



Tasmanian Council of Social Service Inc.

Integrity Commission Act 2009 - Legislative Reform

August 2022



**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

TasCOSS welcomes the opportunity to make a submission to the Department of Justice ('the Department') in relation to the review of the Integrity Commission Act ('the Act').

Independent oversight bodies, such as the Tasmanian Integrity Commission ('the TIC'), can play an integral role in the framework of good governance. TasCOSS has a strong interest in robust governance for two reasons. Firstly, the general public wants and expects to be able to trust the organisations with which they engage. Unfortunately, there are instances when those public institutions, and leaders within them, fail the public. This leads to increasing levels of distrust of politics and politicians as well as other key players in delivering a healthy democracy and society.¹ The second reason for our interest is that good governance is a way to ensure everyone's voices are heard in the decisions that affect them. In our consultations with Tasmanians over many years, they tell us they want a say in these decisions, as well as access to effective recourse when they are negatively impacted by decisions which are made without their involvement.

As an independent review and investigatory body, the TIC has the capacity to oversee, investigate and report on aspects of good governance, particularly allegations of misconduct in public office. This provides a safeguard against corruption and/or wrongdoing, as well as enhancing community confidence in government and the public sector. The TIC can also provide an education and/or training role; for example, providing advice to agencies or individuals on ethics and good governance, as well as preventative measures such as training to ensure public officials are aware of their obligations.

There are several recent examples in Tasmania which highlight the importance of independent oversight of public authorities – which can include not only the conduct of parliamentarians and their staff, but also agencies including Tasmania Police, Government departments such as health and/or education, and the Tasmanian prison service. For example, the shocking and confronting evidence from the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings highlights not only the vulnerability of children within custodial settings in Tasmania and other jurisdictions, but also the importance of independent oversight of institutional settings to better protect the rights of children and respond more effectively to instances of harm.

The current review of the Act is an opportunity to reflect on the role played by the TIC in safeguarding the rights of all Tasmanians, through independent oversight and raising awareness and understanding of the role and responsibilities of the public sector. Our submission will provide feedback in relation to particular issues raised in the Government's Discussion Paper ('the Discussion Paper'),² namely recommendations which relate to the TIC's role in providing independent oversight in relation to allegations of police

¹ For example, 'Roy Morgan surveys on 'Trust' and 'Distrust' of government and government services show distrust levels soared in the second half of 2021 while trust in government fell after sexual assault allegations in Parliament house emerged in early 2021 and were followed by further allegations against Government MPs Christian Porter, Alan Tudge and Andrew Laming.' – Article 8933, Roy Morgan (Tuesday 22 March 2022), accessed at <https://www.roymorgan.com/findings/8933-political-trust-distrust-australian-leaders-march-2022-202203220543>.

² Department of Justice, Tasmanian Government, 'Integrity Commission Act 2009 Legislative Reform: Discussion Paper' (July 2022), accessed at https://www.justice.tas.gov.au/_data/assets/pdf_file/0008/667178/Integrity-Commission-Legislative-Reform-Discussion-Paper-July-2022.pdf.

misconduct, and provisions relating to the education and training provided to public authorities. We will also highlight some additional reforms TasCOSS believes would enhance the work of the TIC, in order to provide strong and accountable governance in Tasmania. Suggested priorities for future reform include the following: the need for an expanded jurisdiction, increased opportunities for education and training, funding, and the need for structural and/or cultural change to promote transparency and accountability in public institutions in Tasmania.

Overview of history of reforms

The Tasmanian Integrity Commission was established in 2010 with the enactment of the *Integrity Commission Act 2009* (Tas). The object of the Act is 'to promote and enhance standards of ethical conduct by public officers by the establishment of an Integrity Commission'.³ The Act also outlines the objectives of the TIC:⁴

- (a) improve the standard of conduct, propriety and ethics in public authorities in Tasmania; and*
- (b) enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and*
- (c) enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.*

As required by legislation,⁵ an independent review of the Act was conducted in 2016 by the Hon William Cox, former Chief Justice of Tasmania ('the Cox Review'). The purpose of the Cox Review was to review the Act to ensure consistency with the legislation and the stated object and objectives of the Act. Several organisations and individuals made submissions as part of the Cox Review, which were reviewed and referenced in a report tabled in Parliament in 2016.⁶

