taken to address the recommendations, he or she may provide a report on the matter to each House of Parliament

Part 9 of the Act specifies the annual reporting requirements for the Ombudsman in relation to disclosures received, referred and investigated. Public bodies required by an Act to produce a report of operations or an annual report must also include information about disclosures. Section 85 of the Act provides that the Ombudsman may at any time cause a report on any matter arising in relation to a disclosed matter to be laid before each House of Parliament.

From the commencement of the Act in January 2004 until 30 June 2007, thirteen disclosures have been made to the Ombudsman[11]. In 2006-2007, no disclosures were made to the Ombudsman under the Act (Ombudsman, 2007). There have been no referrals of disclosures to the Ombudsman from public bodies, the State Service Commissioner, the President of the Legislative Council, or the Speaker of the House of Assembly.

*Disclosures Concerning Members of Parliament*

Section 7(4) of the Act provides that disclosures concerning a Member of Parliament are to be made to either the Speaker of the House of Assembly or the

[11] Collated from the Annual Reports of the Ombudsman for 2004-2005, 2005-2006 and 2006-2007.

President of the Legislative Council, depending on which House of Parliament the member concerned is from. The Speaker or President *may* refer the disclosure to the Ombudsman for investigation. If the Ombudsman determines that the disclosure is a public interest disclosure, he or she must investigate it. On completion of the investigation, the Ombudsman must report the findings to either the President or the Speaker (as the case requires).

Arguably the current provisions of the Act relating to disclosures concerning Members of Parliament are problematic for two reasons. First, a public officer may be reluctant to make a disclosure about a Member of Parliament who belongs to the same political party as the Speaker or President. Second, in the interests of transparency and the integrity of Parliament, it is desirable that an independent party assesses and investigates disclosures relating to members of Parliament. As the Act currently stands, the Speaker and President have a discretion as to whether or not they refer a disclosure about a Member of Parliament to the Ombudsman for investigation.

## THE DIRECTOR OF PUBLIC PROSECUTIONS

The Director of Public Prosecutions (DPP) is appointed under the *Director of Public Prosecutions Act* 1973. The functions of the DPP are specified in section 12 of the Act. One of the primary functions of the DPP is, where he or she considers it desirable to do so, to institute and undertake on behalf of the Crown, criminal proceedings against a person in respect of a crime or an offence alleged to have been committed by that person. In deciding whether or not to prosecute a person, the DPP acts independently.

Pursuant to s 12(1)(f) of the Act, the Attorney-General may direct or request the DPP "to carry out such other functions ordinarily performed by a practitioner". In July 2006, the DPP received a request and direction from the Attorney-General to direct and supervise an investigation into the formation of an agreement between the former Deputy Premier, Mr Bryan Green, and the Tasmanian Compliance Corporation. As a result of the subsequent investigation conducted by the DPP, charges were laid against Mr Green and Mr John White.

As a result of the circumstances in which the Bryan Green – TCC investigation was conducted, it has been suggested that the DPP has the capacity to conduct other independent criminal investigations. However, it is submitted that it is debatable whether the DPP does in fact have the power to conduct an investigation pursuant to a direction from the Attorney-General under s 12(1)(f) of the Act. In fact, in a letter to the Hon N. McKim MHA, the current DPP Mr Tim Ellis SC indicated that he had misgivings that to direct and supervise an investigation would not be a function ordinarily performed by a (legal) practitioner.

Whatever the true position at law, it is clear that, as Mr Ellis has since stated, the DPP does not have a general power to investigate matters referred to him by parties other than the Attorney-General.

## COMMISSIONS OF INQUIRY

A commission of inquiry is a body established by the Governor pursuant to the *Commissions of Inquiry Act 1995* to inquire into and report on matters of public concern. In conducting an inquiry into a matter, a commission may hold hearings and receive written submissions. A commission can examine witnesses under oath, and require persons to appear before it to give evidence or produce any document or thing relevant to its inquiry. A commission may apply to a magistrate for a search warrant, but does not have the power to apply to a magistrate for the use of a listening device. A commission of inquiry is not bound by the normal rules of evidence, and so, for example, may receive hearsay evidence and inform itself on any matter it considers appropriate (Law Reform Institute, 2003). A hearing of a commission is to be open to the public, unless the commission is satisfied that public interest in an open hearing is outweighed by any other consideration.

Section 10 of the Act provides that the commission's report to the Governor in respect of an inquiry is to be in writing, and that a copy of the report is to be tabled in each House of Parliament within 10 sitting days after the day on which it is received by the Governor.

A commission of inquiry may make a finding of misconduct against a person, provided that the person has been given notice of the misconduct and an opportunity to respond to the notice in accordance with s 18 of the Act.

The *Commissions of Inquiry Act 1995* replaced provisions in the *Evidence Act 1910* governing royal commissions as a result of concerns raised by the Hon WJ Carter QC during the Royal Commission established in 1990 to investigate the attempt to bribe a Member of the House of Assembly (Law Reform Institute, 2003).

In February 2000, a Commission of Inquiry into the Death of Joseph Gilewicz was established. The Commissioner, Dennis Mahoney QC, formed the view that aspects of the *Commissions of Inquiry Act 1995*, particularly s 18, were problematic. Although the Act was amended, Commissioner Mahoney considered that s 18 was still problematic and he also stated that the Commission's lack of power to apply for a warrant to use listening devices had hindered the Commission's investigations (Law Reform Institute, 2003).

