

SUBMISSION TO THE JOINT PARLIAMENTARY SELECT COMMITTEE

ON ETHICAL CONDUCT

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TERMS OF REFERENCE

To inquire into and report upon the issue of ethical conduct, standards and integrity of elected Parliamentary representatives and servants of the State in performing their duties with particular reference-

(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;

(c) any matters incidental thereto.

Background: This submission draws on my experiences *as a Tasmanian public servant* for 17 years (1980 to 1994); as a person who, as a result of attempts to inform relevant persons in authority¹ or the 'direct benefit' shareholders about a serious failure in public policy, was dismissed from a government position; *as a contractor to government* and finally as *an independent professional* with broad interests in public policy, governance and application ethical standards within organizations.

This review into ethical conduct - in my opinion - is the single most important endeavour that Tasmania has undertaken in the past half a century. It forms the basis for public confidence in democracy and Open Government.

It has been stated that Tasmania is a small jurisdiction with no evidence of 'systemic corruption' within its police force or within its governance structures. With that justification it is claimed that Tasmania does not require the addition of any independent anti-corruption authority.

The establishment of a standing ICAC-CJC-CMC similar to larger jurisdictions (Qld, NSW & WA) would not be required in Tasmania if '*existing mechanisms currently available to support ethical and open Government in Tasmania*' were capable of acting without the need for referral from politicians to investigate significant allegations of wrong-doing in processes of governance and in public service administration.

This brings into consideration *the separation of powers* between Executive Government, the Parliament and the existing mechanisms currently available to support ethical and open Government in Tasmania. In effect the governance system is corrupted, if independent watchdogs of ethical and open Government in Tasmania are statutorily incapable of (1) obtaining legitimate referrals from outside Executive Government and (2) initiating their own investigations.

Recently the DPP publicly rebuked the Attorney-General for suggesting that anyone could refer such matters to his office for assessment and investigation. Under the existing Tasmanian statute, as Tim Ellis SC pointed out neither

¹ Those in authority included the Minister responsible, **Robin Gray** MHA, the Opposition spokesperson for Primary Industries, **David Llewellyn**, MHA and Tasmania Greens Leader, **Christine Milne**, MHA. Amongst relevant stakeholders were the **executive of the Department Primary Industry, Water & Environment**, the **Tasmanian Farmers & Graziers Association** and Australian **Veterinary Association (Tasmania Branch)**.

he nor the Police Commissioner had the authority to act independent of direction from their Minister or Executive Government. The general public is sadly deluded if they accept the notion that existing watchdogs have the capability to instigate investigations independent of political processes.

And there's the rub!

Executive Government's control over the ability of the 'existing mechanisms currently available to support ethical and open Government in Tasmania' to act independently and its control over the system for safeguarding 'ethical and open Government in Tasmania' is paramount. In my view, this makes the exercise of 'ethical and open Government in Tasmania' tokenistic and inadequate.

Tasmania's recent political history has a number of high-profile cases where incoming governments from opposing political ideologies have commenced Commissions of Inquiry or legal actions alleging wrongdoing by the previous Government. Two extremely important political cases - the 1989 Rouse bribery scandal and the 1971 British Tobacco Company-Reece Government conspiracy charges - required an incoming Government to initiate a judicial review of alleged serious failures in ethical behaviour by parliamentarians and public servants.

History demonstrates over and over again the failure of incumbent governments in Tasmania to allow 'existing mechanisms currently available' to investigate allegations of wrong doing that involves its own Government members. Similarly there is reluctance on the part of Government Ministers to refer publicly exposed allegations of wrongdoing within public agencies, departments & GBEs for which they are responsible to be independently reviewed by 'existing mechanisms currently available'.

Public confidence in governance processes, the bureaucracy and the independent watchdogs would be improved if this were the 'norm' rather than the exception. When the Attorney-General of Tasmania is publicly censured by the DPP for ignorance in his office I believe we have an ethical and open Government system requiring significant improvement.