The Cox Review report made several recommendations to improve the function of the TIC and more closely align the Act with the stated object and objectives. Following the Cox Review, the Act was amended to address some of these recommendations:⁷ for example, recommendation one of the Cox Review was the removal of the Auditor-General and Ombudsman as members of the Board of the TIC, given the potential for actual or perceived conflicts of interests to arise during their participation as Board members.⁸

Most of the recommendations from the Cox Review, however, remain outstanding. The current review of the Act is an opportunity to assess and comment on the outstanding recommendations from the Cox Review, as well as to consider broader reforms to the TIC to enhance their work and promote good governance in Tasmania. Our submission will not contain a comprehensive overview of all the recommendations outlined in the Discussion Paper; rather, our submission will focus on key issues raised both in the Cox Review and the Discussion Paper which we believe should be prioritised, as well as further recommendations for reform.

³ *Integrity Commission Act 2009* (Tas) s3(1).

⁴ *Integrity Commission Act 2009* (Tas) s3(2).

⁵ *Integrity Commission Act 2009* (Tas) s106.

⁶ The Hon William Cox AC, RFD, ED, QC, 'Independent Review of the Integrity Commission Act 2009: Report of the Independent Reviewer' (May 2016).

⁷ The *Integrity Commission Act 2009* (Tas) was amended by the *Integrity Commission Amendment Bill 2017* (Tas).

⁸ Discussed at the Hon William Cox AC, RFD, ED, QC, 'Independent Review of the Integrity Commission Act 2009: Report of the Independent Reviewer' (May 2016), 11-14.

Recommendations from the Cox review

TasCOSS is broadly supportive of the position that the Government should enact recommendations from the Cox Review. We do, however, have some concerns in relation to recommendations which relate to police accountability, as well as recommendations relating to the education function of the TIC.

Police misconduct

Several recommendations of the Cox Review, outlined in the Discussion Paper, relate to TIC oversight of police misconduct:

Recommendation 16: That the Act be amended to require that if criminal conduct by a public officer other than a designated public officer or a police officer is suspected by the Commission during its triage of a complaint, the matter must immediately be referred to Tasmania Police.⁹

Recommendation 26: That complaints of misconduct by designated public officers (which includes commissioned police officers), once identified as such, be immediately made the subject of investigation under Part 6, and those of misconduct by non-commissioned police officers be referred in the first instance to the Commissioner of Police for action.¹⁰

Recommendation 27: That complaints of serious misconduct by a police officer not a designated public officer which are not dealt with by the Commission under section 88(1)(a) be referred to the Commissioner of Police for action.¹¹

Recommendation 10 – That the Commission expedite the processing of complaints by: (a) adopting a robust attitude to the triaging of complaints; (b) so far as practicable confining its investigative function to serious misconduct by public officers, misconduct by designated public officers (DPO), and serious misconduct by police officers under the rank of inspector.¹²

TasCOSS is concerned about the Government's approach as outlined in the Discussion Paper, which seems to support complaints made against police officers being investigated internally in the first instance.¹³ We strongly believe internal investigations of police misconduct are not appropriate, regardless of whether or not the conduct involves an alleged criminal offence, and that independent oversight of such complaints is needed to safeguard the rights of Tasmanians and the integrity of our police. TasCOSS believes independent oversight of police decisions is particularly important in relation to police interactions with marginalised groups, given research which demonstrates that, 'abuse of police power impacts most upon the already vulnerable such as the young, the mentally ill, those from refugee and migrant backgrounds and Indigenous Australians.'¹⁴ We understand from the Discussion Paper that the Government intends to engage in further consultation in relation to this issue – as well as providing further feedback at a later stage, we also take this opportunity to confirm our position in relation to the importance of independent oversight of police.

⁹ Department of Justice, Tasmanian Government, 'Integrity Commission Act 2009 Legislative Reform: Discussion Paper' (July 2022), 10.

¹⁰ Ibid, 13.

¹¹ Ibid.

¹² Ibid, 26.

¹³ Ibid, 10.

¹⁴ Police Accountability Project, 'Independent Investigation of Complaints against the Police: Policy Briefing Paper' (2017), 3.

