

TASMANIA

INTEGRITY COMMISSION BILL 2009

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INTEGRITY TRIBUNAL**

INTEGRITY COMMISSION BILL 2009

*(Brought in by the Minister for Justice, the Honourable
Larissa Tahireh Giddings)*

A BILL FOR

**An Act to establish an Integrity Commission and for
related matters and to amend certain Acts**

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 Act 2009*.

2. Commencement

This Act commences on a day or days to be
proclaimed.

3. Object and objectives

- (1) The object of this Act is to promote and enhance
standards of ethical conduct by public officers
by the establishment of an Integrity
Commission.

THIS BILL IS COGNATE WITH THE *PUBLIC INTEREST DISCLOSURES AMENDMENT BILL
2009*

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- (2) The objectives of the Integrity Commission are to –
- (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.
- (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 the holders of senior executive offices; and
 - (d) making findings and recommendations in relation to its investigations and inquiries.

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4. Interpretation

(1) In this Act, unless the contrary intention appears –

“**assessor**” means a person appointed under section 35(2);

“**audit**” includes to examine, investigate, inspect and review;

“**authorised person**” means a person authorised under section 21;

“**Board**” means the Board of the Integrity Commission established under section 12;

“**Chief Commissioner**” means the person appointed under section 15;

“**chief executive officer**” means the person appointed under section 17;

“**complainant**”, in relation to a complaint, means the person making the complaint, whether on that person’s behalf or on behalf of some other person;

“**complaint**” means a complaint made under section 33 and includes any associated matters relating to the complaint;

“**council-owned company**” means a company incorporated under the Corporations Act that is controlled by one or more councils or another company that is so controlled;

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“designated public officer” means a public officer specified in section 6;

“DPP” means the person appointed as Director of Public Prosecutions under the *Director of Public Prosecutions Act 1973*;

“functions” includes duties;

“Government Business Enterprise” means a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*;

“Government department” means any department established under the *State Service Act 2000*, or constituted by any other enactment as a department within the meaning of the *State Service Act 2000*;

“Head of Agency” has the same meaning as in the *State Service Act 2000*;

“inquiry officer” means a person appointed or required under section 63 to assist an Integrity Tribunal with the conduct of an inquiry;

“Integrity Commission” means the Integrity Commission established under section 7;

“integrity entity” means any of the following:

- (a) the Integrity Commission;

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- (b) the Ombudsman;
 - (c) the Auditor-General;
 - (d) the State Service Commissioner
in performing his or her functions
in relation to misconduct;

“Integrity Tribunal” means an Integrity Tribunal convened under section 60;

“investigator” means a person appointed under section 44;

“Joint Committee” means the Joint Standing Committee on Integrity established under section 23;

“local authority” includes –

- (a) a council; and
- (b) a single authority, controlling authority or joint authority established under Part 3 of the *Local Government Act 1993*; and
- (c) any other body or authority, constituted or established by or under an Act, having power to levy, or cause to be levied, a rate on any land;

“member”, in relation to a council, means a member of that council elected under the *Local Government Act 1993*;

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“Member of Parliament” means a member of the Legislative Council or the House of Assembly;

“misconduct” means –

- (a) conduct, or an attempt to engage in conduct, of or by a public officer that is or involves –
 - (i) a breach of a code of conduct applicable to the public officer; or
 - (ii) the performance of the public officer’s functions or the exercise of the public officer’s powers, in a way that is dishonest or improper; or
 - (iii) a misuse of information or material acquired in or in connection with the performance of the public officer’s functions or exercise of the public officer’s powers; or
 - (iv) a misuse of public resources in connection with the performance of the public officer’s functions or the exercise of the public officer’s powers; or

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- (b) conduct, or an attempt to engage in conduct, of or by any public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer –

but does not include conduct, or an attempt to engage in conduct, by a public officer in connection with a proceeding of either House of Parliament;

