



Department of Justice

Office of the Secretary

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Re: Review of the Integrity Commission Act 2009 (Tas)

The Tasmanian Aboriginal Legal Service (“TALS”) welcomes the opportunity to provide feedback in relation to the current review of the *Integrity Commission Act 2009* (Tas) (“the Act”).

TALS is a community legal centre that specialises in criminal, civil and family law matters for Aboriginal peoples across Tasmania. Our goal is to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade.

TALS is a member-based, independent, not-for-profit, that advocates for law reform. TALS is an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

Background

The Act commenced in 2010 and is the legislation governing the Tasmanian Integrity Commission (“the TIC”), one of the independent oversight bodies in Tasmania with capacity to investigate allegations of misconduct and enhance ethical standards in public office. The objectives of the TIC are outlined in the Act:¹

(2) *The objectives of the Integrity Commission are to –*

(a) *improve the standard of conduct, propriety and ethics in public authorities in Tasmania; and*

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

(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.

(3) The Integrity Commission will endeavour to achieve these objectives by –

(a) educating public officers and the public about integrity; and

(b) assisting public authorities deal with misconduct; and

(c) dealing with allegations of serious misconduct or misconduct by designated public officers; and

(d) making findings and recommendations in relation to its investigations and inquiries.

The current review of the Act relates to a previous review conducted in 2016 by the Hon William Cox, who made a number of recommendations in relation to the Act, and further legislative reform which were subsequently detailed in a report tabled in Parliament in 2016 (“the Cox Report”).²

Strong, independent oversight of public servants and institutions is important to all Tasmanians but is particularly relevant for Tasmanian Aboriginal communities, given their lived experiences of discrimination and harm continuously perpetrated by public authorities. Ongoing issues such as the overincarceration of Aboriginal people, police failures to appropriately respond to Aboriginal victim-survivors of family violence, and Aboriginal deaths in custody, serve as a stark reminder for the need to enhance accountability measures. Such accountability measures are essential for promoting the rights of Aboriginal Tasmanians and building a stronger rapport between public offices, and Aboriginal and Torres Strait Islanders.

TALS is broadly supportive of the recommendations contained in the Cox Report, and this submission will not respond to all issues raised in the Integrity Commission Act 2009 Legislative Reform: Discussion Paper (“the Discussion Paper”).³ Our submission will focus closely on reform recommendations which we have identified to be of particular relevance to Tasmanian Aboriginal individuals, families and communities:

1. Strengthening the oversight and accountability of the Tasmanian police;
2. Increased funding to ensure the TIC is adequately resourced and able to perform their stated functions;
3. Additional reform aimed to increase public knowledge relating to issues of cultural awareness, increasing accountability and confidence in the public sector.

² The Hon William Cox AC, RFD, ED, QC, ‘Independent Review of the Integrity Commission Act 2009: Report of the Independent Reviewer’ (May 2016), accessed at https://www.integrityactreview.tas.gov.au/_data/assets/pdf_file/0006/347649/Report_of_the_Independent_Review_of_the_Integrity_Commission_Act_2009_-_May_20162.PDF.

³ Department of Justice, Tasmanian Government, ‘Integrity Commission Act 2009 Legislative Reform: Discussion Paper’ (July 2022).

Police oversight and reform

The TIC is one of the independent bodies in Tasmania vested with authority to investigate and respond to complaints appertaining to police officer misconduct.⁴ The Tasmania police also have an internal process for investigating and determining complaints, outlined in sections 44-47 of the *Police Services Act 2003* (Tas) and in the Commissioner's Directions for Conduct and Complaint Management, known as 'Abacus'.⁵

There are several recommendations from the Cox Review, highlighted in the Discussion Paper, which relate to complaints made against Tasmania Police. We will respond, firstly to the issues raised in the Discussion Paper, then develop further suggestions for the strengthening of police accountability across Tasmania.

