SECOND READING SPEECH

INTEGRITY COMMISSION AMENDMENT BILL 2011

Mr Speaker, I move that the Bill be now read a second time.

Mr Speaker, as with a lot of legislation which Parliaments pass there is often a need to review and revise parts of the Act to overcome problems encountered by those administering the day to day operation of the Act.

In some cases the impediments to the smooth operation of the Act can be serious and in other cases quite trivial.

The *Integrity Commission Act* was passed just on two years ago and came into operation almost twelve months ago.

In the last year the Commission has identified a number of matters which impede their operations, in particular the way in which own motion investigations might be undertaken.

The Act essentially provides two ways by which alleged misconduct may come before the Commission for assessment or investigation.

The first of these ways is by lodgement of a complaint with the Commission which will then assess that complaint and, if appropriate, investigate it. The Commission may also refer the complaint to another agency or body to be dealt with in accordance with other laws, for example to the State Service Commissioner where a matter falls under the *State Service Act* or to Tasmania Police to investigate possible crimes.

The second way a matter may come before the Commission is when the Board of the Commission determines on its own motion to conduct an investigation into a matter.

An example of a possible "own motion" investigation is one into the adequacy of the policies or practices of public authorities in respect of misconduct.

Section 45 of the Act provides that the Commission may initiate own-motion investigations but the bulk of the Act is framed in relation to the assessment and investigation of "complaints" made by external parties. As a consequence the Commission has been constrained in its ability to conduct own-motion investigations.

There has, however, been no real difficulty for the Commission in dealing with complaints which it has received.

In its first 9 months of operation to June this year the Commission received 131 complaints and had dealt with 85% of them by the end of the reporting year.

In addition, as the Chairperson said in his recent Annual Report, the Commission's major focus in its first year has been the education of the public sector and the prevention of misconduct.

The Commission has in that period also developed new Codes of Conduct for Ministers, members of parliament and ministerial staff.

What is pleasing is the view taken by the Honourable Murray Kellam the Chairperson of the Commission that *"the Commission has seen no evidence of any systemic corruption in any part of the public sector. Rather, the evidence before the Commission is that most complainants have concerns relating to perception of misconduct by individuals in the public sector. Unfortunately 'corruption' is a word that is too often used."*

Mr Kellam went on to say *"It is also clear that a considerable number of complaints relate to a perception of conflict of interest on the part of those complained about. It is inevitable in a state with a population the size of Tasmania that conflict of interest will arise regularly in the course of decision-making. However, the fact of a conflict of interest arising does not, by itself, demonstrate the existence of misconduct.*

What is necessary is an understanding throughout the public sector of what conflict of interest is, and what appropriate and transparent processes are necessary to deal with conflict of interest when it is reasonably perceived to arise. The misconduct education and prevention functions of the Commission provide assistance to public sector agencies in relation to appropriate strategies and processes to ensure public confidence in terms of this issue."

The extent to which the limitations of the Act have actually impeded the Commission in examining and investigating matters on its own motion is obviously not a matter that I am in a position to comment upon. However the lack of evidence of entrenched misconduct and the positive response of agencies and authorities to the education and prevention training which has been provided would seem to suggest that the number of own-motion investigations that might have been (or for that matter will in the future be) initiated would be quite small.

I am pleased to be able in this Bill to address in particular two issues – enhancing the capacity of the Commission to initiate and carry out investigations of its own motion and ensuring that the Commission's investigations and the Tribunal's inquiries are not compromised by the inappropriate release of information by people who have been served with notices under the Act or by people who have been given information about the investigations or inquiries by the person who had been served with a notice.

The amendments to a number of sections remove references to complaint or the person who was the subject of a complaint so that the various sections apply equally to the handling of external complaints and the handling of investigations initiated by the Board itself.

The rights of persons who might be called before the Tribunal on the basis of a complaint were clear – they had a right to be heard, be represented and present evidence. In respect of those persons who were the subject of an own-motion inquiry into possible misconduct the Act was silent and they were not guaranteed the same rights through the Act. As the Tribunal is able to determine its own procedures for hearings it could to a large extent address this deficiency but the rights were not in the Act.

The changes will put persons whose conduct is being investigated or inquired into as a result of an own motion decision of the Commission on the same footing as persons being investigated as the result of a complaint.

The other change of note is to section 98 which is intended to ensure that investigations and inquiries which the Commission or Tribunal decide should be kept confidential are kept confidential.

The Act currently limits the rights of the person served with a notice under the Act to pass on information about the notice to a third party and makes it an offence to reveal certain information without "reasonable excuse". Reasonable excuse obviously includes revealing it to get legal advice or to enable the person to comply with the notice.

A closer examination of the provisions has shown that the restriction may be quite limited and that the initiation of an investigation or inquiry could be disclosed without necessarily breaching the Act. The changes that will be brought about by

this Bill are to limit disclosure not only by the person who has been served with a notice which the Commission or Tribunal wants to be kept confidential but to limit disclosure by the persons who can be told by the person served, for example a lawyer asked for legal advice by the person served.