The exercise of soundly-based ethical conduct within the public sector, amongst elected parliamentarians and their leaders gives the most precise portrait of the society that we are part of. In 1891 Oscar Wilde wrote '*The Picture of Dorian Gray*'. It is a fictitious dramatisation of the consequences in the life of a man who is authentically painted in his handsomeness and pride as a young man and who dreams that he can remain so forever and still takes part in a decadent world. As Dorian realizes his picture is *indeed* taking on his every subtle change in character and physical weakening, a Mephistophelian pact is entered into with the portrait becoming the only truthful presentation of the actual life lived by the seemingly untouched subject.

'*The Picture of Dorian Gray*' was a prophetic judgment of British society's moral & ethical standards at the height of Victorian dominion and its ethical decay. Dorian Gray is also a salient metaphor in the journey of every human culture that needs to remain truthful and genuine in the face of an ever changing world.

The importance of ethics to any society's health and sustainability are not difficult to encapsulate....but they do require *self-reflection* and invariably a good dose of *self-admonition*. The process of *stirring up the mud* in a retrospective review and then allowing muck to settle requires heroes with one-thousand faces and not the just the two-faces of a Janus.

I ask all Committee members to take time to reflect not just on the matter directly in hand but to examine themselves personally - as elected leaders - in the matter of ethical conduct and the Open Government. I also ask each of them to search for *their* own Picture of Dorian Gray that might be hidden away, out of sight out of mind.

This is a necessary catharsis that must happen to protect and strengthen this island society. And it will take courage from the gatekeepers.

IS Tasmania ready and brave enough to say 'sorry' not just to the aboriginal Stolen Generation; not just the victims of sexual abuse as wards of the State; not just to other disadvantaged groups, but is it ready to say 'sorry' and forgive *itself* for the actions it has committed against itself?

(a) a review of existing mechanisms currently available to support ethical and open Government in Tasmania and the capacity to conduct independent investigations

The Review of existing mechanisms currently available should include all statutory & regulatory mechanisms to support ethical and Open Government. These would include the senior quasi-judicial, deterministic positions and specialist regulatory authorities or commissions.

The Offices that I particularly wish to highlight to the Select Committee are:

The Office of the Commissioner of Police - Category 1 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public officer are paramount to public safety & confidence in the societal standards.

The Office of the Director of Public Prosecutions - Category 1 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public officer are paramount to public confidence in the rule of law. The independence of the DPP to assess and investigate significant matters in relation to alleged wrongdoing or serious unethical conduct that *corrupt* the exercise of Open Government need to be reviewed.

The Office of the Auditor-General - Category 1 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public officer are paramount to public confidence in the financial administration of public resources.

The Office of the Ombudsman - Category 1 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public officer are paramount to public confidence in the standards of service provision by government instrumentalities and local government. [The Ombudsman has powers to take and investigate complaints regarding decisions or actions made by State agencies, bureaucracies & GBEs; its powers as a Health Complaints Commissioner; its powers as an Energy Complaints Commissioner; its powers to investigate and protect under the Public Interest Disclosure legislation; powers to review determinations under the Freedom of Information Act].

The Office of the Solicitor-General - Category 1 Public Official whose character needs to be above reproach for honesty, integrity and independence. As a Government appointment this officer is the instructing solicitor in legal defense of the Tasmanian Government; the officer also provides legal advice on drafted legislation, government contracts, MOUs and Heads of Agreement etc.

The Office of the Children's Commissioner - Category 2 Public Official whose character needs to be above reproach for honesty, integrity and independence.

The Office of the Anti-Discrimination Commissioner - Category 2 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public officer are paramount to public confidence in the practical exercise of anti-discrimination standards across the community.

The Office of the Commissioner for Review - Category 2 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public officer are paramount to public confidence in state service employment matters.

The Office of the Director of Public Health [& Chief Medical Officer] - Category 2 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public officer are paramount to confidence in public health, communicable diseases and food-safety standards.

The Office of the Chief Veterinary Officer - Category 2 Public Official whose character needs to be above reproach for honesty, integrity and independence. The ethical standards applied by this public

officer are paramount to public confidence in safeguarding animal disease management, emergency responses & preparedness to significant animal disease outbreaks.

The Boards, Authorities or Commissions that exercise significant powers that of necessity require the highest levels of integrity, honesty and ethics are:

The Forests Practices Authority -

The Workplace Standards Authority -

Various Professional Standards Authorities with oversight for the legal, real estate, professional guilds (builders, engineers)

The executive boards of management of all government agencies, departments & GBEs -

At the Parliamentary Level there are a number of long-established committees and powers vested in the Parliament itself that attempt to safeguard ethical conduct and Open Government; these include the Privileges Committee, various *ad hoc* Standing Committees taking public submissions on related matters; and the Public Accounts Committee.