A number of community organisations, particularly those working with Aboriginal and Torres Strait Islander communities, have raised concerns about the lack of police accountability and oversight. Various reports have also highlighted both the high incidence of police wrongdoing and/or misconduct experienced by Aboriginal Australians, as well as identified failures of internal police complaint mechanisms and the need for independent review processes to enhance public confidence in accountability processes.¹⁵ These concerns are shared by community organisations working with other marginalised groups; for example, member organisations have highlighted the findings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in relation to police conduct, which found that, ‘police responses to people with disability are, on the whole, inadequate, are frequently damaging to the well-being of people with disability and can significantly negatively impact on their rights to justice.’¹⁶ Anecdotal evidence from our member organisations providing advocacy to Tasmanians with disability demonstrates the impact of a lack of external oversight in relation to police decision-making, with organisations highlighting that although clients often present with allegations or concerns relating to potential police misconduct, many decide not to proceed once they are informed that the police will be responsible for investigation and handing the complaint in the first instance. TasCOSS believes these examples show the importance of independent oversight and accountability mechanisms. Recent legal decisions relating to police decision-making in Tasmania also highlight the potential impact of decisions which compromise the integrity of systems such as the criminal justice system,¹⁷ underlining the benefit of strengthening independent oversight in relation to public authorities.

For these reasons, TasCOSS opposes any reform which limits the possibility of external oversight of police. We support the continuation of current legislative provisions which permit independent review of police actions and decisions and encourage the TIC to take a more active role in providing accountability and transparency by engaging in more (rather than less) independent reviews of allegations of police misconduct. We make this recommendation in light of evidence demonstrating the TIC is not currently engaging in reviews of this nature - for example, the recent decision by the TIC to not investigate allegations of police misconduct in relation to potential breaches of confidentiality and/or legal professional privilege at Risdon Prison.¹⁸ TasCOSS strongly believes that, rather than limiting the role of the TIC, the Government should be looking at how to strengthen independent oversight of police, not only to respond more effectively and transparently to allegations of misconduct, but also to increase public confidence in decision-making more generally.

We are also concerned by the recommendation in relation to the potential ‘triaging’ of complaints,¹⁹ to focus primarily on complaints which involve allegations of ‘serious misconduct’.²⁰ We understand this

¹⁵ See for example, Aboriginal and Torres Strait Islander Legal Service QLD (ATSILS), Submission on the Review of the Crime and Corruption Commission Act 2001 (July 2015), 10; Browne, K, Victorian Aboriginal Legal Service (VALS), Submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria (September 2017) 8-14; Police Accountability Project, ‘Independent Investigation of Complaints against the Police: Policy Briefing Paper’ (2017), 9-14.

¹⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, (Research Report: Police responses to people with disability, October 2021), 111.

¹⁷ *Tasmania v Thompson* (No 2) [2022] TASSC 55.

¹⁸ Amber Wilson, ‘Concerns raised over review into Tasmania Police’s use of covert recording devices’, The Mercury (online, 1 September 2022), <https://www.themercury.com.au/truecrimeaustralia/police-courts-tasmania/concerns-raised-over-review-into-tasmania-polices-use-of-covert-recording-devices/news-story/f247821e079b33ab126bc456113e0213>.

¹⁹ Department of Justice, Tasmanian Government, ‘Integrity Commission Act 2009 Legislative Reform: Discussion Paper’ (July 2022), 26.

²⁰ ‘Serious misconduct’ is defined in the Act as: (a) a crime or an offence of a serious nature; or (b) misconduct providing reasonable grounds for terminating the public officer’s appointment.

recommendation seeks to expedite the complaint management process and ensure the resourcing of the TIC is focused on the most serious complaints. However, we are concerned that a ‘triaging’ process, as well as a subjective interpretation of what may be considered ‘serious’, may lead to certain types of misconduct remaining unidentified or unaddressed by the TIC. In the context of police complaints, we are concerned this process may unfairly impact groups who are already marginalised in our community, such as Aboriginal Tasmanians. We note community organisations in other jurisdictions have called for independent investigation and management of all police complaints made by Aboriginal and Torres Strait Islander people, noting the significant number of complaints made in relation to conduct which wouldn’t necessarily be considered ‘serious misconduct’, but still have significant individual and community impact (such as allegations of racist language or abuse).²¹

Recommendation:

- The Government should not enact any changes to the Act which may limit the capacity of external oversight bodies (such as the TIC) to investigate and report on allegations of police misconduct – particularly in relation to marginalised groups, such as Aboriginal Tasmanians.
 - This includes both legislative provisions which could limit the TIC’s ability to review decisions or actions taken by police officers, as well as any provisions which limit the TIC’s jurisdiction to allegations of ‘serious misconduct’

Education of public sector agencies

As outlined above, the objectives of the TIC include an educative role, to ‘enhance the quality of, and commitment to, ethical conduct’.²² There are further obligations in relation to the education of public sector employees included in s32 of the Act:

Public officers to be given education and training relating to ethical conduct

(1) The principal officer of a public authority is to ensure that public officers of the public authority are given appropriate education and training relating to ethical conduct.