Mr Speaker, the changes will also broaden the limitations on disclosure so that anything done as a consequence of the notice such as providing documents, giving evidence etc cannot be revealed to third parties. I think we would all agree that there is little value in preventing the disclosure of the notice itself (or its content) if there is not a similar limit on the actual information or documents disclosed as a result of the notice.

On that same issue I draw members' attention to new subsections 3 and 4 of Section 98 (clause 23 of the Bill). The Act at the moment allows the confidentiality restrictions on notices to remain indefinitely if the Commission or Tribunal have not put some limit in the notice itself.

At the start of an investigation it is hard to say how long it will take to process a complaint or own motion investigation although for Tribunal notices it may be possible to say the notice only applies until the Tribunal has completed its hearing or given its decision.

The new subclauses allow the Commission or Tribunal to lift the confidentiality restrictions at a point in time so that revealing the existence of a notice would no longer would be an offence.

It was suggested to Departmental officers in the briefing provided to the Joint Standing Committee on Integrity that it might be worth adding a process for the person who is subject to the confidentiality obligations to seek to have them lifted and in a similar vein placing an obligation on the Commission to

review these confidentiality requirements on notices periodically.

As these suggestions have only just been raised they have not been discussed with the Commission and it is not proposed to attempt to draft more changes at this time. The amount of additional work involved in undertaking periodic reviews has not been assessed.

It is likely that the combination of appropriately drafted restrictions in future notices themselves and the provisions we are now inserting in section 98 will minimise the number of notices which might continue unnecessarily or for an excessive period. But the Government does see merit in looking at ways to improve these provisions further and I have asked my officers to consult with the Commission and recommend whether additional amendments are desirable in the next session of Parliament.

The other changes that I might note are those that clarify that decisions to undertake own-motion investigations under section 89 into misconduct within Tasmania Police or into practices within Tasmania Police on the handling of misconduct matters will be made by the Board.

Again while that was likely to be how such matters would have been initiated the Act currently uses the phrase "the Integrity Commission" which encompasses not only the Board but the CEO, assessors, investigators and other staff of the Commission.

Own motion investigations into the actions of other persons or organisations which fall under the Act are made by the Board under section 45 and it is considered that it is more appropriate that the Act explicitly provide that the Board make such a decision in relation to Tasmania Police.

As it was raised at some length in the Commission's Annual Report and is no doubt going to be raised in the debate on the Bill, I advise the House Mr Speaker that there are two matters which the Government does not intend to address at this time and in this Bill.

The oversight of the activities of Tasmania Police by the Commission is admittedly a complicated matter and requires more consideration before any legislative change is made, if in fact any is found to be necessary. The scheme that was put into the Act was a result of significant consultation with stakeholders and any changes need an equally extensive examination with all stakeholders.

Further the issue of access to information held by Departments and other bodies raised in the Annual Report is not necessarily limited to the investigation of matters within Tasmania Police.

The current provisions of the *Integrity Commission Act* allow personal information held by a personal information custodian (which term encompasses government agencies and authorities, local government, GBEs and most statutory bodies) to be provided to the Integrity Commission "for the purpose of and in accordance with this Act".

Section 102 authorises the information custodian to disclose information which, by virtue of the Personal Information Protection Principles under the *Personal Information Protection Act*, might not otherwise be able to be provided to the Commission. As noted in the Second Reading speech on the Bill in 2009 "Government bodies that deal with personal information about citizens are required by the *Personal Information Protection Act* to observe strict safeguards about the way that information is collected and used".

In the absence of a legal obligation on a custodian to provide personal information (such as a formal notice to produce

served by the Commission) the Act authorises disclosure by an information custodian to the Commission and it is for the custodian to determine whether to provide the information when it is requested.

As noted in the Commission's Annual Report there is a level of disagreement between the Commission and Tasmania Police as to how access to databases of information held by Tasmania Police might be facilitated.

It could be expected that Tasmania Police and any other agency or body from whom information is sought would respond positively to the request by the Commission. I am given to understand that when information has been requested from them Tasmania Police have considered the request and responded thereto and the Report itself commends the relevant officers for their "cooperation, assistance and support".

However the issue of what access the Commission should have to require information to be provided when not exercising its statutory powers (ie not by formal notice) is not only of interest or concern to the Commission and Tasmania Police but has wider potential implications for all agencies and authorities and needs to be considered in some depth.

The Government will examine, in conjunction with the Joint Standing Committee on Integrity, both the extent of the oversight of Tasmania Police and the access to information by the Commission and if it is considered that the *Integrity Commission Act* or the *Personal Information Act* need to be amended we will address that at that stage. I will talk to the Chairperson of the Joint Standing Committee about how we can work together and as part of that process the question of how the Act might better deal with the lifting of the confidentiality of notices may also be able to be covered.

I commend the Bill to the House.