In March 2002, the Law Reform Institute received a reference from the Attorney-General to examine and report on the operations of the *Commissions of Inquiry Act 1995*, and particularly to examine the need for any extension of powers and

to examine the practical operation of s 18 (Law Reform Institute, 2003). In August 2003, the Law Reform Institute published a *Report on the Commissions of Inquiry Act 1995*. In addition to recommending that s 18 be amended, the Law Reform Institute recommends that the Act be amended to enable the commissioner of a commission of inquiry to apply to a magistrate for a warrant to use a listening device (Law Reform Institute, 2003). To date the Act has not been amended in accordance with these recommendations.

# 5.0 ETHICS COMMISSION - RECOMMENDED MODEL

## Promotion of Ethical Conduct

The promotion of ethical conduct is one of the most important components of an integrity system. It is much better to prevent misconduct rather than having to investigate it, particularly where this can lead to loss of public confidence in the Government.

It should never be assumed that individuals who take public office for the first time, either as a public sector employee or elected representative, know what it means to act ethically in every situation they may encounter in their future career. This is an unrealistic expectation, particularly for individuals who initially have a limited understanding of what their role will involve and so cannot possibly predict the range of ethical dilemmas they may face.

Tasmania Police has recognised the importance of providing ethics training to recruits. In partnership with the University of Tasmania, Tasmania Police delivers a comprehensive curriculum on police ethics to police recruits and other members undertaking professional development.

The purpose of the police ethics training for recruits is:

> To develop the underpinning knowledge, skills and attitudes to engage in ethical and professional practice[12].

Police recruits undergo a thirty period course of instruction in ethics. The course is jointly delivered by Dr Anna Alomes from the Centre of Applied Philosophy and Ethics at the University of Tasmania, and Inspector Grant Twining, the Recruit Training Inspector. This partnership works well, and Tasmania Police is appreciative of the involvement of the University of Tasmania in the development and delivery of the curriculum.

While ethics training alone does not eliminate police misconduct, it does provide individuals with the capacity to make ethical decisions and to recognise situations which could create ethical challenges for them in the policing context. At the end of their police training, recruits have a much better understanding of the need to act with integrity, and are well equipped to cope with the ethical demands of their employment.

The concept of ethics training has wide application to other public sector employees, elected representatives and political staffers. With the assistance of an organisation with the appropriate level of expertise, in-house training courses

[12] Tasmania Police Recruit Training Curriculum, Module 15, Police Ethics

for government agencies could be developed, along with an appropriate training and/or induction package for elected representatives and their staff.

**Independent Police Investigations of Misconduct Oversighted by an Ethics Commission**

The existing mechanisms to support ethical and open Government in Tasmania could be augmented through the formation of a dedicated Misconduct Branch within Tasmania Police, oversighted by an Ethics Commission. The proposed model takes into account Tasmania's size, the existing capacity of Tasmania Police to investigate allegations of misconduct, and the need for an oversight body to review investigations, provide prevention advice and restore public confidence.

Misconduct Branch

Complaints alleging misconduct by public officers (including elected representatives) in performing the functions of their office or employment would be made to the Commissioner of Police or the Ethics Commission and then referred to the Misconduct Branch of Tasmania Police for assessment and possible investigation. The proposed Misconduct Branch of Tasmania Police would report directly to the Commissioner of Police and be staffed on a permanent basis by an Assistant Commissioner, a lawyer, an investigator and an administrative assistant. Initial assessments of alleged misconduct involving public officials would be carried out by the Misconduct Branch. If the alleged misconduct was considered to amount to a criminal offence a recommendation would be made to the Commissioner of Police that the matter should be investigated. The Commissioner of Police would then authorise the formation of a specialist investigation team with the relevant skills and experience to investigate the matter. The benefit of this approach is that it enables the investigation team to be tailored to the nature of the alleged misconduct and the type of investigation required, utilising individuals who have developed specialist skills and expertise in the investigation of particular types of crime (e.g. fraud, sexual offences, drug offences, computer crime). Completed investigation files would be forwarded to the Director of Public Prosecutions to determine whether criminal proceedings should be instituted against any individuals.

Existing legislative provisions enable Tasmania Police in appropriate cases to conduct telephone intercepts. It is also anticipated that Tasmania Police will soon have access to other special powers which are available to interstate anti-corruption bodies e.g. to install surveillance devices, use assumed identities and conduct controlled operations[13]. The Misconduct Branch should also be able to make application to the Ethics Commission, or a judge or magistrate, to authorise the use of additional special powers (e.g. requiring a person to produce

[13] As noted previously, the Acts creating these powers have received Royal Assent and it is anticipated that they will be proclaimed in the near future.

documents or other things, or to hold a hearing to examine a witness), where this is necessary to progress an investigation. Where the Misconduct Branch makes a successful application to the Ethics Commission, or a judge/magistrate, for a hearing to obtain evidence from a witness, it is envisaged that the Ethics Commission, or judge/magistrate would appoint a hearing officer for the purpose of examining the witness and receiving the evidence.

Ethics Commission

The proposed Ethics Commission would be an independent body staffed by one part-time Ethics Commissioner and two part-time Assistant Ethics Commissioners supported by one or more full-time staff members as appropriate. The Ethics Commissioner and the Assistant Ethics Commissioners should be eminent members of the community who will inspire public confidence. The Ethics Commissioner should have served as, or be eligible for appointment as, a Supreme Court Judge (or a Judge of the Federal Court or the High Court), and at least one of the Ethics Commission staff members should have legal qualifications.