“Parliamentary integrity entity” means any of the following:

- (a) the President of the Legislative Council;
- (b) the Speaker of the House of Assembly;

“Parliamentary Standards Commissioner” means the person appointed to the office of Parliamentary Standards Commissioner under section 27;

“police misconduct” means misconduct by a police officer;

“political party” means a party registered under the *Electoral Act 2004* or under an Act of the Commonwealth or another State or Territory as a political party;

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“premises of a public authority” means premises at which the business or operations of the public authority are conducted;

“principal officer”, in relation to a public authority specified in Column 1 of Schedule 1, means the principal officer specified in Column 2 of the Schedule opposite that public authority;

“privilege” includes all the privileges set out in Part 10 of Chapter 3 of the *Evidence Act 2001* and the privileges of the Parliament;

“public authority” means a public authority referred to in section 5;

“public officer” means a person who is a public authority or a person who holds any office, employment or 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;

“record” includes any account, deed, writing or document and any other record of information however compiled, recorded or stored, whether in written or printed form, on film or in electronic form or otherwise;

“register of complaints” means the register referred to in section 34;

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“relevant public authority”, in relation to a complaint made or an investigation or inquiry conducted under this Act, means the public authority to which a public officer who is the subject of a complaint is appointed or, in the case of a public authority who is a person, the public authority who is the subject of a complaint, investigation or inquiry;

“responsible Minister”, in relation to any public authority or part of a public authority, means the Minister charged with the administration of that public authority or part of that public authority;

“senior executive office” means an office created under section 29(4) of the *State Service Act 2000*;

“serious misconduct” means misconduct by any public officer that could, if proved, be –

- (a) a crime or an offence of a serious nature; or
- (b) misconduct providing reasonable grounds for terminating the public officer’s appointment;

“State-owned company” means a company incorporated under the Corporations Act that is controlled by –

- (a) the Crown; or

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(b) a Government Business Enterprise; or

(c) a statutory authority; or

(d) another company which is itself controlled by an entity referred to in paragraph (a), (b) or (c);

“statutory authority” means a body or authority, whether incorporated or not, that is established, constituted or continued by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority but does not include a State Service Agency;

“statutory office” means an office the holder of which is appointed by the Governor or a Minister but does not include an office under the *State Service Act 2000*.

(2) For the purposes of this Act –

(a) a reference to a public authority includes a reference to the principal officer and each of the members, officers and employees of the authority; and

(b) a reference to an officer of a public authority includes a reference to a principal officer and an officer appointed by or to the authority under any Act; and

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- (c) a reference to a member of a public authority includes a reference to the holder of an office created by any Act who, by virtue of his or her holding the office, is a member of the authority; and
 - (d) a reference to an employee of a public authority includes a reference to a State Service officer or State Service employee; and
 - (e) a reference to a member of a public authority includes a reference to a person who is elected to that authority.
- (3) For the purposes of the definition of “State-owned company” in subsection (1), the provisions of the Corporations Act relating to control are taken to apply as if the Crown, Government Business Enterprise or statutory authority, as the case may be, were a corporation under that Act.

5. Public authorities

- (1) Subject to subsection (2), the following persons are public authorities for the purposes of this Act:
 - (a) the Parliament of Tasmania and any person performing functions or exercising powers under the *Parliamentary Privilege Act 1898*;

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- (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) any person performing functions under the *Governor of Tasmania Act 1982*;
- (f) a Government Business Enterprise;
- (g) the Board of a Government Business Enterprise;
- (h) a State-owned company;
- (i) the Board of a State-owned company;
- (j) 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;
- (k) the holder of a statutory office;
- (l) a local authority;
- (m) a council-owned company;
- (n) any other prescribed body or authority, whether incorporated or not –

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- (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.
 - (2) The following persons are not public authorities for the purposes of this Act:
 - (a) the Governor of Tasmania;
 - (b) a judge of the Supreme Court;
 - (c) the Associate Judge of the Supreme Court;
 - (d) a magistrate of the Magistrates Court;
 - (e) a court;
 - (f) a tribunal;
 - (g) the Tasmanian Industrial Commission;
 - (h) the Integrity Commission;
 - (i) any other prescribed person.
 - (3) A reference to a person specified in subsection (1) or (2) includes a reference to that person as it was formerly known.