The Attorney-General (as a member of the ruling Government) has the statutory power to control the activities of the DPP and the Commissioner of Police in undertaking independent investigations involving allegations of corruption against elected politicians or senior public officers. This power can be abused and thwart these officers from acting independently in relation to matters of serious wrong-doing. Politicisation of DPP and the Commissioner of Police needs to be rejected. This is particularly relevant when either of these public officials recognizes that political interference or direct control is perverting their ability to investigate serious wrong doing in the public services.

The ability for ordinary citizens and persons living in Tasmania to make submissions and be heard - either in public or in camera - at Parliamentary Inquiries and Standing Committees *without* experiencing any form of reprisal or victimisation, intimidation and duress is essential to safeguarding public confidence in ethical conduct and Open Government.

Encouraging a culture of positive ethics to support any community of human beings is essential to the operation of healthy, supportive and sustainable societies. But it does not happen by chance. It requires effort and discipline and flows through the lives of ordinary individuals, manifest in the way they themselves are nurtured, supported and sustained.

In undertaking any review of ethics that emerges after a period of collapse in standards, it is easy to focus on triggering issues of notoriety and plan 'top-down' reactive responses. Developing sustainable solutions requires quiet reflection and an understanding of the philosophical basics.

As a community we cannot change our past, but it is in our capacity to change our methods and our actions into the future. If, at a personal and a community level, we have not understood *the consequences* of past actions then it is almost guaranteed that a familiar pattern of response will repeat itself with similar consequences.

That is the basis of this submission - a person or a society that does not accept and learn from its past is destined to repeat it...over, and over again.

*"If you want to know your past life, look at your present condition;
If you want to know your future life, look at your present action."*

The change from the *present condition* - if it is unsatisfactory and does not foster harmony between people - requires great wisdom and compassion.

At a personal level our *present condition* is informed by where we have come from and what we have been given.

[Family values, early years of education (kindergarten and primary schooling), cultural & ethnic values, local community values (within a township, a suburb or a society), workplace values & ethics, and our religious or spiritual credo.]

I commend to all committee members a book written by His Holiness, the Dalai Lama in 1999 - *Ancient Wisdom, Modern World - Ethics for a New Millennium*. The book is refreshingly clear about the foundations required to develop sound ethical principles and then explores the development of personal ethics and ethics for a society.

Present-day Tasmania is a product of its past history - its geography and natural resources, its climate, its pre-European history, its discovery by Europeans, its colonization as a convict settlement and later as a colony for free settlers. There are consequential legacies from that history that create the *present condition* of Tasmania.

During the last 2 centuries there were abundant natural resources (water, food, minerals & energy sources) and reliable climate patterns; Tasmania 'appeared' sustainable, resource-rich and resilient. During those pioneering centuries, the abundant natural resources of this island of 68,000 km² were exploited and in some cases significantly alienated. Basic survival in the early decades of the colony gave way to the establishment of thriving local communities through the efforts of humans.

In the words of poet & song-writer, Joni Mitchell: *'Oh the lovely days are gone; and you don't what you've got 'til it's gone!'*

Tasmania is an island but it is not an isolated microcosm that can withstand local and global challenges that will accelerate in the next century. Developing new ethical principles for Tasmania comes at a time when sustainability, trust and interdependence will be essential components in a world that is changing very rapidly.

Tasmania must begin to adapt to a changed environment - both locally and globally. Our elected leaders must now acknowledge the need for change and develop a new ethical framework for the next century. This Parliamentary Select Committee must be wise, courageous and non-partisan.

It will be extremely refreshing if this Committee and the Parliament recognizes this unique opportunity for *root & branch* change to the way Tasmanians treat each other and the places in which we all live. The times of uncontrolled exploitation, unsustainable allocation of natural resources, nepotism/cronyism and corrupting practices in public service and business should be in the past.