Our response to the police misconduct-related recommendations in the Discussion Paper

Internal review of police misconduct

The Cox Report included a number of recommendations relating to police complaints:

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

The Discussion Paper indicates the Government will be engaging in further consultation relating to the recommendation that referrals of police misconduct be directed to the Tasmania Police.⁶ TALS wishes to raise concerns over the appropriateness of the Tasmania Police being appointed as the responsible agency to investigate such misconduct. This concern remains relevant despite whether police misconduct investigations involve an alleged criminal offence.

We strongly believe the Tasmania Police should not be responsible for investigating complaints against police officers in the first instance. As noted by the TIC in their submission to the Cox Review, '*Tasmania Police will not always be the most appropriate body to investigate criminal allegations against its own members [particularly] if those members were very senior within the service*'.⁷ Whilst we agree it would be extremely inappropriate for the police to investigate and respond to complaints of misconduct/alleged misconduct by senior officials, TALS strongly

⁴ The Tasmanian Ombudsman also investigates complaints against police pursuant to their powers under the *Ombudsman Act 1978* (Tas).

⁵ Information about Abacus, as well as a link to the directions, can be found on the Tasmania Police website: <https://www.police.tas.gov.au/about-us/abacus/>.

⁶ Department of Justice, Tasmanian Government, 'Integrity Commission Act 2009 Legislative Reform: Discussion Paper' (July 2022), 13.

⁷ Tasmanian Integrity Commission, Submission to the Independent Reviewer, 'Independent Five Year Review of the functions, powers and operations of the Integrity Commission Act 2009' (March 2016), 32.

suggests all complaints made against police officers be handled by an independent agency, not only those involving officials in positions of seniority.

Whilst a satisfactory outcome in a police complaint investigated internally may not significantly impact trust between Tasmania Police and an Aboriginal and/or Torres Strait Islander person, a complaint that is determined internally to be without merit is always going to be seen by the person laying the complaint to be tainted by internal bias and the already fractured relationship between Aboriginal communities and Tasmania Police further extends. The lack of trust and accountability is further exacerbated when it is evident that Tasmania Police does not have identified positions within the force working with communities. This means there are no safeguards for those making complaints that people with a real and genuine understanding of issues facing Aboriginal and Torres Strait Islander people in Tasmania are considering the complaint or having input into any decisions in respect of them. It is not known how many members of Tasmania Police identify as Aboriginal and/or Torres Strait Islander, and positions dedicated to liaising with Aboriginal people are often filled with members of Police who do not identify.

Police accountability, and the need for independent oversight of police misconduct was identified as a fundamental issue in the Royal Commission Into Aboriginal Deaths in Custody,⁸ and the importance of independent oversight has been continually reiterated by several national and state-based organisations. As noted by the Australian Law Reform Commission, '[w]hile in the intervening 26 years the police have undertaken work to improve relationships with Aboriginal and Torres Strait Islander peoples and communities, a perception of lack of accountability for wrongdoing continues to undermine confidence and trust in police.'⁹

The ALRC further identified several issues with internal complaint-management systems relating to police misconduct:¹⁰

- a perceived lack of impartiality of the police complaints processes;
- low substantiation rates when complaints are made;
- police being able to influence complaint processes;
- undue or arbitrary time limits for the making of complaints;
- powers given to independent police complaints bodies being too narrow; and
- independent police complaints bodies too frequently referring complaints back to police instead of conducting an external review

Recent reports from other Australian jurisdictions demonstrates both the high incidence of misconduct experienced by Aboriginal individuals and communities; as well as the low rates of substantiation following investigation. In their submission to the Victorian inquiry into the external

⁸ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991) Vol 4 ch 28.5, accessed at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/cth/AURoyalC/1991/4.html?stem=0&synonyms=0&query=Royal%20Commission%20into%20Aboriginal%20Deaths%20in%20Custody#Heading1376>.

⁹ Australian Government, Australian Law Reform Commission, 'Pathways To Justice—Inquiry Into The Incarceration Rate Of Aboriginal And Torres Strait Islander Peoples: ALRC Report 133' (11 January 2018), 14.56.