The functions of the Ethics Commission would include:

- Misconduct prevention and public education, including the provision of ethics training and assistance with the development of codes of conduct and/or guidelines for appropriate behaviour;
- Receiving complaints alleging misconduct by public officers and forwarding them through the Commissioner of Police to the Misconduct Branch of Tasmania Police for assessment;
- Reviewing assessments and investigations conducted by the Misconduct Branch of Tasmania Police, and the outcomes of any prosecutions;
- Referring matters to the home agency (i.e. the agency within which the alleged misconduct took place) or another agency (e.g. the Ombudsman or State Service Commissioner) for investigation if the alleged misconduct does not amount to a criminal offence;
- Monitoring investigations conducted by home agencies;
- Making recommendations in relation to the prevention of misconduct, including the establishment of codes of conduct and/or provision of ethics training;
- Making recommendations in relation to disciplinary action and/or changes to agency processes;
- Providing advice to individuals and agencies – e.g. in response to queries in writing, via phone and email;

- Considering applications for the use of special powers by the Misconduct Branch of Tasmania Police, and conducting hearings where required; and
- Monitoring the implementation of recommendations.

Similar to the Ombudsman, the Ethics Commission should be required to report to both Houses of Parliament on an annual basis, with the power to provide a report at any time to both Houses of Parliament where deemed necessary to address matters of particular concern (e.g. the failure of an agency to implement recommendations concerning the prevention of misconduct).

Attachment B provides an overview of the proposed assessment and investigation process in relation to complaints alleging misconduct by public officers.

**Complaints Against Police**

During 2006-07, 86 complaints against police were registered, the lowest number of complaints received since 1994. The continuing low number of complaints against police reflects Tasmania Police's commitment to the highest professional and ethical standards. This position has been achieved by the timely, effective investigation and transparent management of public and internally reported complaints, the commitment to ethics training, and the critical oversight of discipline by Internal Investigations and the Senior Executive. The Deputy Commissioner is responsible for and actively involved in the oversight and management of the disciplinary process within the policing service.

The role of Internal Investigations is to effectively investigate and resolve complaints against police, including those involving misconduct which amounts to a criminal offence. Allegations of criminal misconduct are referred to the Office of the Director of Public Prosecutions (DPP) for review and prosecution. All Internal Investigation files are subject to independent review by the Office of the Ombudsman.

Internal Investigations also has a misconduct prevention focus, by providing annual presentations to District personnel on complaint prevention and ethical awareness, and where possible incorporating a similar presentation into training courses at the Police Academy. This complements the ethics training provided to police recruits.

Given that complaints against police are already effectively managed within Tasmania Police with the opportunity for independent review by the Ombudsman or the DPP, and there have been no allegations or suggestions of either individual or systemic police corruption in Tasmania, it is not envisaged that the current process would need to change significantly under the proposed model. However, Internal Investigation files involving allegations of criminal misconduct

which the DPP decides not to prosecute would be referred to the Ethics Commission for independent review of the adequacy of the investigation.

**What is meant by the term 'Misconduct'?**

Essentially there are three types of misconduct by public officers in performing the functions of their office or employment which could be the subject of complaints made to the Ethics Commission or Commissioner of Police:

1) Complaints which involve breaches of a code of conduct or other disciplinary matters which do not amount to a criminal offence and do not provide a basis for the termination of a person's position as an elected representative and/or employment;
2) Complaints alleging serious misconduct which is criminal in nature and amounts to a breach of a provision of the Criminal Code and would justify termination of the individual's position or employment; and
3) Complaints alleging misconduct which is criminal in nature and should attract an appropriate court imposed sanction but does not amount to serious misconduct, i.e. does not amount to a breach of any Criminal Code offences or justify termination of the individual's employment. (NB: It is recommended that a suite of simple offences be created to cover this type of less serious criminal misconduct).

Complaints falling into category 1 would ordinarily be referred by the Ethics Commission to the home agency (i.e. the agency within which the alleged misconduct took place) or another agency (e.g. the Ombudsman or State Service Commissioner) for investigation and/or for appropriate action (e.g. disciplinary measures, ethics training, changes to agency procedures etc.).

Complaints falling into the other two categories would be investigated by the Misconduct Branch and potentially be the subject of criminal proceedings, depending on whether the Director of Public Prosecutions considers there is sufficient evidence and/or it is in the public interest to prosecute.

**Legislation**

To support the proposed model, new legislation would be required to establish the Ethics Commission, specify its functions and powers, and outline the process for the investigation of allegations of misconduct. Although not strictly necessary given the clear position at common law, the *Police Service Act 2003* may also need to be amended to remove any ambiguity in relation to the operational independence of the Commissioner of Police, particularly given that in the proposed model the Assistant Commissioner of the Misconduct Branch reports directly to the Commissioner of Police.

The new legislation should clearly define the classes of public officers the Act applies to, and the type of conduct which constitutes criminal misconduct. Two levels of criminal misconduct should be prescribed, with provision for a less serious offence to be dealt with as a simple offence by the Magistrates Court. An existing example of this type of approach is the dual provision of the offence of common assault in both the *Police Offences Act 1935* and the *Criminal Code*. Common assault contrary to s 35(1) of the *Police Offences Act 1935* is a simple offence which is dealt with in the Magistrates Court and attracts a maximum penalty of 12 months imprisonment. By contrast, common assault contrary to s 184 of the *Criminal Code* is an indictable offence triable in the Supreme Court attracting a maximum penalty of 21 years imprisonment.