(2) In particular, the education and training must relate to –

(a) the operation of this Act and any Act that relates to the conduct of the public officer; and

(b) the application of ethical principles and obligations to public officers; and

(c) the content of any code of conduct that applies to the public authority; and

(d) the rights and obligations of public officers in relation to contraventions of any code of conduct that applies to public officers.

As noted in the Cox Review, the above section does not impose an obligation on the TIC to provide opportunities for training.²³ TasCOSS believes, however, that the inclusion of this section – as well as the reference to education as part of the objectives of both the Act and the TIC - make clear the importance of the educative role of the TIC and the need for public officers to be provided opportunities for training and education. We also believe this section imposes a clear obligation on public authorities to ensure their staff are given opportunities for training in relation to ethical conduct, their rights and responsibilities in public office.

²¹ Browne, K, Victorian Aboriginal Legal Service (VALS), Submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria (September 2017), 16-17.

²² *Integrity Commission Act 2009* (Tas) s3(2).

²³ The Hon William Cox AC, RFD, ED, QC, ‘Independent Review of the Integrity Commission Act 2009: Report of the Independent Reviewer’ (May 2016), 64-65.

Considering this obligation, TasCOSS would support legislative provisions which require public authorities to report on training and education provided for staff. This view is reflected in the recommendations of the TIC in their submission to the Cox Review, in which they noted that, *[a]lthough the Act directs public authorities to give appropriate education and training on ethical conduct to public officers, there are no provisions requiring a public authority to report on whether this obligation is being undertaken. This is in direct contrast to other obligations on public authorities.*²⁴ They also recommended the amendment of s 32 to include provisions requiring public authorities to report each year on education and training.²⁵

TasCOSS notes this recommendation has not been accepted by the Government, who state in their response to the Cox Review that, ‘[r]esponsibility for ensuring an ethically healthy organisation rests with the agency head and other senior executives’,²⁶ and that ‘[t]raining is only one component and requiring agencies to report on this one element may distort an agency’s approach to ethical health.’²⁷ We respectfully request reconsideration of this position, as we believe creating a positive obligation on public authorities would likely increase education opportunities for staff. Reports from both interstate and Tasmania have highlighted the lack of training in relation to ethical conduct in certain public bodies: for example, in Victoria, the Victorian Aboriginal Legal Service (VALS) have highlighted the need for more comprehensive training for prison staff to safeguard the rights of Aboriginal prisoners and prevent further deaths in custody.²⁸ The recently released report into Parliamentary workplace culture in Tasmania has also highlighted the need for more comprehensive education and training,²⁹ not only in relation to ethical conduct, but also to ensure public officers are aware of complaint mechanisms and processes.³⁰ Similarly, evidence from the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings have laid bare extensive cultural issues relating to misconduct, including several instances of serious offences being perpetrated against children. We believe education and training in relation to ethical conduct and good governance could also play an importance role in creating cultural shifts within public institutions, including prisons and hospitals, which could in turn provide greater protections against harm.

Recommendation:

- The Government should enact the recommended changes to s32 outlined in the Cox Review, to require public authorities to report each year on education and training.

Further opportunities for reform

As well as the recommendations above, TasCOSS firmly believes the current review of the Act is an opportunity to reflect on additional opportunities for reform, both of the Act and the TIC more broadly.

²⁴ Tasmanian Integrity Commission, Submission to the Independent Five-Year Review of the functions, powers and operations of the Integrity Commission Act 2009 (March 2016), 126.

²⁵ Ibid, 127.

²⁶ Tasmanian Government, ‘Tasmanian Government Response to the Independent Review of the Integrity Commission Act 2009’ (November 2016), 11.

²⁷ Ibid.

²⁸ For example, see Victorian Aboriginal Legal Service (VALS), Submission to the Cultural Review of the Adult Custodial Corrections System (December 2021), 81-82.

²⁹ Equal Opportunity Tasmania, ‘Motion for Respect: Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services’ (August 2022), 31-32.

³⁰ Ibid, 75.