6. Designated public officers

- (1) The following persons are designated public officers:

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- (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;
 - (e) such other persons as may be prescribed.
- (2) The persons specified in section 5(2) are not designated public officers for the purposes of this Act.

PART 2 – INTEGRITY COMMISSION

Division 1 – Establishment of Integrity Commission

7. Establishment of Integrity Commission

- (1) The Integrity Commission is established.
- (2) The Integrity Commission includes the Board, any member of the Board, the staff of the Integrity Commission, any authorised persons, assessors, investigators, and any member of or any persons appointed to assist an Integrity Tribunal.
- (3) The Integrity Commission –
 - (a) is a body corporate with perpetual succession; and
 - (b) may have a seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is an instrumentality of the Crown.
- (4) If the Integrity Commission has a seal –
 - (a) it is to be kept and used as authorised by the Integrity Commission; and
 - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Integrity Commission.

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8. Functions and powers of Integrity Commission

- (1) In addition to any other functions that are imposed on the Integrity Commission under this or any other Act, the functions of the Integrity Commission are to –
- (a) develop standards and codes of conduct to guide public officers in the conduct and performance of their duties; and
 - (b) educate public officers and the public about integrity in public administration; and
 - (c) prepare guidelines and provide training to public officers on matters of conduct, propriety and ethics; and
 - (d) provide advice on a confidential basis to public officers about the practical implementation of standards of conduct that it considers appropriate in specific instances; and
 - (e) establish and maintain codes of conduct and registration systems to regulate contact between persons conducting lobbying activities and certain public officers; and
 - (f) receive and assess complaints or information relating to matters involving misconduct; and
 - (g) refer complaints to a relevant public authority, integrity entity or

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Parliamentary integrity entity for action;
and

- (h) refer complaints or any potential breaches of the law to the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate for action; and
- (i) investigate any complaint by itself or in cooperation with a public authority, the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate; and
- (j) on its own initiative, initiate an investigation into any matter related to misconduct; and
- (k) deal with any matter referred to it by the Joint Committee; and
- (l) assume responsibility for, and complete, an investigation into misconduct commenced by a public authority or integrity entity if the Integrity Commission considers that action to be appropriate having regard to the principles set out in section 9; and
- (m) when conducting or monitoring investigations into misconduct, gather evidence for or ensure evidence is gathered for –
 - (i) the prosecution of persons for offences; or

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- (ii) proceedings to investigate a breach of a code of conduct; or
 - (iii) proceedings under any other Act; and
 - (n) conduct inquiries into complaints; and
 - (o) receive reports relating to misconduct from a relevant public authority, integrity entity or Parliamentary integrity entity and take any action that it considers appropriate; and
 - (p) if the Integrity Commission is satisfied that it is in the public interest and expedient to do so, recommend to the Premier the establishment of a Commission of Inquiry under the *Commissions of Inquiry Act 1995*; and
 - (q) monitor or audit any matter relating to the dealing with and investigation of complaints about misconduct in any public authority including any standards, codes of conduct, or guidelines that relate to the dealing with those complaints; and
 - (r) perform any other prescribed functions or exercise any other prescribed powers.
- (2) In addition to any other powers that are conferred on the Integrity Commission under this or any other Act, the Integrity Commission has the power to do all things necessary or convenient to be done in connection with the performance of its functions.