As stated previously, individuals convicted of a simple offence would ordinarily be permitted to remain in their position, but could be required to undergo ethics training or to take other remedial action. Generally speaking, misconduct which amounts to an offence contrary to the *Criminal Code*, or breach of a code of conduct which provides reasonable grounds for the termination of a person's employment or position, would constitute serious misconduct.

Only matters involving recent misconduct (e.g. misconduct which allegedly took place in the last two years) should be investigated, unless the Ethics Commission determines that it is in the public interest to pursue an allegation relating to past misconduct. Finally, the definition of public officers should be broad and include public sector employees, Local Government Councillors, Members of Parliament and political staffers.

**Rationalisation of Some Existing Measures**

The implementation of the proposed model may necessitate the rationalisation of some of the existing measures to avoid unnecessary duplication, and provide a clear mechanism for dealing with allegations of misconduct. For example, the *Public Interest Disclosures Act 2002* may not be necessary if adequate provision is made to protect individuals making disclosures about alleged misconduct in the legislation establishing the Ethics Commission.

**Other Anti-Corruption Bodies**

Attachment C summarises some of the main features of other anti-corruption bodies, including the Independent Commission Against Corruption (ICAC), the Corruption and Crime Commission (CCC), and the Crime and Misconduct Commission (CMC). The annual budget for these bodies is significant. In 2006-2007, the operating expenses ranged from $16.2m for the ICAC, $25.5m for the CCC and $20m for the crime and misconduct output of the CMC. The cost of independent oversight of these bodies also needs to be considered. For example, in 2006-2007 the annual budget for the Office of the Inspector of the ICAC was $636,730.

The Tasmanian model proposed above incorporates features of the Anti-Corruption Branch of South Australia Police, and the anti-corruption bodies operating in the other jurisdictions, particularly in relation to the oversight of investigations and the focus on corruption prevention. As stated above, the preferred model has been designed to provide independent oversight which is commensurate with Tasmania's size, draws on local expertise and avoids the large cost burden associated with bodies such as the ICAC and CCC.

It is submitted that the expense of establishing a body like the ICAC or CCC in a small jurisdiction like Tasmania cannot be justified, particularly when it would necessitate the duplication of resources, skills, expertise and legislative powers already available within Tasmania Police.

## 6.0 SUMMARY OF RECOMMENDATIONS

A number of recommendations have been made in this submission which either relate to the implementation of the recommended model for an Ethics Commission, or involve suggestions as to how the existing mechanisms currently available to support ethical and open Government in Tasmania could be improved.

**Recommendations Related to the Proposed Model**

1) That s 7(1) of the *Police Service Act 2003* be amended to remove any potential for ambiguity in relation to the operational independence of the Commissioner of Police.
2) That the *Criminal Code* offences concerning Members of Parliament or public officers be reviewed and where appropriate either replaced with new provisions or reworded to remove any ambiguity.
3) That a suite of clear and unambiguous simple offences be created which cover misconduct by public officers in performing the functions of their office or employment which is criminal, but less serious in nature and could be dealt with by the Magistrates Court.
4) That ethical conduct be promoted through the provision of ethics training and/or induction courses to public sector employees, elected representatives and political staffers.
5) That a Misconduct Branch within Tasmania Police be created to assess and investigate complaints alleging misconduct by public officers in performing the functions of their office or employment.
6) That an Ethics Commission be established with responsibility for misconduct prevention and public education, the oversight of assessments and investigations of alleged misconduct by the Misconduct Branch, and the provision of misconduct prevention advice and recommendations to agencies.
7) That the current system for investigating complaints against police remain, but that Internal Investigation files involving allegations of criminal misconduct which the Director of Public Prosecutions decides not to prosecute be referred to the Ethics Commission for independent review.
8) That legislation be enacted to support the proposed model by establishing the Ethics Commission, specifying its functions and powers, defining relevant terms (including public officers and misconduct) and outlining the process for the investigation of complaints of misconduct.
9) That where appropriate some of the existing measures in Tasmania be rationalised to avoid unnecessary duplication, and provide a clear mechanism for dealing with allegations of misconduct.

**Recommendations Related to Existing Measures**

1) That a statutory requirement for a code of conduct for each House of Parliament, for presiding officers of each House and for Ministers (including Ministerial staff) be introduced as recommended by Brown (2005). Arguably the functions of a parliamentary integrity advisor and a parliamentary standards commissioner could be performed by the proposed Ethics Commission.
2) That the *Freedom of Information Act 1991* be reviewed to ensure that it adequately reflects the general principle of a 'public right to know', but still protects the reputation of individuals by restricting the release of material relating to investigations.
3) That the *Public Interest Disclosures Act 2002* be amended so that a disclosure which relates to a member of Parliament must be made to, and investigated by, an independent party (e.g. the Ombudsman, Commissioner of Police or Ethics Commission).

## 7.0 CONCLUSION

There are a number of existing mechanisms available to support ethical and open Government in Tasmania. These mechanisms could be augmented by the establishment of a Misconduct Branch within Tasmania Police, oversighted by an independent Ethics Commission. In addition, some of the existing mechanisms could be improved as recommended in part 6 of this submission.

The model recommended in this submission recognises the existing capacity of Tasmania Police to conduct independent investigations into alleged misconduct, and the need to avoid unnecessary duplication of resources in a small jurisdiction like Tasmania. The establishment of an independent body like the proposed Ethics Commission to oversight misconduct investigations and provide prevention advice would restore public confidence without imposing the large cost burden associated with the anti-corruption bodies which have been established interstate.