Expanded jurisdiction

For an integrity commission to effectively monitor the conduct of the public sector, the jurisdiction must be sufficiently broad to encompass a wide range of government workers. This has been recognised in recent academic literature exploring the scope of a potential federal integrity body; for example, the National Integrity Committee, a body established to provide policy advice in relation to accountability reforms,³¹ have emphasised the importance of broad jurisdiction, recommending an integrity body ‘must have the ability to investigate any person, whether or not they are a public official, whose conduct affects the impartial exercise of public Administration’.³²

The jurisdiction of the Tasmanian Integrity Commission is currently limited to the conduct of ‘public officers’,³³ defined in section 6 of the Act as:

- (a) a Member of Parliament;
- (b) a member of a council;
- (c) the principal officer of a public authority other than a person specified in section 5(2) in relation to the principal officer's office;
- (d) the holder of a statutory office other than the Chief Commissioner and the chief executive officer;
- (e) a commissioned police officer;
- (f) the holder of a senior executive office;
- (g) such other persons as may be prescribed.

The TIC can investigate allegations of misconduct in relation to a public officer, as well as starting an own-motion investigation in relation to the conduct of a public officer. However, the term ‘public officer’ means the TIC is limited in relation to the types of people who can be investigated, which is significantly more constrained than the scope of other state integrity bodies. For example, the ACT legislation contains a broader definition of ‘public official’ which includes Government department employees,³⁴ as well as an expansive definition of both ‘corrupt conduct’, which includes any conduct which ‘adversely affects, either

³¹ Information about the National Integrity Committee, a group of former Judges established to explore the development and design of a federal integrity commission, can be found here: <https://australiainstitute.org.au/expert/national-integrity-committee/>.

³² National Integrity Committee, ‘The jurisdiction of a National Integrity Commission’ (9 April 2018), 5 – accessed at <https://apo.org.au/node/230431>.

³³ *Integrity Commission Act 2009* (Tas) s8.

³⁴ The definition of ‘public official’ is found at s6 of the *Integrity Commission Act 2018* (ACT):

- (a) means a person who—
 - (i) has public official functions for the Territory; or
 - (ii) is acting in a public official capacity for the Territory; and
- (b) includes the following:
 - (i) a member of the Legislative Assembly;
 - (ii) a member of staff of an MLA;
 - (iii) a judicial officer;
 - (iv) a presidential member, non-presidential member, assessor or registrar of the ACAT;
 - (v) an officer of the Assembly;
 - (vi) a statutory office-holder;
 - (vii) a public servant;
 - (viii) any other person who is—
 - (A) an employee of a public sector entity; or
 - (B) a contractor, employee of a contractor, or volunteer exercising a function of, a public sector entity.

directly or indirectly the honest or impartial exercise of functions by a public official or a public sector entity',³⁵ and 'serious corrupt conduct'.³⁶

The importance of jurisdiction has been highlighted by the National Integrity Committee, who have recommended (in relation to a potential federal body) that an integrity commission should have 'a broad jurisdiction, including the ability to investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration'.³⁷ This is consistent with the findings of an independent panel who reviewed the NSW Independent Commission Against Corruption (ICAC),³⁸ who recommended amendments to the definition in the NSW legislation to include the conduct of any person (whether or not a public official) that impairs or could impair public confidence in public administration.³⁹

An expansive definition which goes beyond the current scope of the Act would ensure the Act could be applied in a wider range of circumstances, which could address some of the issues relating to the TIC's jurisdiction raised in the Discussion Paper. For example, the Discussion Paper explores concerns relating to the current application of the Act to members of Parliament during election campaigns,⁴⁰ confirming that a current issue with the application of the Act is that it cannot be applied to sitting members of Parliament following the dissolution of a House of Parliament for an election. This is an issue which has been raised by organisations such as The Australia Institute, who note these provisions have limited the TIC's capacity in the past to investigate instances of misconduct during election periods.⁴¹ Recommendation 37 is that the definition in the Act be amended to include volunteers and officers exercising statutory functions or powers, noting there is a 'lack of clarity and potential inconsistency in relation to whether volunteers and officers who exercise statutory functions and powers are covered';⁴² however, the Discussion Paper also notes the Government has not accepted this recommendation.⁴³

Australian research has also highlighted that the strongest state-based integrity bodies also allow for investigations of third parties. A 2021 report from the Centre for Public Integrity recommended the federal government model the proposed National Integrity Commission on bodies from NSW or QLD,⁴⁴ which both allow for the investigation of the conduct of any person (including third parties) who affects the impartial exercise of public administration, including those outside the public service who may seek to unduly influence public decision making.

³⁵ *Integrity Commission Act 2018* (ACT) s9.

