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From: Damian Bugg [mailto:djb46@netspace.net.au]

Sent: Friday, 10 October 2014 12:17 AM

To: Laura Ross

Cc: robert.cockerell@rtbg.tas.gov.au

Subject: Re: Joint Standing Committee on Integrity

Dear Laura,

First of all, thank you for providing the opportunity to belatedly make a submission.

Secondly, I apologise for the lateness of the submission, and its form. Unfortunately I did not see the announcement seeking submissions. As for the form, I am currently driving with Jenny in the USA, with limited access to materials and reliable internet and wifi.

I only became aware of this review through an email last week.

Also, I know quite a few of the Board and people at the Commission, I respect them and acknowledge the challenges the provisions of the Act impose on them. If I was at my home base I would do them the courtesy of raising these points with them first.

Under Section 24(1)(e) of the Act, I would like to raise for the consideration of the Committee the following matters concerning the functions, powers and operation of the Commission.

1. I have said this previously, and almost four years later I still have a concern about the need for a full time Integrity Commission of this size and function for Tasmania. There should now be sufficient material from the operation of the Commission over the last three years to broadly answer that question. Under this point, dealing with the two key functions of the Commission:- (a) I do not have the information available to me, but how many investigations, as opposed to assessments, have been undertaken by the Commission since its inception and how many of those investigations, based on their outcomes, could have been investigated and dealt with by another entity through their existing powers and functions? I would like the opportunity to expand on this point, relative to the other points I raise.

(b) Education and awareness are very important. As are the requirements for integrity of governance frameworks within the Public Sector. These functions of the Commission were emphasised in the Second Reading Speech, and appear to be given primary focus in the Act. See Sections 8(1)(a-e) and 9(1)(a-d). But, in light of the level of training and education undertaken to date, do we need an independent Commission, overseen by a highly qualified Board, to deliver this outcome?

2. Recently I have had cause to look more closely at the provisions of the Act, and I believe that the model established under the Act is flawed because of the governance structure within the Act. The Board established under the Act has three ex officio members who are 'integrity entities' as defined. The inclusion of the Ombudsman, Auditor General and the State Service Commissioner (then), may well have added their reputations and experience to the Board, but all three are likely to be recipients, at some stage or other, of matters of complaint which, after assessment, or investigation, are referred to them by the CEO or the Board (See sections 38(2) and 58(1). The Board's roles under Section 13(a) and (c), coupled with the previous issue may not be seen by every objective onlooker as comfortable fits and may, conversely, cause complaints to be referred to the Commission which should, in the first instance, have been referred to one of the integrity entities.

3. While there was an assurance of 'proportionality' given in the second reading Speech, that principle does not appear to be adequately reinforced in the Act. For example, direction within the Act to 'not duplicate' does not specifically advert to new matters which should be more appropriately investigated and dealt with by one of the Integrity entities or under the

State Service Act. Section 9(1)(g) enjoins the Commission " to not duplicate or interfere with work that has been or is being undertaken appropriately by a public authority. (but not new matters which could be 'undertaken' but are not yet in the hands of the public authority, this would probably account for most matters handled by the Commission, see 1(a) above). The Act does not, in my view, give specific guidance to the Commission to not apply a sledgehammer to the walnut (to use the analogy referred in the Second Reading Speech). In NSW the ICAC legislation, from memory, specifically directs the Commissioner to focus on serious incidents of corruption. I cannot see an equivalent 'non minimus' provision here.

4. I may be wrong about this, but the lack of clear direction I refer to in 3 may be the reason, and I do not have access to any records, that the CEO, (and the Commission?) appear to misunderstand the "assessment" process under section 35(2). Described in the Second Reading Speech (page 12) as a "triage" (or clearing house, my term) the only matter concerning the Commission of which I have any direct knowledge laboured through an assessment stage (which I would describe as being more akin to an "investigation ") of 5 months after which the matter was then referred by the CEO to not one but three persons under section 38(1), one of whom is a Board member, to " investigate" and " take action".

5. There are some statutory interpretation issues, or ambiguities, with a need for possible amendment, which I will raise if I am given the opportunity to appear on the 22nd.

Thank you once again for the opportunity to make this submission.

Regards,

Damian Bugg