9. Principles of operation of Integrity Commission

- (1) The Integrity Commission is to perform its functions and exercise its powers in such a way as to –
- (a) raise standards of conduct, propriety and ethics in public authorities; and
 - (b) work cooperatively with public authorities, integrity entities and Parliamentary integrity entities to prevent or respond to misconduct; and
 - (c) improve the capacity of public authorities to prevent and respond to cases of misconduct; and
 - (d) ensure that action to prevent and 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
 - (e) deal with matters of misconduct by designated public officers; and
 - (f) ensure that matters of misconduct or serious misconduct are dealt with expeditiously at a level and by a person that it considers is appropriate; and
 - (g) not duplicate or interfere with work that it considers has been undertaken or is being undertaken appropriately by a public authority.

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- (2) In the performance of its functions and the exercise of its powers, the Integrity Commission is not bound by the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it thinks fit.
- (3) The Integrity Commission is to perform its functions and exercise its powers with as little formality and technicality as possible.

10. Integrity Commission not subject to direction or control of Minister

The Integrity Commission is not subject to the direction or control of the Minister in respect of the performance or exercise of its functions or powers.

11. Annual and other reports

- (1) The Integrity Commission, as soon as practicable after 31 October in each year, is to lay before each House of Parliament a report on the performance of its functions and exercise of its powers under this Act during the period of 12 months ending on that date.
- (2) The report under subsection (1) may be combined with the report under section 36 of the *State Service Act 2000*.
- (3) The Integrity Commission may, at any time, lay before each House of Parliament a report on any matter arising in connection with the

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performance of its functions or exercise of its powers.

- (4) The Integrity Commission may, at any time, provide a report to the Joint Committee on the performance of its functions or exercise of its powers relating to an investigation or inquiry.

Division 2 – Board of Integrity Commission

12. Establishment of Board of Integrity Commission

The Board of the Integrity Commission is established.

13. Role of Board

The role of the Board is to –

- (a) ensure that the chief executive officer and the staff of the Integrity Commission perform their functions and exercise their powers in accordance with sound public administration practice and principles of procedural fairness and the objectives of this Act; and
- (b) promote an understanding of good practice and systems in public authorities in order to develop a culture of integrity, propriety and ethical conduct in those public authorities and their capacity to deal with allegations of misconduct; and

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- (c) monitor and report to the Minister or Joint Committee or both the Minister and Joint Committee on the operation and effectiveness of this Act and other legislation relating to the operations of integrity entities in Tasmania.

14. Members of Board

(1) The members of the Board are –

- (a) the Chief Commissioner who is the chairperson; and
- (b) the person holding the office of Auditor-General; and
- (c) the person appointed as Ombudsman; and
- (d) the person holding the office of State Service Commissioner; and
- (e) a person with experience in local government; and
- (f) a person with experience in law enforcement or the conduct of investigations; and
- (g) a person who has at least one of the following:
 - (i) experience in public administration, governance or government;

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- (ii) experience in business management and administration whether in a government organisation or non-government organisation;
 - (iii) experience in legal practice.
 - (2) The members of the Board referred to in subsection (1)(e), (f) or (g) are appointed by the Governor on the advice of the Minister.
 - (3) In providing advice to the Governor, the Minister is to inform the Governor of the outcome of the consultations referred to in subsection (4).
 - (4) Before a person is appointed as a member of the Board under subsection (1)(e), (f) or (g), the Minister is to consult the Joint Committee.
 - (5) If the members of the Joint Committee have not been appointed or Parliament has been prorogued, the Minister is to consult –
 - (a) the President of the Legislative Council;
and
 - (b) the Parliamentary leader of each political party represented in the House of Assembly.
 - (6) A person is not eligible to be appointed as a member of the Board under subsection (1)(e), (f) or (g) if that person is, or has been in the period of 5 years immediately preceding the date on which it is proposed to appoint that person –

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- (a) a Member of a House of Parliament of the Commonwealth or a State or Territory; or
 - (b) a member of a council; or
 - (c) a member of a political party or a member of a similar organisation.
- (7) Schedule 2 has effect with respect to membership of the Board.
- (8) Schedule 3 has effect with respect to meetings of the Board.