³⁶ *Integrity Commission Act 2018* (ACT) s10: 'serious corrupt conduct' means corrupt conduct that is likely to threaten public confidence in the integrity of government or public administration.

³⁷ National Integrity Committee, 'The jurisdiction of a National Integrity Commission' (9 April 2018), 8 – accessed at <https://apo.org.au/node/230431>.

³⁸ Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption, 'Report' (30 July 2015), accessed at <https://www.oicac.nsw.gov.au/assets/oicac/reports/other-reports/Independent-Panel-Review-of-the-jurisdiction-of-ICAC-2015-Report.pdf>.

³⁹ *Ibid*, xi.

⁴⁰ Department of Justice, Tasmanian Government, 'Integrity Commission Act 2009 Legislative Reform: Discussion Paper' (July 2022), 23.

⁴¹ For example, see Carr, E and Hay, R, The Australia Institute, 'Still Toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania' (March 2022), 10-11.

⁴² Department of Justice, Tasmanian Government, 'Integrity Commission Act 2009 Legislative Reform: Discussion Paper' (July 2022), 44.

⁴³ *Ibid*.

⁴⁴ The Centre for Public Integrity, 'Australia's Weakest Watchdog' (October 2021), accessed at https://publicintegrity.org.au/research_papers/australias-weakest-watchdog/.

TasCOSS firmly supports the expansion of the jurisdiction of the TIC in accordance with the recommendations of the National Integrity Committee, allowing the TIC to ‘investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration’.

Recommendation:

- The Government should amend the Act to expand the jurisdiction of the TIC, allowing them to ‘investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration’.

Expansion of the education and training role

TasCOSS strongly believes the TIC should direct more resources towards their education and training role. We understand the TIC provides training (including workshops and presentations) on a number of issues relevant to public bodies, including good decision-making in the public interest, integrity in public service, and the role and functions of the Integrity Commission.⁴⁵ However, as highlighted above, recent reports raise questions about whether public bodies fully understand the role of the TIC, particularly in relation to the role in investigating misconduct.

The recently-released report, ‘Motion for Respect: Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services’,⁴⁶ explores the role played by the TIC in relation to allegations of misconduct within the Ministerial and Parliamentary Services (‘the MPS’) in Tasmania, and notes that despite high levels of incidence of misconduct (including sexual harassment) occurring in the workplace, the TIC has received very few complaints.⁴⁷ The report notes that the evidence ‘[s]uggests that there is low awareness of the function of the Integrity Commission or the existence of the Public Interest Disclosures Act and Procedure’,⁴⁸ and the recommendations made in the report include the recommendation for clearer and more comprehensive information to be provided to MPS staff in relation to the role of the TIC.⁴⁹

TasCOSS further believes that the educative role of the TIC should not be limited to those working in public office but should also extend to the Tasmanian community more broadly. We believe there is a need for greater awareness and understanding of the role of public officers and their ethical duties, as well as the role of the TIC in investigating and reporting on misconduct, to increase accountability and confidence in public authorities in Tasmania. We recognise there are publications and resources provided by the TIC which are publicly available on their website,⁵⁰ however we would encourage the Tasmanian Government and the TIC to work together to create more opportunities for public education, training and information.

Recommendations:

⁴⁵ Information about training provided by the TIC can be found on their website - <https://www.integrity.tas.gov.au/research-and-education/prevention>.

⁴⁶ Equal Opportunity Tasmania, ‘Motion for Respect: Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services’ (August 2022).

⁴⁷ Ibid, 74-76.

⁴⁸ Ibid, 75.

⁴⁹ Ibid, 31.

⁵⁰ Tasmanian Integrity Commission, Publications and Resources, accessed at: <https://www.integrity.tas.gov.au/publications>.

- The TIC should be supported to expand their education and training role, to ensure those working in public authorities are aware of their ethical obligations, as well as the role of the TIC in investigating and responding to instances of misconduct.
- The TIC should also be supported to engage in community education and training in relation to public decision-making and governance in Tasmania, to raise awareness of issues relating to misconduct in public office, and ensure the community is well-informed in relation to the role of the TIC and the complaints process.

