

TASMANIA

INTEGRITY COMMISSION AMENDMENT BILL 2011

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**INTEGRITY COMMISSION AMENDMENT BILL
2011**

*(Brought in by the Minister for Justice, the Honourable Brian
Neal Wightman)*

A BILL FOR

**An Act to amend the *Integrity Commission Act 2009*, the
Ombudsman Act 1978 and the *State Service Act 2000***

Be it enacted by His 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Integrity
Commission Amendment Act 2011*.

2. Commencement

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

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Part 2 – Integrity Commission Act 2009 Amended

**PART 2 – INTEGRITY COMMISSION ACT 2009
AMENDED**

3. Principal Act

In this Part, the *Integrity Commission Act 2009**
is referred to as the Principal Act.

4. Section 4 amended (Interpretation)

Section 4(1) of the Principal Act is amended as
follows:

- (a) by omitting the definition of
“investigator” and substituting the
following definition:

“investigator” means –

- (a) a person appointed under
section 44 or 45; or
- (b) if the Integrity
Commission is
conducting an
investigation under
section 87, 88 or 89, a
person appointed by the
Integrity Commission;
- (b) by omitting “section 5” from the
definition of “public authority” and
substituting “section 5(1)”;

*No. 67 of 2009

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- (c) by inserting “but does not include a person specified in section 5(2)” after “manner” in the definition of “public officer”.

5. Section 5 amended (Public authorities)

Section 5(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) “a” and substituting “members of a”;
- (b) by omitting from paragraph (g) “the” and substituting “members of the”.

6. Section 6 amended (Designated public officers)

Section 6 of the Principal Act is amended by omitting subsection (2).

7. Section 33 amended (Complaints)

Section 33 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) A complaint under subsection (1) may be made anonymously.

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8. Section 37 amended (Report of assessor)

Section 37(2)(a) of the Principal Act is amended by inserting “or not accepted” after “section 36”.

9. Section 45 amended (Own-motion investigations)

Section 45 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “that an investigator be appointed”;
- (b) by omitting from subsection (2) “officer, who” and substituting “officer of the determination and the chief executive officer”;
- (c) by omitting from subsection (2)(b) “is suspected” and substituting “has occurred”;
- (d) by omitting from subsection (2)(c) “investigation.” and substituting “investigation; or”;
- (e) by inserting the following paragraph after paragraph (c) in subsection (2):
 - (d) into any of the policies, practices or procedures of a public authority or of a public officer, or the failure of those policies, practices or procedures.

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10. Section 51 amended (Search warrants)

Section 51 of the Principal Act is amended by omitting subsection (5).

11. Part 6, Division 2: Heading amended

Division 2 of Part 6 of the Principal Act is amended by omitting “*Procedure after investigation*” from the heading to that Division and substituting “*Reports and subsequent action*”.

12. Section 56 amended (Opportunity to provide comment on report)

Section 56(1)(b) of the Principal Act is amended by omitting “complaint” and substituting “investigation”.

13. Section 57 amended (Report by chief executive officer)

Section 57 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “the complaint,”;
- (b) by omitting from subsection (2)(d) “into the complaint”;

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- (c) by inserting in subsection (2)(d) “into the matter” after “Tribunal”;
- (d) by inserting the following subsection after subsection (2):
 - (3) The chief executive officer may in accordance with section 35(1) recommend that the Board recommend to the Premier that a commission of inquiry be established under the *Commissions of Inquiry Act 1995* in relation to the matter.

14. Section 58 amended (Determination of Board)

Section 58 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 57” and substituting “section 57(1) or a recommendation under section 57(3)”;
- (b) by omitting from subsection (1) “to the complaint that was”;
- (c) by omitting from subsection (1) “investigation” and substituting “report or recommendation”;
- (d) by omitting from subsection (2)(b) “the complaint and”;

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- (e) by omitting from subsection (2)(b) “relating to the complaint”;
- (f) by omitting from subsection (2)(d) “of the complaint”;
- (g) by omitting from subsection (2)(e) “into the complaint”;
- (h) by omitting from subsection (4) “complaint and report are” and substituting “report is”;
- (i) by omitting from subsection (4) “complaint” second occurring and substituting “report”.

15. Section 59 amended (Persons to whom notice of determination is to be given)

Section 59(1)(b)(i) of the Principal Act is amended by omitting “to whom the complaint relates” and substituting “who was the subject of the investigation”.

16. Section 61 amended (Function of Integrity Tribunal)

Section 61(1) of the Principal Act is amended as follows:

- (a) by omitting “a complaint or a matter referred to in section 45(1)” and substituting “a matter in respect of which

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the Board has determined under section 58 that an inquiry be undertaken”;

- (b) by omitting “the complaint or” and substituting “that”.

17. Section 65 amended (Notice of inquiry)

Section 65(1) of the Principal Act is amended as follows:

- (a) by omitting “a complaint” and substituting “the inquiry”;
- (b) by omitting “complaint” second occurring and substituting “inquiry”.