15. Chief Commissioner

- (1) A person is to be appointed by the Governor as Chief Commissioner.
- (2) Before a person is appointed as Chief Commissioner, the Minister is to consult the Joint Committee.
- (3) If the members of the Joint Committee have not been appointed or Parliament has been prorogued, the Minister is to consult –
 - (a) the President of the Legislative Council; and
 - (b) the Parliamentary leader of each political party represented in the House of Assembly.

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- (4) A person is not eligible to be the Chief Commissioner unless that person –
- (a) is an Australian lawyer and has had not less than 7 years' standing as a legal practitioner; and
 - (b) is under the age of 72 years.
- (5) A person is not eligible to be appointed as Chief Commissioner if that person is, or has been in the period of 5 years immediately preceding the date on which it is proposed to appoint that person –
- (a) a Member of a House of Parliament of the Commonwealth or a State or Territory; or
 - (b) a member of a council; or
 - (c) a member of a political party or a member of a similar organisation.
- (6) If the Chief Commissioner is removed from office by the Governor, he or she ceases to be a member of the Board.

16. Delegation

- (1) The Board may, by resolution, delegate to a member of the Board, a member of the staff, other than the chief executive officer, of the Integrity Commission or any other person all or any of its functions or powers under this Act or

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any other Act, other than this power of delegation.

- (2) The Board may, by resolution, delegate to the chief executive officer any of its functions and powers including this power of delegation.
- (3) Section 23AA(2), (3), (4), (5) and (8) of the *Acts Interpretation Act 1931* apply to a delegation made under subsection (1).

Division 3 – Staff of Integrity Commission

Subdivision 1 – Chief executive officer

17. Chief executive officer

- (1) Subject to and in accordance with the *State Service Act 2000*, a chief executive officer of the Integrity Commission is to be appointed.
- (2) Before a person is appointed as chief executive officer, the Minister is to consult the Joint Committee.
- (3) If the members of the Joint Committee have not been appointed or Parliament has been prorogued, the Minister is to consult –
 - (a) the President of the Legislative Council;
and
 - (b) the Parliamentary leader of each political party represented in the House of Assembly.

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- (4) The chief executive officer is not eligible to hold the office of member of the Board.

18. Responsibilities of chief executive officer

- (1) The chief executive officer is responsible to the Board for the general administration, management and operations of the Integrity Commission.
- (2) The chief executive officer –
- (a) must perform any functions or carry out any responsibilities imposed on the chief executive officer, and may exercise any other powers conferred on the chief executive officer, by this or any other Act; and
 - (b) must carry out any responsibilities, and may perform any functions or exercise any powers, delegated by the Board.

19. Delegation by chief executive officer

The chief executive officer may delegate any of his or her responsibilities, functions or powers, other than this power of delegation.

Subdivision 2 – Officers, employees and authorised persons

20. Officers and employees

Subject to and in accordance with the *State Service Act 2000*, persons may be appointed for the purpose of this Act.

21. Authorised persons

- (1) The chief executive officer may make arrangements with the principal officer of any public authority for a public officer of that authority to be made available to undertake work on behalf of the Integrity Commission.
- (2) If a person is to be made available under subsection (1), the chief executive officer is to, by written notice, authorise the person to perform the functions or exercise the powers under this Act that are specified in the notice.
- (3) An arrangement made under subsection (1) may allow the authorised person to remain an employee of the public authority, but to report to the chief executive officer or other person nominated by the chief executive officer in relation to the work being undertaken on behalf of the Integrity Commission.
- (4) At the request of the chief executive officer, the Commissioner of Police is to make available, in accordance with an agreement referred to in subsection (10), police officers to undertake

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investigations and assist with inquiries on behalf of the Integrity Commission.