Funding

Reports have raised concerns about the level of funding provided to the TIC and how this impacts the ability of the TIC to exercise its statutory functions.⁵¹ Although the TIC has received additional funding in the last two State Budgets, the level of funding per capita remains proportionately lower than other jurisdictions – according to a 2022 report from The Australia Institute, the TIC has the second-lowest per capita budget in Australia.⁵²

TasCOSS has previously raised concerns in relation to the resourcing of the TIC and have highlighted the need for additional resourcing to ensure the TIC is able to perform its statutory functions.⁵³ Given the recent expansion of the work of the TIC to include the regulation and monitoring of lobbying in Tasmania,⁵⁴ we believe it is extremely important for the Government to ensure the funding of the TIC allows for robust and comprehensive government oversight, as well as the ongoing education of the public sector as required by the Act.

Recommendation:

- The TIC should be adequately funded to perform all its statutory functions.

Structural and cultural change to support transparency and promote greater awareness of and engagement in political process

Reports in relation to the TIC, and its role in promoting public confidence in governance in Tasmania, have raised concerns in relation to the differences between the TIC and similar bodies in other jurisdictions. Some of these differences are the result of the legislative framework in Tasmania – such as the jurisdiction of the TIC, explored above. There are other differences, however, which point to the need for cultural change, both within the TIC and the broader Tasmanian community, to meet the objectives under the Act.

One such example is the lack of public hearings in Tasmania. The Act does allow for public hearings in the case of an ‘inquiry’, a broad investigation in which a range of powers can be invoked by the TIC.⁵⁵ However, The Australia Institute have noted that despite the power to hold an inquiry being enshrined in legislation, the TIC ‘must go through a prolonged process before it can launch a full inquiry using all its investigative

⁵¹ Aulby, H, The Australia Institute, ‘Tasmania’s toothless watchdog: A comparison of the Tasmanian and NSW anti-corruption watchdogs’ (January 2018), 8; Carr, E and Hay, R, The Australia Institute, ‘Still Toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania’ (March 2022), 14-15.

⁵² Carr, E and Hay, R, The Australia Institute, ‘Still Toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania’ (March 2022), 14-15.

⁵³ TasCOSS, Submission to Tasmanian Integrity Commission: Reforming Oversight of Lobbying in Tasmania (June 2022).

⁵⁴ Tasmanian Integrity Commission, Lobbying Oversight, accessed at: <https://lobbyists.integrity.tas.gov.au/>.

⁵⁵ *Integrity Commission Act 2009* (Tas) s64.

powers',⁵⁶ meaning public hearings are less likely (and in fact, have never occurred in Tasmania). The Australia Institute contrasted this with the situation in other Australian jurisdictions, such as NSW and Victoria, where public hearings can form part of preliminary inquiries.⁵⁷

According to The Australia Institute:

*As the role of anti-corruption commissions is to investigate and expose corruption, and much of the content of investigations comes out in hearings, the act of hiding hearings from public view threatens the proper function of the commission. Integrity commissions assist in building public trust in government, particularly when hearings are held in public view. Australia Institute polling shows that 85% of people believe public trust in parliament would increase with a federal ICAC with public hearings, but that without public hearings 57% of people said public trust would fall.*⁵⁸

Similarly, The Australia Institute have highlighted the low rates of investigations in Tasmania when compared with other Australian jurisdictions, noting that the TIC has completed fewer investigations than any other jurisdiction, other than the ACT. According to The Australia Institute, 'Tasmania's Commission has made 37 investigations, compared to just 21 in the ACT. However, considering that the ACT commission was established in 2019 and Tasmania's was established in 2010, the ACT Integrity Commission has conducted 2.2 times as many investigations per year as the Tasmanian Integrity Commission. All other commissions have undertaken between 3.6 to 12.4 times as many investigations per year as Tasmania.'⁵⁹ TasCOSS believes this reflects not only the need for legislative change (such as those changes recommended above), but a need to address the culture within the TIC, as well as potential resourcing issues, which may be impacting the rates of investigation. We also believe the low rates may reflect a poor level of community or sector understanding about the role of the TIC in overseeing, investigating and reporting on misconduct.

As outlined above, the stated objectives of the TIC as defined in the Act include the improvement of standards and ethics in public authorities, enhancing public confidence in public officers, and increasing the quality of and commitment to ethical conduct. As the legislative basis for the TIC, the Act clearly plays a key role in ensuring the TIC is established in accordance with its objectives and is able to effectively work towards achieving its stated goals. However, TasCOSS believes the objectives outlined in the Act will not be achieved through reform of the Act alone; as stated in previous submissions,⁶⁰ TasCOSS strongly believes a clear commitment to good governance in Tasmania requires a comprehensive reform of several democracy-related issues, including electoral donation laws, a review of the Right to Information process and legislation, and general considerations about how the public can access government information. We believe these issues are often interrelated and that recommendations in relation to particular issues can have beneficial flow-on effects for accountability generally – for example, our recent recommendation in relation to the publication of ministerial diaries as part of effective lobbying reform could also support the work of the TIC in investigating allegations of misconduct in public office. TasCOSS firmly believes that prioritising these issues will address the need for greater transparency and accountability in governance, which in turn will improve community confidence in public authorities.