# ATTACHMENT A

**Draft Proposed Guidelines Governing the Release of Information Concerning Political Investigations**

***For discussion as to whether they should exist at all, and, if so, open discussion on their content to obtain as many views as possible.***

The following Guidelines reflect agreed protocols between the Commissioner of Police and the Government, represented by the Minister for Police and Emergency Management, in relation to the release of information concerning investigations involving, or which could implicate, public sector executives and/or elected representatives (including Members of Parliament and Local Government Councillors).

1) The Government, including the Premier, the Attorney-General and the Minister for Police and Emergency Management, do not have the authority to issue operational directions to the Commissioner of Police, or to require the provision or release of any information relating to an investigation being conducted by Tasmania Police involving, or which could implicate, a public sector executive and/or elected representative.
2) The Commissioner of Police has no duty or obligation to provide or release any information to the Government relating to an investigation being conducted by Tasmania Police involving, or which could implicate, a public sector executive and/or elected representative.
3) The senior investigator is in the best position to provide advice to the Commissioner as to whether the release of information has the potential to compromise an investigation involving, or which could implicate, a public sector executive and/or elected representative by providing early warning to a suspect, or potential suspect.
4) No information that may have the potential to taint, prejudice or impede the progress of a police investigation involving, or which could implicate, a public sector executive and/or elected representative will be released by the Commissioner of Police without consultation with the senior investigator.
5) A request for information from a Member of Parliament, including the Premier or a Minister, about an investigation involving, or which could implicate, a public sector executive and/or elected representative, should be made in writing to the Commissioner of Police.
6) A demand or request for information from a Member of Parliament, including the Premier or a Minister, about an investigation involving, or which could implicate, a public sector executive and/or elected representative will be declined unless the Commissioner determines otherwise after receiving appropriate advice from the Assistant Commissioner of the Misconduct Branch, the senior investigator and the Senior Legal Officer for Tasmania Police.
7) No information about an investigation involving, or which could implicate, a public sector executive and/or elected representative will be released to the media unless the Commissioner determines otherwise after receiving appropriate advice from the Assistant Commissioner of the Misconduct

Branch, the senior investigator and the Senior Legal Officer for Tasmania Police.

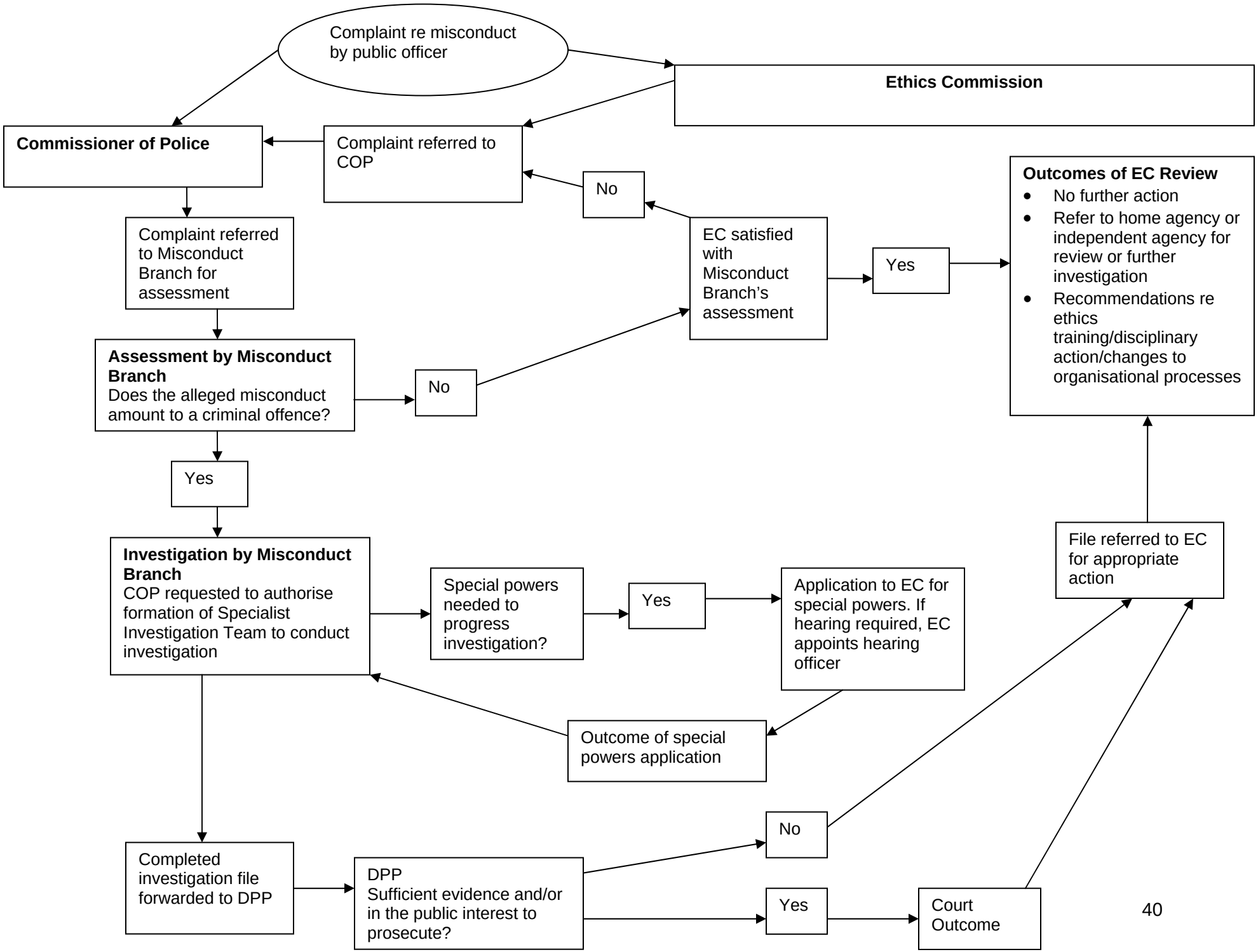
8) A Member of Tasmania Police who receives a request for information on any sensitive matter concerning a public sector executive and/or elected representative, shall refer the request to his or her senior officer who will advise the Commissioner of Police.