The personal values of honesty, openness and inter-personal respect in thinking, communicating and action create the moral basis for a contented life and can flow on to others. Leaders in positions of power must genuinely practice the ethical standards they establish & promote to their community. When community leaders are seen by society to practice poor standards of honesty, openness and accountability the consequences for the ethical standards practiced by the general public can be far-reaching.

A society can become rebellious and confused when the public standard is: *'Do as I say, NOT as I do.'*

Think of clergymen who sexually abuse children; think of politicians who lie or take bribes and inducements; think of police officers who are involved protection rackets; think of employees who steal money from their employer; think of the person in a position of power who is threatening and intimidating in order to get what they want.

Self-censorship necessarily would be, by any measure, an undesirable consequence if **Category 1 or 2 public watchdogs** are appointed by government (usually under contract and based on performance) and therefore

beholden to them for continued patronage. Issue of 'conflict of interest' and 'pecuniary interest' must not impede the ability of such officials to give frank and fearless advice. It increases the public's confidence in the deliberations of public watchdogs, particularly if they are called on to 'judge Caesar'.

Recommendations:

(1) *Civics & ethics education* in both primary & secondary school - basic foundations of personal values & ethics and ethics for society. [A long-term strategy]

(2) Adoption of a *Charter of Ethical Standards* for Public Service employees and for elected community leaders *right now*.

(3) *Categorisation of Tasmania's important independent 'watchdogs'* and a recognition that such offices need to be accountable to the Parliament of Tasmania, and not to the Government.

(4) The ethical standards applied by second-tier watchdog authorities, commissions or offices need to be reviewed in light of the significance of their assessments, determinations and decision-making to public safety, and environmental, social & economic sustainability .

(5) The *role of the Parliament* - under the current bicameral system - to instigate either full judicial or parliamentary *Commissions of Inquiry* when necessary.

(6) The ability for ordinary citizens and persons living in Tasmania to make submissions and be heard - either in public or in camera - through Parliamentary Inquiries and Standing Committees *without* experiencing any form of reprisal or victimisation, intimidation and duress is essential to safeguarding public confidence in ethical conduct and Open Government.

(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;

Tasmania lacks any independent investigative body. The Tasmanian DPP, Tim Ellis SC highlighted this in April 2008. The case for its establishment has been building for several decades; however, successive incumbent governments of all political persuasion have dismissed the need for such bodies.

The difficulty Tasmania faces is the paradox that it would not need such a peak anti-corruption body if the ethical standards applied to governance and public services were credible and trustworthy. Regrettably, in my view, there is the entrenched culture of secrecy, cover up and executive control that negates all efforts to refresh the system and build a truly accountable and transparent governance system.

The words and actions of elected leadership - both in Government and in Opposition - resonate into the community. Public confidence in public officials - both elected and unelected - is essential for maintaining standards of ethics within the broader community.

What are the long term consequences when a society recognises that its leaders can be liars; persons who act disingenuously, who will not resign or admit wrongdoing even when the evidence is irrefutable; who engage in secret arrangements which are self-serving?

If a powerful 'Caesar' is in denial and continues to feed the masses on 21st-century versions of *panem & circenus* (bread & circuses) and Caesar stands in judgment over Caesar, we will continue having a corrupted and inefficient governance system in Tasmania.

In times of relative prosperity these unethical models survive because there is the money to maintain that paradigm. In times of economic, social and/or environmental instability *the consequences* of such arrogant governance can be sudden and profound.

Let Tasmanians cross the 'Rubicon' and become a genuinely wise people and *change by evolution not revolution!*

The measure of genuineness in all Tasmanian politicians to embrace this necessary change will be in the - courage and leadership they give to this essential reform. It will need to be non-partisan and genuine and workable.

Recommendations:

(1) Tasmania explores the establishment of an *Ethics and Integrity Advisor or Commissioner* (as has been recently established in the ACT) with the powers initiate independent investigations of serious misconduct and alleged wrongdoing affecting governance and public sector administration.

(2) The issue of *conflict of interest* and *pecuniary interest* by senior public officials and elected representatives is addressed through the *Charter of Ethical Conduct*. All politicians and public servants would be asked to accept that Charter in their public service.

(3) Significant independent watchdogs on probity and good Government be *answerable to Parliament* and therefore be appointed by Parliament and NOT by the Government of the day.

