

Introduction

The Legislative Council's Joint Select Committee on Ethical Conduct is inquiring into and reporting on the issue of ethical conduct, standards and integrity of elected parliamentary representatives and servants of the State in performing their duties with particular reference to:

- a. a review of existing mechanisms currently available to support ethical and open government in Tasmania and the capacity to conduct independent investigations;
- b. an assessment of whether those mechanisms need to be augmented by the establishment of an Ethics Commission or by other means, and if so by what means; and
- c. any other matters incidental hereto.

In making this Submission, Transparency International Australia (TIA) is informed by a study it commissioned entitled *National Integrity Systems Assessment (NISA): Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems* (the NISA Report).

Review of existing mechanisms currently available to support ethical and open government in Tasmania and the capacity to conduct independent investigations

A relatively limited examination of mechanisms currently available prompts the following observations.

In summary, Tasmania appears to have established what might be termed the 'usual' but relatively limited, range of integrity mechanisms. In institutional terms these appear to comprise the Auditor-General, Ombudsman, Director of Public Prosecutions, State Service Commissioner, and some Parliamentary Standing Committees (Estimates Committee, Public Accounts Committee). In terms of the legislative framework, these appear to comprise Freedom of Information, Parliament (Disclosure of Interests), Privileges legislation, Public Interest Disclosures, Financial Management and Audit, and Directions made pursuant to some of these Acts. In policy or program terms, these mechanisms appear to include Codes of Conduct (for Members of Parliament, for public servants and possibly for Ministerial Staff).

TIA is not able to comment on the effectiveness of these existing mechanisms, both individually or in aggregate. However, there are some immediately obvious gaps in this range of integrity mechanisms, for instance,

- the absence of whistleblower protection legislation;
- the absence of an independent Parliamentary Ethics and Standards Commissioner or similar body; and
- the absence of an Independent Commission Against Corruption, a Crime and Misconduct Commission or similar independent body.

Some comments in relation to these institutions are set out below.

It is worth pointing out that the mosaic of integrity mechanisms raises challenges of resourcing, coherence and co-ordination, which benefit from sustained review and scrutiny. These challenges are addressed in a variety of different ways, but one of the most effective appears to be by the establishment of a Standing Parliamentary Committee.

Whether the existing mechanisms need to be augmented by the establishment of an Ethics Commission or by other means, and if so by what means

TIA is of the view that existing mechanisms do need to be augmented by the mechanisms identified above, and elaborated upon here.

a. mechanisms supporting Parliamentary leadership and integrity

The brief survey of existing mechanisms set out above suggests that one of the risks for Parliament is the patchy nature of the various integrity mechanisms applying to Parliament and Ministers. It is not suggested that these various mechanisms need to be 'swept up' into one single regime, but it does highlight the need for a mechanism such as a Parliamentary Ethics and Standards Commissioner capable of providing independent advice, investigation and, importantly, enforcement. A Parliamentary Ethics and Standards Commissioner can ensure that appropriate parliamentary standards are set and maintained, and that alleged integrity breaches are investigated and publicly reported on.

b. 'whistleblower' protection

This involves a legislative regime to facilitate 'whistleblowing' by current and former employees. It needs to include effective protection from reprisal. Tasmania can benefit from the reviews currently underway in a number of 'early adopter' jurisdictions, and also from the extensive research undertaken by the 'Whistling While They Work' research project led by Dr A J Brown of Griffith University.

c. civic education, awareness and rights

A longer-term but crucial element of supporting ethical and open Government in Tasmania is through support for civic education at primary and secondary school levels, focussing on the substantive issues of ethical leadership, integrity and how it is achieved, and citizens' rights. Rights to seek review of administrative actions which impact adversely on citizens is also of great importance, and TIA recommends that a review of the Tasmanian framework for citizen-initiated review of government action should be undertaken.

d. freedom of information legislation

TIA is not aware of any recent review of Tasmania's FOI legislation; however TIA suggests that recent amendments foreshadowed to Commonwealth FOI legislation, which have the effect of reinforcing the principle of the 'right to know', should be considered in the Tasmanian context.

e. Ministers, Ministerial staff and public servants

The various Codes of Conduct which have been adopted in relation to Members of Parliament, Ministerial staff and public servants should be regularly reviewed, with particular emphasis on timeliness of disclosures and consideration of the introduction of a requirement for continuous disclosure. In particular, it may be appropriate to consider whether the Code of Conduct applying to Ministerial staff sufficiently articulates the accountability of Ministerial staff to their Ministers. It may also be appropriate to consider whether appropriate due processes are in place to protect public service chief executives from arbitrary dismissal by Ministers.

f. a broader crime and misconduct commission or similar body

TIA supports the establishment of an Independent Commission Against Corruption, or a Crime and Misconduct Commission, or a similar stand-alone body with substantial investigative powers covering the full range of state and local government bodies. It is possible to argue that the patchwork or mosaic approach to integrity institutions is sufficient, and that the combined roles of existing institutions collectively negate the need for such a body. However, the issue is one of the extent to which governments are prepared to be proactive at the policy, operational, educational and symbolic levels in addressing allegations of corruption across all spheres of government activity, and just as importantly, in promoting integrity. The establishment of such a body needs to be complemented by substantive controls and independent scrutiny of that body, and in this regard, a standing Parliamentary Committee would be an essential safeguard.

Two advantages we suggest can be derived from such a standing body:

1. Cost-effectiveness: Rather than a 'lawyers picnic' as critics may argue we consider that the deployment of specialised in-house personnel can be better than the length and cost of ad-hoc Royal Commissions. Experience in other states bears this out.
2. Ability to convert the experience from any investigations of public sector agencies into ongoing value in a corruption prevention/education role and for driving reform

g. co-ordination between integrity agencies at policy and operational levels

Finally we suggest that the mosaic approach to integrity institutions also requires the establishment of an Integrity Committee or similar body, comprising the Ombudsman, Auditor-General, State Service Commissioner, a Parliamentary Standards Commissioner, and the Chair of a broader Crime and Misconduct Commission or similar body. This kind of co-ordination committee is seen as essential to ensure policy, operational and resourcing synergies are realised. The manner in which this co-ordination is formalised by the agencies in WA is instructive and we commend it.