Directions For the Future

A strategic planning process will be initiated and a five year Strategic Plan, an annual Business Plan and a Risk Management Plan will be developed. Organisational values will be developed in close consultation with staff, the Board and key stakeholders and underpin key documents such as the organisation’s Code of Conduct. The Strategic Plan is yet to be approved by the Board, it is apparent that the primary focus of the Integrity Commission should be on the prevention of misconduct in the first place. To this end, research on national and international best practice in corruption and misconduct prevention will be essential, as will public sector and community engagement, and the professional design and delivery of appropriate training and education programs.

The aim will be to provide value for money and the best possible "bang for the buck." In this regard, it will be essential that the Integrity Commission has a strong organisational focus and is not seen to just targeting high profile individuals. Subject to direction from the Board, it is hoped to conduct organisational reviews, their complaint handling systems and their ability to investigate and deal appropriately with misconduct (which would be enabled by section 45(1)(d) of the Act). A suitable methodology for this approach is currently under development.

The future will be about understanding the causes of public sector misconduct in Tasmania, whether structural, behavioural or cultural, and addressing such factors in partnership with the Minister and the Board. The Commission will also be about building misconduct resistant cultures, working cooperatively with them and building the capability of such organisations to deal effectively with their own misconduct matters. It will be essential to the Integrity Commission to know what is happening within the public authorities, so the issue of notification by principals officers will certainly be pursued. The future is about values-based organisations and the development of trust and mutual respect, as opposed to organisations that are compliance driven and ruled by fear.

It is also about strong and visible ethical leadership, effective leadership, supervision and management, and holding supervisors to account. It is also about dealing appropriately with staff who come to attention through monitoring, coaching, remedial training and appropriate performance management. The setting of high but pragmatic standards of conduct and the inculcation of strong values-driven and supportive cultures will be essential to future success.

As part of the strategic and business planning processes, it will be essential to monitor and evaluate organisational and individual performance to ensure the highest standards of performance and return on investment. There are provisions in the Act for a three year review by the Joint Standing Committee on Independent reviews and the Minister (section 106). It will be important to review the Commission in three to five years, the impact that an Integrity Commission has had on the ethical health of Tasmanian public authorities and levels of community confidence. The future of the Commission will need to be considered further down the track to ensure that the Commission is able to be effective (see [Hammond, 2009] and [Cooper, 2010]).

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Future Evaluation And Review

Committee on Integrity (see section 24(1)(e)) and a five year independent review to be commissioned by the Minister (section 106). It will be interesting

References

- “Cash to Match Power” (2010)
- Hammond, Commissioner (2009) "Integrity and the Public Sector" 20 March, Perth

Introduction

The Integrity Commission opened its doors on Friday 1 October 2010. This was an historic moment in Tasmanian legal and political history. This paper outlines the early observations of the new CEO in relation to the Tasmanian model. It presents her views on the issues and challenges that the organisation is likely to face into the future, given her personal knowledge and experience, and the experiences of other Australian jurisdictional models.

The Integrity Commission Act 2009 was a demonstrated need for an independent body with a complaint handling and investigative role. It was recognised that there was a need for a new independent, investigative and advisory role. This paper underpins the CEO’s public lecture delivered at the University of Tasmania entitled “A Conversation with Barbara Etter” on Wednesday 13 October 2010.

Background

A number of high profile incidents in Tasmania led to serious consideration being given to the establishment of a public sector integrity agency, similar to agencies already established in WA (the Corruption and Crime Commission or CC C), Queensland (the Crime and Misconduct Commission or CM C) and NSW (the Independent Commission Against Corruption or ICAC). As a result, the Joint Select Committee on Ethical Conduct was established and delivered its report in July 2009. Amongst other things, it found that there was a clear need for a new body to “address the identified deficiencies in the existing system of governance” (2009, p.5). Legislation was subsequently developed and debated in the Tasmanian Parliament in November 2009.