9) The Commissioner of Police, on the advice of the Assistant Commissioner of the Misconduct Branch, the senior investigator and the Senior Legal Officer for Tasmania Police, may decide to release limited information about an investigation involving, or which could implicate, a public sector executive and/or elected representative to the media or to the Minister or another Member of Parliament, including a member of an opposition party, to minimise the level of public or media speculation about an investigation, particularly where it has the potential to interfere with the conduct of the investigation, prejudice subsequent criminal proceedings, or damage the reputation of an innocent party.

10) If it is considered to be in the public interest, the Commissioner of Police, on the advice of the Assistant Commissioner of the Misconduct Branch, the senior investigator and the Senior Legal Officer for Tasmania Police, may, if there are sufficient grounds for believing that a Member of Parliament and/or public sector executive has committed a criminal offence, inform the relevant Minister and/or the Premier so that steps can be taken to stand down the individual concerned in order to prevent any further misconduct and/or or to maintain public confidence in the Government, provided that to do so will not jeopardise any ongoing investigation.

# ATTACHMENT B

## Outline of Complaint Process for Alleged Misconduct in Recommended Model


Complaint re misconduct by public officer
Ethics Commission
Commissioner of Police
Complaint referred to COP
No
Outcomes of EC Review
No further action
Refer to home agency or independent agency for review or further investigation
Recommendations re ethics training/disciplinary action/changes to organisational processes
Complaint referred to Misconduct Branch for assessment
EC satisfied with Misconduct Branch's assessment
Yes
Assessment by Misconduct Branch
Does the alleged misconduct amount to a criminal offence?
No
Yes
Investigation by Misconduct Branch
COP requested to authorise formation of Specialist Investigation Team to conduct investigation
Special powers needed to progress investigation?
Yes
Application to EC for special powers. If hearing required, EC appoints hearing officer
File referred to EC for appropriate action
Outcome of special powers application
Completed investigation file forwarded to DPP
DPP
Sufficient evidence and/or in the public interest to prosecute?
No
Yes
Court Outcome

# ATTACHMENT C

## Summary of Features of Other Anti-Corruption Bodies

# Comparison of Anti-Corruption Bodies in Other Jurisdictions

| | NSW | WA | SA | QLD |
|---|---|---|---|---|
| **Body** | **Independent Commission Against Corruption (ICAC)**<br><br>Commenced in March 1989 – established by *ICAC Act 1988* | **Corruption and Crime Commission**<br><br>Commenced on 1 January 2004 – established by the *Corruption and Crime Commission Act 2003*<br><br>(Replaced the Anti-Corruption Commission, ACC. Recommended by Initial Report of Police Royal Commission as ACC ineffective due to its lack of the necessary powers.<br>CCC differs from ACC in that it can hold public examinations, conduct integrity tests, run controlled operations, use assumed identities and is subject to investigation by a Parliamentary Inspector) | **Anti-corruption Branch (ACB) – SAPOL**<br>Established in May 1989 as a result of a recommendation by Justice Stewart in the National Crime Authority July 1988 Interim Report to the SA Govt.<br><br>The ACB is charged with the responsibility to investigate allegations of corruption within the public sector (including within Local Government).<br><br>ACB reports to the Commissioner | **Crime and Misconduct Commission (CMD)**<br>Commenced on 1 January 2002 – created under the *Crime and Misconduct Act 2001*. Carries on the work of the former Criminal Justice Commission (CJC) and the Queensland Crime Commission. CJC set up as a result of the Fitzgerald Commission of Inquiry |
| **Status** | Corporation | Body corporate with perpetual succession | Branch of SAPOL | Body corporate |
| **Appointment of Commissioner** | • Appointed by the Governor<br>• Joint Parliamentary Committee has power to veto the proposed appointment<br>• Appointee has to have served or be eligible for appointment as a Supreme Court Judge (or High Court or Federal Court).<br>• Appointment for maximum period of 5 years | • Appointed on recommendation of Premier by Governor. Position has to be advertised throughout Australia. Appointment must have bipartisan support.<br>• Appointee has to have served or be eligible for appointment as a Supreme Court Judge (or High Court or Federal Court).<br>• Appointment for 5 years, may be reappointed once. | | • Appointed by the Governor-in-Council under the terms of the Act for not more than 5 years<br>• Position must be advertised nationally<br>• Nomination for appointment must have the bipartisan support of the Parliamentary Crime and Misconduct Committee<br>• Must have served as, or be qualified for appointment as, a Supreme Court Judge (or High Court of Federal Court) |
| **Staff** | 111.5 FTE (06-07 Annual Report)<br><br>Assessments Section – 11 FT staff<br>Investigation Division – 42 FT staff<br>Corruption Prevention, Education and Research Division – 24 FT staff | 148 FTE (06-07 Annual Report) | • Officer in charge - Chief Superintendent or above<br>• Detective Inspector<br>• Approx 17 other staff members including 2 administrative service officers and police officers of various ranks | About 300 staff (06-07 Annual Report)<br><br>1 FT Commissioner who is the chairperson and five PT commissioners who are community reps |