⁵⁶ Aulby, H, The Australia Institute, 'Tasmania's toothless watchdog: A comparison of the Tasmanian and NSW anti-corruption watchdogs' (January 2018), 16.

⁵⁷ Ibid.

⁵⁸ Ibid, 14.

⁵⁹ See Carr, E and Hay, R, The Australia Institute, 'Still Toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania' (March 2022), 17.

⁶⁰ For example, see TasCOSS, Submission to Tasmanian Integrity Commission: Reforming Oversight of Lobbying in Tasmania (June 2022).

Finally, we believe there is significant community interest in issues relating to good governance, demonstrated by the extensive public debate around the National Integrity Commission in the recent federal election, as well as ongoing reflections on how public authorities can be more effectively held to account for decisions which impact marginalised groups (such as those who gave evidence at the recent Commission of Inquiry). However, despite the demonstrated public interest in this issue, TasCOSS are concerned that the format of the Discussion Paper may not result in broad community consultation on this issue. We respectfully recommend that further public consultation on issues relating to integrity and good governance in Tasmania are conducted in a way which promotes meaningful engagement from a wide range of individuals and groups. Ideas to improve public engagement could include, for example, the release of materials (such as the Discussion Paper) in a Plain English format, or arranging targeted community consultation and/or focus groups for more in-depth discussion of issues.

Recommendations:

- The Government should enact legislative changes to promote an increase in both investigations and inquiries in Tasmania – this could include provisions allowing public hearings at a preliminary stage, as well as a streamlined process for commencing an inquiry.
- The Government should explore other options for legislative review relating to good governance and accountability in public decision-making – this could include, but is not limited to, a review of the following:
 - Review of Right to Information laws
 - Review of electoral donation laws
 - Publication of ministerial diaries and other government information relating to decision-making
- Future consultation on issues relating to integrity in public office should be conducted in a way to promote meaningful community engagement with issues.

Conclusion

TasCOSS believes the TIC plays an important role in ensuring good governance in Tasmania. The current review of the Act is an opportunity to explore how the TIC can be supported to perform all its legislative functions, including investigating, reporting on and responding to misconduct in public office in Tasmania, as well as educating all Tasmanians on the responsibilities of public officers and the role of the TIC in safeguarding our democratic rights. We therefore recommend not only consideration of the recommendations of the Cox Review, but an examination of how the Act can be amended to promote the stated objectives, as well as additional changes (such as increased funding) to increase the capacity of the TIC.

Recommendations

- The Government should not enact any changes to the Act which may limit the capacity of external oversight bodies (such as the TIC) to investigate and report on allegations of police misconduct – particularly in relation to marginalised groups, such as Aboriginal Tasmanians.

- This includes both legislative provisions which could limit the TIC's ability to review decisions or actions taken by police officers, as well as any provisions which limit the TIC's jurisdiction to allegations of 'serious misconduct'
- The Government should enact the recommended changes to s32 outlined in the Cox Review, to require public authorities to report each year on education and training.
- The Government should amend the Act to expand the jurisdiction of the TIC, allowing them to 'investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration'.
- The TIC should be supported to expand their education and training role, to ensure those working in public authorities are aware of their ethical obligations, as well as the role of the TIC in investigating and responding to instances of misconduct.
- The TIC should also be supported to engage in community education and training in relation to public decision-making and governance in Tasmania, to raise awareness of issues relating to misconduct in public office, and ensure the community is well-informed in relation to the role of the TIC and the complaints process.
- The TIC should be adequately funded to perform all its statutory functions.
- The Government should enact legislative changes to promote an increase in both investigations and inquiries in Tasmania – this could include provisions allowing public hearings at a preliminary stage, as well as a streamlined process for commencing an inquiry.
- The Government should explore other options for legislative review relating to good governance and accountability in public decision-making – this could include, but is not limited to, a review of the following:
 - Review of Right to Information laws
 - Review of electoral donation laws
 - Publication of ministerial diaries and other government information relating to decision-making