The start date for the Commission was set for 1 July 2010. However, with the disruption of a fiercely fought election where the final outcome was not known for weeks, and delays in the selection and recruitment process, it was necessary to push the start date back to 1 October 2010 to allow for a proper establishment phase and appointments to critical positions such as that of Chief Commissioner and no ex officio Board members.

The CEO, Barbara Etter APM, a former Assistant Commissioner with the Western Australia Police who had headed up the then Corruption Prevention and Investigation Portfolio for a three year period and was the Chair of the WA Integrity and Crime Commission, had worked closely with the CCC, the then independent WA Integrity and Crime Commission and the Audit Commission of SA, and the Office of Police Integrity (OPI) in Victoria. Following several high profile incidents and the report of the Joint Select Committee on Ethical Conduct in July 2009, there was a demonstrated need for an independent body with a complaint handling and investigative role. It was recognised that there was a need for a new independent, investigative and advisory role. This paper underpins the CEO’s public lecture delivered at the University of Tasmania entitled “A Conversation with Barbara Etter” on Wednesday 13 October 2010.

The Integrity Commission Act 2009 is unique in its approach to addressing community concerns about accountability in government and enhancing community trust and confidence. The primary role of the Commission is one of prevention, education and advice (see section 3), but with the very real role of complaint handling, assessment and referral, with the possibility of an investigation or even an “inquiry” or public hearing.

The Act, which covers Members of Parliament, ministerial staff, public sector agencies, State-owned companies, Government Business Enterprises, police and local government and other types of organisations listed as public authorities at section 5 of the Act, deals with the issues of “misconduct” and “serious misconduct” by public officers and a special category of “public officers” (see Members of Parliament and Members of the Executive). The Commission is designated at section 6 of the Act, section 76 of the Act states that the Integrity Commission is dealt with complaints relating to misconduct by public officers, including State Members of Parliament. The organisation has a clear triage role and is not given automatic overview powers with other integrity agencies. The aim is for the organisation to be focused on its core mechanism already in place in Tasmania, such as the Auditor-General, the State Service Commissioner and the Ombudsman (or “integrity entities” as defined in the Act) and Parliamentary oversight mechanisms. In regards to this approach, all three positions mentioned above are included on the organisation’s seven person Board chaired by the Chief
The Tasmanian Model

The Tasmanian model, unlike some of the other models around the country, does not have an organised crime function. Whilst certain powers are invested in the organisation (e.g., search and seizure, use of surveillance devices, directions to attend hearings, answer questions and produce information) and several notable investigative powers are not included in the Act such as telecommunications interception, data access; integrity testing; and assumed identities, and controlled operations. The granting of such powers in the Tasmanian model is significantly counterbalanced by the retention of certain privileges and protections. Numerous privileges under the Evidence Act and Parliamentary Privilege (section 100) are retained, including a paramount duty to retain the self-incrimination which is otherwise treated by other integrity agencies (see section 69 of the Victorian Police Integrity Act 2006 and sections 26 and 37 of the NSW Independent Commission Against Corruption Act 1988).

Whilst some other agencies focus on crime and corruption, the Tasmanian model focuses on concepts of “integrity” (in the naming of the Commission), “conduct”, “propriety”; “ethics” and “misconduct”. In fact, the Tasmanian Act, unlike other similar legislation elsewhere, makes no mention of corruption. The Act includes a very broad definition of what constitutes “misconduct” for the purposes of the operation of the Act. It encompasses a simple breach of the Code of Conduct or an attempted breach by a public officer, as well as conduct involving dishonesty, impropriety or misuse of information or material, or public resources. Interestingly, the Integrity Commission Act defines public interest to be made by what is meant by the key concept of “integrity” in the context of public administration.

Unlike its counterparts in WA, NSW and QLD, the Tasmanian model, does not include an obligation for public sector CEO’s or principal officers to notify the Integrity Commission at an early stage of reasonably suspicion misconduct (or similar) even for specially designated public officers (see above).