(c) any matters incidental thereto.

Public Sector - Government - Community relationship

It is argued that smaller jurisdictions, such as Tasmania, experience substantial resource constraints to achieve interstate parity in the range of public services (health, education, policing, infrastructure, public housing, disability support etc). In my view, this underlying premise has contributed to the opportunity for resource-starved government departments to engage in an unacceptable culture of dishonesty and self-serving fraudulence in an effort to obtain extra resources from the State or more commonly from the Commonwealth.

This allegation goes to the core of the ethical underpinning in the relationship between the community, the public sector and elected government.

The two-way relationship between unelected senior bureaucrats invariably in charge of the *same* agencies for decades and a small pool of elected Ministers can actually promote behaviours and practices designed to be self-serving and deceptive. If sound ethical principles do not operate at the leadership levels within the boards of management of government agencies as well as in the communication between the heads of agencies and their responsible Ministers, it is neither fanciful nor exaggerated to consider that a self-serving culture of mutual self-interest, cover up and crisis management can develop.

There are numerous day-to-day instances where government officers at lower tiers (but with high technical proficiencies) within an Agency have truthfully made detailed assessments and recommendations only later to be astonished to discover that the basis of these findings have been misrepresented, reworded, watered down or completely overlooked after passing up through the agency command structure. This practice is wrong and it is unethical and once entrenched within a hierarchy or command is likely to become systemic.

Self-censorship of ordinary public servants in areas of risk assessment/risk management competency necessarily would be, by any measure, an undesirable consequence.

Such practices can be politically self-serving and opportunistic - a phenomenon referred to as 'kiss up-kick down'. At its most malevolent and when deeply embedded, it can generate intense distrust between staff and a neurotic sense of paranoia. It can also have serious consequences to the long-term health & well being of staff and the effectiveness of the agency as an effective service provider or as public policy think-tank.

Such reactive, top-down, self-serving cultures are also very resource-depleting at the highest levels of management and consequentially impact on the capability of the agency to recruit & retain competent staff at lower tiers because the department global budget becomes top-heavy with a culture of 'spin over substance'. [Recent publicity on the annual cost of Ministerial staff and the Government's media liaison officials is testament to this.]

There is no doubt that there are increasing calls on our governance & public sectors to act ethically.

Governments in Australia inherently become less stable as they age. World-wide, *investigative reporting* - sometimes supported by credible public interest disclosures (PID) - are essential in uncovering serious failures in public governance, mismanagement, corruption, criminal behaviours or human rights violations. When powerful governance structures become detached from even the most prudent risk-assessment findings provided by others (both within the public sector itself and from non-government organisations) then it can produce inappropriate public policy and corrupt behaviours.

Governments lose office when they are seen as intransigent and unwilling to change and face an ever present reality.

Recommendation:

- (1) *Begin at the top*: All SES personnel receive particular training and awareness in what constitutes *of ethical conduct, standards and integrity*. Such training should be conducted by competent ethicists.
- (2) The State Service includes *ethics training in induction codes* for new public servants and defines a *charter of ethical conduct, standards and integrity*.

Tasmania's Public Interest Disclosure Legislation

This Act needs to be re-examined from a number of perspectives. As a statute that is designed to offer 'whistleblower protection' experiences in other jurisdictions show that ordinary citizens making PIDs cannot rely on this mechanism to protect them. Submission through the Ombudsman provide a preliminary assessment of the seriousness and veracity of the allegations made, however, as with general Ombudsman complaints that office has limited resources to initiate independent investigation and usually refers the PID allegation to respondent agency. This is unacceptable approach to investigating PIDs.

In providing background to this ethics inquiry on ABC radio, Jim Wilkinson MLC indicated that: 'You cannot have Caesar judging Caesar.' I would also add that under our existing mechanisms and remarkably powerful system of governance 'what Caesar wants, Caesar gets.'

Recommendations:

- (1) *Strengthening and review the current PID legislation* as a component in improving the integrity and confidence in the public service.
- (2) Ensure that any PID claims are properly reviewed and assessed by relevant staff in the Ombudsman office and ensured the submitter is consulted on the intended course of action.
- (3) Where warranted the PID Commissioner also involve the Anti-Discrimination Commissioner, Tasmania Police or DPP.