# Comparison of Anti-Corruption Bodies in Other Jurisdictions

| | NSW | WA | SA | QLD |
|---|---|---|---|---|
| **Divisions** | 1. Assessments<br>2. Corruption, Prevention, Education and Research<br>3. Investigation<br>4. Corporate Services<br>5. Legal | 1. Operations<br>2. Legal Services<br>3. Business Services<br>4. Corruption Prevention. Education & Research | | 1. Witness Protection and Operations Support<br>2. Misconduct<br>3. Crime<br>4. Research and Prevention<br>5. Intelligence<br>6. Corporate Services |
| **Annual Budget 06-07 (State Govt contribution)** | Net costs of services $16,241,000<br>State Govt contribution $16,467,000<br><br>Assessments Section $928,562<br>Investigation Division $4,968,294<br>Corruption Prevention, Education and Research Division $2,625,507 | Net costs of services $25,512,000<br>State Govt contribution $27,521,000 | Staffing budget approx $1.4m<br>Operating costs $231,000 | Operating expenses 06-07 $35,707,000<br><br>State Govt grant $35,015,000<br><br>Cost for Misconduct Output - $20,052m |
| **Role** | • Investigating, exposing and preventing corruption<br>• Educating public authorities, public officials and members of the public about corruption and its detrimental effects | • Misconduct function<br>o Oversight and conduct of public sector misconduct investigations<br>• Prevention and education function<br>• Organised crime function<br><br>NB: the Commission's organised crime function was not performed in 06-07 as no applications to access the available powers were received from the Commissioner of Police | • Investigate corruption and allegations of corruption across the whole public sector<br>• Provide advice to government departments and agencies if it identifies practices within those areas that may be open to fraud, corruption or misconduct | • Combating major crime<br>• Reducing misconduct and improving public sector integrity<br>• Research and intelligence functions and protecting witnesses |
| **Terminology** | Corrupt conduct – defined in Part 3 of the Act (with a particular focus on serious and systemic corrupt conduct) | Misconduct – defined in s 4 of the Act | Corruption | Misconduct – defined in Part 4 of the Act |
| **Who can be investigated?** | • Public officials (includes MPs, local government employees and elected representatives, judges, public servants)<br>• Can investigate corruption by police officers where other public officials are involved otherwise the Police Integrity Commission has jurisdiction<br>• People who aren't public officials if their conduct does or could adversely affect the honest and impartial exercise of official functions by a public official or public authority | • Public officers (includes MPs, local government employees and elected representatives, public servants, police officers) | Police officers and public officers | • For official misconduct – all public sector officials including police<br>• Can only investigate elected officials if their conduct could amount to a criminal offence<br><br>Re police misconduct – Commissioner of Police has primary responsibility for dealing with complaints, info etc re police misconduct, subject to CJC's monitoring role. CJC can assume responsibility for and complete an investigation by the Commissioner of Police into police misconduct |

# Comparison of Anti-Corruption Bodies in Other Jurisdictions

| | NSW | WA | SA | QLD |
|---|---|---|---|---|
| **Special Powers** | • Can require a public authority or official to provide information or produce documents<br>• Power to enter and search premises and inspect and copy documents<br>• Can apply for warrants to search properties, use listening devices and intercept telephone calls<br>• Can hold compulsory examinations and public inquiries where witnesses are obliged to answer questions | • Can require public authority or public officer to produce a statement of information<br>• Can require a person to attend before Commission and produce a record other thing<br>• Power to enter and search premises of public authority or officer and take copies of documents<br>• Can apply to Supreme Court Judge for a search warrant<br>• Commission may grant approval for officer of Commission to acquire and use an assumed identity or to conduct a controlled operation or integrity testing | No specific special powers but can utilise police powers to:<br>• Undertake surveillance<br>• Conduct telephone intercepts<br>• Install listening devices<br>• Conduct undercover operations<br>• Undertake targeted integrity testing<br>• Compel police officers to truthfully answer questions – can't be used in criminal trial<br><br>No coercive powers to compel a public officer or any other person to truthfully answer questions | • Enter public sector agency and inspect records or other thing and seize or take copies<br>• Apply to magistrate or judge for search warrant<br>• Apply to Supreme Court for surveillance device<br>• Summons person to attend hearing and give evidence and produce records or things<br>• Does not have telephone intercept powers but can gain access to them through joint operations where there are federal or cross-border aspects to the investigation [pressing for these powers]<br>• Commission can grant approval to commission officers for controlled operations and to acquire assumed identifies |
| **Exercise of Statutory Powers (06-07)** | 659 uses of statutory powers<br>Most frequently used – notice requiring production of documents (58%) and summonses to give evidence or produce documents or both at compulsory examination or public inquiry (18%) | 568 uses of statutory powers<br>Most frequently used – power to summon witnesses to attend and produce things (33%) and power to obtain documents and other things (27%) | | Special powers exercised 346 times for misconduct investigations. Most frequently used notice to discover information (57%) and notice to attend hearing (35%) |
| **Assessment Outcomes** | • No action<br>• Refer matter to another investigation agency e.g. NSW Ombudsman, Dept of Local Govt<br>• Request an investigation and report from agency concerned<br>• Conduct assessment enquiries<br>• Provide corruption prevention analysis and/or advice<br>• Undertake an investigation | • No action<br>• Refer matter to WA Police for (external) criminal investigation<br>• Refer to home agency for investigation<br>• Refer to independent authority or appropriate authority other than home agency<br>• Refer to CCC Investigations Unit<br>[Can also be some combination of above – i.e. referral to home agency and Police or CCC Investigations Unit in cooperation with appropriate authority] | • Filed<br>• Referred to another agency<br>• Fully investigated if approved by COP | • No further action<br>• Refer to relevant agency for handling<br>• Refer to CMC investigation |