While the advantages beneficially, one can pick up past behaviour. Jurisdiction, of course, is a key provision: initial gathering of intelligence, or the exchange of intelligence and information with other relevant bodies. However, the Integrity Commission Act does draw on some of the principles at section 34 of the Queensland legislation, which states that the following principles are to be used in the performance of the misconduct function:

- Cooperation
- Capacity Building
- Devolution
- Public Interest

In relation to the above, “devolution” (which is said in the Act to be subject to the principles of cooperation and public interest and the capacity of the relevant agency) involves action to prevent and deal with misconduct occurring wherever possible within that agency. “Public interest” is also expanded upon in the Queensland legislation to provide issues that must be considered in deciding whether to take on a matter.

Following on from this, the “principles of operation” of the Integrity Commission are set out in section 9 of the Act and some similarities can be identified. For instance, the Tasmanian Act stipulates that the Integrity Commission should, inter alia:

- Work “cooperatively” with public authorities;
- Improve the capacity of public authorities to prevent and respond to case of misconduct;
- Ensure that action taken to prevent or respond to misconduct in a public authority is taken if the public authority has the capacity, and it is in the public interest to do so; and
- Ensure that matters of misconduct or serious misconduct are dealt with expeditiously at a level and by a person that is considered appropriate.

In relation to jurisdiction, in Tasmania, the behaviour complained about must have been committed by a “public officer” within a “public authority” (as defined in the Act) and constitute either “misconduct” or “serious misconduct” (or “serious misconduct” for a police officer given section 88(1)(a)). The Tasmanian model provides detailed criteria that need to be taken into account by the CEO in determining whether to dismiss a complaint. Section 36(1) lists criteria that should be considered and then section 36(2) outlines factors which the CEO may consider in determining whether it is in the “public interest” to investigate the complaint. Section 36(3) is pivotal to the efficient and effective operation of the complaint handling process. For instance, there must be the ability to quickly dispense with obviously frivolous or vexatious complaints or complaints that have already been effectively investigated and dealt with by other agencies, particularly other integrity entities.

Interestingly, significant powers are actually given to the CEO, rather than the Board, under sections 35, 36, 37 and 44, in relation to dismissal and the investigation of complaints, need to be approved by the Board. Furthermore, pursuant to section 58, the Board determines the action to be taken in relation to an investigation report.

It should be observed that there is no independent mechanism for dealing with complaints against the Integrity Commission or its staff, such as the Special Investigations Monitor (SIM), or the Parliamentary Inspector within the WA CCC. This is an issue that the Board is considering closely to ensure appropriate mechanisms are in place.

As with other integrity agencies, the Commission is able to make findings and recommendations in relation to its investigations and inquiries (section 38) but it is not able to impose actual sanctions.

In relation to independence, section 10 of the Act makes it clear that the organisation is not subject to the direction or control of the relevant Minister (the Attorney-General in this case) in relation to the performance of its powers and functions is to notify that the Minister is not able to effectively refer matters to the Commission. In fact, it appears the only formal power of referral to the Commission is held by the Joint Standing Committee (see section 24(1)(g)).

The Nature Of The Organisation

One of the first tasks facing the new CEO upon her arrival in mid June, apart from identifying a range of priority actions, was determining the structure of the new organisation and the roles and responsibilities of the senior leadership team. As noted above, the downturn in the economy and the challenges faced by the public sector had a significant impact on the organisational structure and its capacity to deal with a surge in initial complaints and the legislative requirement for a thorough complaint assessment process, which was decided that there should not be an emphasis on a specific formal complaint handling and assessment processes (which met the relevant Australian Standard). There was also the need to have the capacity to investigate complex and large matters. Stakeholder management was clearly a priority.

Given the likelihood of an influx of initial complaints and the legislative requirement for a thorough complaint assessment process, it was decided that there should be a need to have a specific opportunity to strengthen their capacity to deal with initial complaints efficiently and effectively (for instance, to quickly dispense with obviously frivolous or vexatious complaints or complaints that have already been effectively investigated) and to ensure that the Commission could respond to those matters of misconduct or serious misconduct within a level and by a person that is considered appropriate.

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