¹⁰ Ibid, 14.59

oversight of police corruption and misconduct, the Victorian Aboriginal Legal Service (VALS) noted the following:

Low substantiation rates and poor communication with complainants, combined with concerns about lack of independence where police are investigating complaints against police, continue to undermine community confidence in the complaints process. This in turn leads to lower rates of complaints, which means that police are not being held to account for their actions, and there is less opportunity for Victoria Police to learn from its mistakes and improve its relationship with Aboriginal and Torres Strait Islander communities into the future. The current flaws in the complaints process further disempower and alienate Aboriginal and Torres Strait Islander community members, depriving them of the opportunity to raise concerns about infringements on their rights by police in an easily accessible, transparent and un-biased process... An independent, victim-focused complaints system would improve the relationship and respect between the Aboriginal community and police, and may therefore assist in reducing the over- and under-policing of Aboriginal Victorians, which contributes to over-incarceration and under-reporting of crimes.¹¹

These concerns have been further echoed by organisations from other Australian jurisdictions, highlighting the ineffectiveness of internal complaints mechanisms nationally, particularly for Aboriginal and Torres Strait Islander individuals, families and communities. Such ineffectiveness can have long term ramifications for communities as a whole of systems, resulting in a lack of confidence and trust in public offices.

For example, the Aboriginal and Torres Strait Islander Legal Service of QLD (ATSILS) noted the following in a recent submission:¹²

Public interest in our view should always be the overarching principle governing the investigation of conduct of police officers. The community is entitled to expect that law enforcement officers are scrupulously ‘clean’ and their actions highly defensible. Not only must justice be done – but it must be seen to be done...In our view, fundamental principles of natural justice should mandate, in the majority of cases, the investigation of complaints against police by an independent body like the CCC.’

‘Triaging’ of complaints

As well as the concerns aforementioned within this review, particularly noting those relating to internal complaint investigations by Tasmania Police, TALS is also concerned by the recommendation the TIC propose to manage complaints in which ‘serious misconduct’ is alleged.¹³

¹¹ Kate Browne, Victorian Aboriginal Legal Service, Submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria (September 2017), 8.

¹² Aboriginal and Torres Strait Islander Legal Service QLD (ATSILS), Submission on the Review of the Crime and Corruption Commission Act 2001 (July 2015), 10.

¹³ 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 - Department of Justice, Tasmanian Government, ‘Integrity Commission Act 2009 Legislative Reform: Discussion Paper’ (July 2022), 26.

‘Serious misconduct’ is defined in the Act as:¹⁴

(a) a crime or an offence of a serious nature; or

(b) misconduct providing reasonable grounds for terminating the public officer's appointment

We note that VALS has raised serious concerns on the classification of complaints brought by Aboriginal individuals against police, supported by data collected through an internal project: The Koori Complaints Project. VALS have highlighted the need for all complaints made by Aboriginal peoples, despite the level of supposed severity, to be investigated by an independent body.

VALS also note, that while a significant number of complaints made against the police relate to behaviour which could be easily classified as ‘serious misconduct’ (for example, assaults by police officers against Aboriginal complainants), many complaints relate to conduct which would not necessarily result in the termination of the officer’s employment (for example, abusive or offensive language). These ‘lower level’ complaints should be treated with the same level of care and importance as those deemed to be ‘serious misconduct’.

VALS note:

Racist language or abuse should also be...investigated independently, as it can have important ramifications for the relationship between Aboriginal and Torres Strait Islander communities and police, as well as a negative impact on the recipient of the abuse. It is particularly important to ensure that duty failure complaints, which may be viewed as ‘lower level’ complaints are prioritised and investigated independently where they involve an Aboriginal person and particularly for more serious failures such as the failure to act where family violence is involved or where there is a failure to provide medical assistance. Ensuring that complaints reflective of over or under policing of Aboriginal and Torres Strait Islander communities are independently investigated would be an important step towards mending the relationship between these communities and Victoria Police.¹⁵

Opportunities for reform

Instead of limiting the TIC’s opportunity to engage in independent reviews of police misconduct, we urge the Government to consider alternatives to the current model of inquiry. Alternatives offered within this review, as well as from other Australian jurisdictions would enhance transparency and build accountability throughout police decision-making processes in Tasmania.