# Comparison of Anti-Corruption Bodies in Other Jurisdictions

| | NSW | WA | SA | QLD |
|---|---|---|---|---|
| **Investigation Outcomes** | • Make Findings of corrupt conduct<br>• Refer brief of evidence to DPP to consider prosecution<br>• Refer to public employer to take disciplinary action<br>• Make corruption prevention recommendations and provide advice re policies, procedures and work practices | • Make recommendations re prosecution or disciplinary action<br>• Make recommendations as to the taking of other action | • Prosecution<br>• Referral to relevant agency re disciplinary proceedings<br>• Recommendations re changes to policy/procedures | • Arrest offenders or refer matter to relevant prosecuting authority with a view to criminal prosecution<br>• Refer to appropriate CEO to consider disciplinary action<br>• CJC can charge public officers with official misconduct in a Misconduct Tribunal |
| **Corruption Prevention Advice Services** | • Responded to 276 advice requests<br>• Made 113 corruption prevention recommendations in investigation reports<br>• Provided prevention advice re 49 complaints or reports alleging corrupt conduct<br>• Produced 6 research or prevention advice publications<br>• Delivered 70 training courses/presentations | Delivered 155 corruption prevention and education seminars<br><br>Produced 5 major and 30 minor education materials | | Research, prevention and intelligence reports completed – 10<br><br>Capacity-building and monitoring projects undertaken - 23 |
| **Cost of Independent Oversight**<br><br>**06-07** | **Office of the Inspector of the ICAC**<br><br>Budget:<br>$636,730<br><br>Actual expenditure: $450,120 (under expenditure due primarily to the Office not filling an additional professional position)<br><br>Staff: 2 permanent FT positions (Exec Officer and Admin Manager) + Inspector | **Office of the Parliamentary Inspector of the CCC**<br><br>Budget:<br>Net cost of services $213,235<br>State Govt allocation: $555,273<br><br>Staff: Inspector – PT position, FT Assistant (not yet engaged at time of 06-07 annual report) | **Independent Auditor appointed by Minister for Justice**<br><br>Budget – not known | **Parliamentary Crime and Misconduct Committee**<br><br>Budget:<br>Expenditure: $275,898.66<br>Allocation 06-07 - $277,451<br><br>Staff:<br>Research Director, Principal Research Officer, Executive Assistant, PT Parliamentary Commissioner |

# Comparison of Anti-Corruption Bodies in Other Jurisdictions

| | NSW | WA | SA | QLD |
|---|---|---|---|---|
| **Key assessment and investigation activities 06-07** | 2,149 matters received and assessed<br><br>Commenced investigating 73 matters<br>• Made findings of corrupt conduct against 17 people<br>• 7 people prosecuted arising from investigations<br>• 3 people subject to disciplinary actions arising from investigations<br><br>Held 4 public inquiries and conducted 49 compulsory examinations | Received and assessed 2,150 complaints and notifications of misconduct by public officers<br><br>Monitored 2,055 Appropriate Authority investigations and reviewed 1,832 completed Appropriate Authority investigations.<br><br>Charged 14 persons with 156 criminal offences and 10 persons were convicted on charges resulting from Commission investigations<br><br>Held 5 public hearings | Total no. of complaints<br>04-05 166<br>05-06 96<br>06-07 101 | Matters assessed - 3565<br>Matters referred to relevant agency - 2891<br>Matters investigated - 107<br><br>Total allegations = 9146<br><br>Disciplinary/criminal charges recommended - 87 |
| **Complaints profile 06-07** | **All Matters – five most common types of allegations**<br>• Breach of policy or procedure (11.7%)<br>• Fabricate/falsify info/forgery/fraud/tamper info (7.7%)<br>• Favouritism/nepotism (7.4%)<br>• Misuse/theft of resources by public official (7.3%)<br>• Collusion (7%)<br><br>**Complaints from the public**<br>Most complained about sector was local government with more than 4 times the number of complaints about this sector than the next most complained about sector<br><br>Local government also the most investigated sector in 06-07 (in 05-06 custodial services was the most investigated sector) | **Categories of Allegations - five most common categories**<br>• Assault – physical/excessive use of force (15%)<br>• Neglect of duty (12%)<br>• Breach of code of conduct/policy/procedure (10%)<br>• Unprofessional conduct – demeanour/attitude/language (9%)<br>• Bullying/intimidation/harassment (5%)<br>• Contracts and tendering (5%)<br>• Misuse of computer system/email/internet (5%)<br>• Inappropriate behaviour (5%)<br><br>**Allegations against public officers by sector groups**<br>• WA Police – 57%<br>• Education – 11%<br>• Corrective Services – 7%<br>• Health – 7%<br>• Local Government – 6%<br>• Remainder – 12% | | Assault was the most common allegation made against police, followed by official conduct.<br><br>Official conduct was the most common allegation made against local government officers, followed by 'corruption and favouritism'.<br><br>Official conduct was the most common allegation made against the public sector, followed by assault.<br><br>**Allegations by agency**<br>QPS – 57%<br>Public sector – 30%<br>Local Govt – 11%<br>Other – 2% |

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