

# Tasmania

---

## **CRIMINAL CODE AMENDMENT (MISCONDUCT IN PUBLIC OFFICE) BILL 2015**

---

### **CONTENTS**

1. Short Title
2. Commencement
3. Principal Act
4. Schedule 1 amended (*Criminal Code*)
5. Repeal of Act

# CRIMINAL CODE AMENDMENT (MISCONDUCT IN PUBLIC OFFICE) BILL 2015

*(Brought in by Cassandra Stanwell O'Connor)*

## A BILL FOR

### **An Act to amend the *Criminal Code Act 1924***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Criminal Code Amendment (Misconduct in Public Office) Bill 2015*.

#### **2. Commencement**

This Act commences on the day after the day on which this Act receives the Royal Assent.

#### **3. Principal Act**

In this Act, the *Criminal Code Act 1924* is referred to as the Principal Act.

#### 4. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by deleting the existing definition of 'public officer' in section 1 and replacing it with the following:

**Public officer** means a person who is a public authority or a person who holds any office, employment or position, including a voluntary position, in a public authority whether the appointment to the office, employment or position is by way of selection or election or by any other manner.

- (b) by inserting the following definition of 'public authority' into section 1

**Public authority** means -

- (a) the Parliament of Tasmania and any person performing functions or exercising powers under the *Parliamentary Privilege Act 1898*;
- (b) a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament whether in accordance with the *State Service Act 2000* or otherwise, except for a person performing functions or exercising powers under the *Parliamentary Privilege Act 1898*;
- (c) a State Service Agency;
- (d) the Police Service;
- (e) the Governor of Tasmania;
- (f) any person performing functions under the *Governor of Tasmania Act 1982*;
- (g) a Government Business Enterprise;

- (h) the Board of a Government Business Enterprise;
- (i) a State-owned company;
- (j) the Board of a State-owned company;
- (k) the University of Tasmania;
- (l) a body or authority, whether incorporated or not, whose members or a majority of whose members are appointed by the Governor or a Minister under an Act;
- (m) the holder of a statutory office;
- (n) a local authority;
- (o) a council-owned company;
- (p) a judge of the Supreme Court;
- (q) the Associate Judge of the Supreme Court;
- (r) a magistrate of the Magistrates Court;
- (s) a court;
- (t) members of a tribunal;
- (u) members of the Tasmanian Industrial Commission;
- (v) an integrity entity as defined within the *Integrity Commission Act 2009*;
- (w) any other prescribed, person, body or authority, whether incorporated or not –
  - (i) to which any money is paid by way of appropriation from the Public Account; or
  - (ii) over which the Government or a Minister exercises control.

(c) by inserting the following after section 83:

**83A Misconduct in public office.**

(1) Any public officer who, without lawful authority or justification—

- (a) acts, or fails to act, upon any knowledge or information obtained by reason of his or her office or employment; or
- (b) acts, or fails to act, in any matter, in the performance or discharge of the functions of his or her office or employment, in relation to which he or she has, directly or indirectly, any pecuniary interest; or
- (c) acts corruptly in the performance or discharge of the functions of his or her office or employment,

so as to gain a benefit, whether pecuniary or otherwise, for any person, corporation, association or organisation, or so as to cause a detriment, whether pecuniary or otherwise, to any person or corporation, association or organisation,

is guilty of a crime.

Charge: misconduct in public office

- (2) Any person who has ceased to be a public officer in a particular capacity and who, without lawful authority or justification acts, or fails to act, upon any knowledge or information obtained in that capacity so as to gain a benefit, whether pecuniary or otherwise, for any person, corporation, association or organisation, or so as to cause a detriment, whether pecuniary or otherwise, to any person, corporation, association or organisation,

is guilty of a crime.

Charge: misconduct after public office

(3) Subsection (2) applies to a person:

- (a) whether the person ceased to be a public officer as mentioned in the paragraph before, at or after the commencement of this section; and
- (b) whether or not the person continues to be a public officer in another capacity.

## **5. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.