We note there have been multiple calls in other Australian jurisdictions for an independent body to investigate and report on police complaints. The Police Accountability Project in Victoria has pushed for the Victorian government to ‘establish a body separate from police to independently investigate complaints made against police,’¹⁶ citing the Police Ombudsman of Northern Ireland as

¹⁴ Integrity Commission Act 2009 (Tas) s4.

¹⁵ Kate Browne, Victorian Aboriginal Legal Service, Submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria (September 2017), 16-17.

¹⁶ Police Accountability Project, ‘Independent Investigation of Complaints against the Police: Policy Briefing Paper’ (2017), 5.

a model. However, they duly note that if a separate body were not established, the police oversight function of the Victorian integrity body (IBAC) could be further strengthened ‘with some significant legislative and cultural changes, which would include the quarantining of a dedicated specialist, police focused investigative unit, separate from teams that carry out anti-corruption investigations.’¹⁷

A further area for urgent reform relates to the appropriate education, including cultural education, of public officers (including but not limited to police officers), in order to increase awareness of the needs of Aboriginal individuals, families and their communities. We note the TIC plays an essential educative role in preventing and responding to misconduct, however, TALS believes there is an urgent need for improved cultural awareness education, particularly across the public sector in Tasmania.

By increasing awareness and broadening public understanding of the continued lived experiences and histories of Aboriginal Tasmanians, the standard of behaviour conducted by public authorities will undoubtedly improve. Increased cultural awareness and understanding is critical to strengthening the existing relationships between public authorities and Aboriginal individuals, families and communities. It is essential that educational programs and initiatives are developed in collaboration with local Aboriginal community-controlled organisations, with a clear focus on prioritising education in settings where Aboriginal and Torres Strait Islander peoples are currently most at risk of experiencing institutional harm (e.g. Prisons, hospitals and police stations).

Finally, TALS has concerns over the practicality in achieving the TIC’s stated objectives given the current resource funding allocated.¹⁸ This concern has also been raised by other organisations, and is supported by reports which highlight the TIC’s per capita budget, which is currently listed as the second lowest of its kind in Australia.¹⁹

We urge the Government to ensure the TIC is adequately resourced. The sufficient assignment of resources is imperative to the provision of the TIC’s statutory duties such as the comprehensive and meaningful oversight of public authorities. Increased resource allocation would also enable the implementation of cultural awareness education programs, and preventative training across the public sector, ensuring public officers are aware of their obligations in avoiding and responding to instances of potential misconduct.

Summary

TALS is firmly of the view that for the TIC to be operational at an effective capacity, there must be critical reforms made to the Act, which acknowledges the complexed relationship between Aboriginal and Torres Strait Islanders living in Tasmania and public officials. Whilst the TIC is a step forward for accountability and transparency in public offices, it is essential that misconduct, despite its deemed severity, be handled through an independent agency. This is of particular

¹⁷ Ibid.

¹⁸ 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.

¹⁹ Carr, E and Hay, R, The Australia Institute, ‘Still Toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania’ (March 2022), 14-15.

importance for complaints surrounding alleged police misconduct, filed by Aboriginal and Torres Strait Islander Tasmanians. Foundational trust between Aboriginal Tasmanians and public officials may only begin to broaden with the enhancement of an impartial complaint management system, and the implementation of mandatory cultural awareness education. The recommendations discussed in this submission seek to build broad accountability and confidence in the public sector, as well as provide relief to Aboriginal peoples across the state; ensuring their rights are upheld, and a history of continuous discrimination may come to an end.

Please feel free to contact me should you have any further questions.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'HPP', written in a cursive style.

Hannah Phillips
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Tasmanian Aboriginal Legal Service