18. Section 66 amended (Right of representation)

Section 66(1) of the Principal Act is amended as follows:

- (a) by omitting “a complaint of misconduct” and substituting “an inquiry”;
- (b) by omitting “an inquiry into that complaint” and substituting “the inquiry”.

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19. Section 70 amended (Response to notice of inquiry)

Section 70 of the Principal Act is amended as follows:

- (a) by omitting “a complaint” and substituting “an inquiry”;
- (b) by omitting “complaint” second occurring and substituting “notice”;
- (c) by omitting from paragraph (c) “regarding the complaint” and substituting “in relation to the inquiry”;
- (d) by omitting from paragraph (d) “complaint” and substituting “inquiry”.

20. Section 78 amended (Determination of Integrity Tribunal)

Section 78(6)(a) of the Principal Act is amended by omitting “complaint” and substituting “inquiry”.

21. Section 87 amended (Investigation or dealing with misconduct by designated public officers)

Section 87(1) of the Principal Act is amended by omitting “this Act” and substituting “Parts 6 and 7”.

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Part 2 – Integrity Commission Act 2009 Amended

22. Section 89 amended (Own-motion investigations)

Section 89 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “The Integrity Commission may conduct an investigation on its own motion” and substituting “The Board, on its own motion, may determine that the Integrity Commission should conduct an investigation in accordance with Parts 6 and 7”;
- (b) by omitting from subsection (2) “investigation” first occurring and substituting “investigation into”;
- (c) by omitting from subsection (2)(b) “investigation.” and substituting “investigation; or”;
- (d) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (c) any of the policies, practices or procedures of Tasmania Police in relation to misconduct.
- (e) by omitting from subsection (3) “Integrity Commission” and substituting “Board”;
- (f) by inserting in subsection (3) “its determination to conduct” after “notice of”.

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23. Section 98 amended (Certain notices to be confidential documents)

Section 98 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsections:

(1) A person on whom a notice that is a confidential document was served or to whom such a notice was given under this Act must not disclose to another person –

(a) the existence of the notice; or

(b) the contents of the notice; or

(c) any matters relating to or arising from the notice –

unless the person on whom the notice was served or to whom the notice was given has a reasonable excuse.

Penalty: Fine not exceeding 2 000 penalty units.

(1A) A person to whom the existence of a notice that is a confidential document was disclosed must not disclose to another person –

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- (a) the existence of that notice; or
- (b) the contents of the notice; or
- (c) any matters relating to or arising from the notice –

unless the person to whom the existence of the notice was disclosed has a reasonable excuse.

Penalty: Fine not exceeding 2 000 penalty units.

(1B) For the purposes of subsections (1) and (1A), matters relating to or arising from a notice include but are not limited to –

- (a) obligations or duties imposed on any person by the notice; and
- (b) any evidence or information produced or provided to the Integrity Commission or an Integrity Tribunal; and
- (c) the contents of any document seized under this Act; and

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- (d) any information that might enable a person who is the subject of an investigation or inquiry to be identified or located; and
 - (e) the fact that any person has been required or directed by an investigator or an Integrity Tribunal to provide information, attend an inquiry, give evidence or produce anything; and
 - (f) any other matters that may be prescribed.
- (b) by omitting from subsection (2)(b) “first-mentioned person” and substituting “person to whom the disclosure was made”;
- (c) by inserting the following subsections after subsection (2):
- (3) The Integrity Commission or an Integrity Tribunal may advise a person on whom a notice was served or to whom a notice was given under this Act that the notice is no longer confidential.
 - (4) If the Integrity Commission or an Integrity Tribunal advises a

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Part 2 – Integrity Commission Act 2009 Amended

person referred to in
subsection (3) that a notice is no
longer confidential,
subsections (1) and (1A) do not
apply.

24. Section 101 repealed

Section 101 of the Principal Act is repealed.

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Part 3 – Ombudsman Act 1978 Amended

s. 25

PART 3 – OMBUDSMAN ACT 1978 AMENDED

25. Principal Act

In this Part, the *Ombudsman Act 1978** is referred to as the Principal Act.

26. Section 26 amended (Secrecy, &c.)

Section 26 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) Subsection (1) does not prevent the disclosure of information to the Integrity Commission if the information is relevant to the performance or exercise by the Integrity Commission of its functions or powers.

*No. 82 of 1978

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Part 4 – State Service Act 2000 Amended

PART 4 – STATE SERVICE ACT 2000 AMENDED

27. Principal Act

In this Part, the *State Service Act 2000** is referred to as the Principal Act.

28. Section 24 amended (Relationship with Ombudsman and other persons)

Section 24 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) The Commissioner may disclose information to the Integrity Commission if the information is relevant to the performance or exercise by the Integrity Commission of its functions or powers.

*No. 85 of 2000

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Part 5 – Repeal

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PART 5 – REPEAL

29. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.