- (5) The chief executive officer may make arrangements with a law enforcement authority (however described) of the Commonwealth or another State or a Territory for officers or employees of that authority to be made available to undertake investigations and assist with inquiries on behalf of the Integrity Commission.
- (6) If a person is to be made available under subsection (4) or (5), the chief executive officer is to, by written notice, authorise the person to perform the functions or exercise the powers of an investigator or inquiry officer under this Act.
- (7) While undertaking work on behalf of the Integrity Commission, an authorised person who is a police officer continues to have the functions and powers of a police officer but reports to the chief executive officer, or other person nominated by the chief executive officer, in relation to the work being undertaken on behalf of the Integrity Commission.
- (8) Nothing in this section or the *Police Service Act 2003* requires a police officer who is made available under subsection (4) to report to, provide information to or take direction from the Commissioner of Police or any senior officer within the meaning of that Act.
- (9) The Commissioner of Police is to appoint, with or without restrictions, as a special constable any person made available under subsection (5).

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- (10) The Commissioner of Police and the chief executive officer are to enter into a written agreement concerning the provision of police officers to undertake investigations and assist with inquiries on behalf of the Integrity Commission.

PART 3 – RELATIONSHIP WITH PARLIAMENT

Division 1 – Preliminary

22. Interpretation: Part 3, Division 1

In this Part –

“**integrity entity**” does not include the Auditor-General.

Division 2 – Joint Standing Committee on Integrity

23. Joint Standing Committee on Integrity

- (1) The Joint Standing Committee on Integrity is established.
- (2) The Joint Committee consists of 6 Members of Parliament of whom –
 - (a) 3 are to be Members of the Legislative Council; and
 - (b) 3 are to be Members of the House of Assembly.
- (3) Of the members of the Joint Committee referred to in subsection (2)(b), at least one member of any political party that has 3 or more members in the House of Assembly is to be a member of the Joint Committee.
- (4) The Joint Committee is to be appointed at the commencement of the first session of each

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Parliament according to the practice regulating the appointment of Members of Parliament to serve on select committees of the Legislative Council and House of Assembly respectively.

- (5) Schedule 4 has effect with respect to the membership of the Joint Committee.
- (6) Schedule 5 has effect with respect to the proceedings of the Joint Committee.

24. Functions and powers of Joint Committee

- (1) The Joint Committee has the following functions:
 - (a) to monitor and review the performance of the functions of an integrity entity;
 - (b) to report to both Houses of Parliament, as it considers appropriate, on the following matters:
 - (i) matters relevant to an integrity entity;
 - (ii) matters relevant to the performance of an integrity entity's functions or the exercise of an integrity entity's powers;
 - (c) to examine the annual reports of an integrity entity and any other report of an integrity entity and report to both Houses of Parliament on any matter appearing in or arising out of such reports;

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- (d) to report to the Legislative Council or House of Assembly on any matter relevant to an integrity entity's functions that is referred to it by the Legislative Council or House of Assembly;
 - (e) to review the functions, powers and operations of the Integrity Commission at the expiration of the period of 3 years commencing on the commencement of this section and to table in both Houses of Parliament a report regarding any action that should be taken in relation to this Act or the functions, powers and operations of the Integrity Commission;
 - (f) to provide guidance and advice relating to the functions of an integrity entity under this Act;
 - (g) to refer any matter to the Integrity Commission for investigation or advice;
 - (h) to comment on proposed appointments to be made under section 14(1)(e), (f) or (g) and section 15.
- (2) Nothing in this Part authorises the Joint Committee –
- (a) to investigate any matter relating to a complaint that is being dealt with by the Integrity Commission; or
 - (b) to review a decision of the Integrity Commission to investigate, not investigate or discontinue an

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investigation or inquire into or not inquire into a particular complaint; or

- (c) to make findings, recommendations, determinations or other decisions of the Integrity Commission in relation to a particular investigation or complaint.

25. Resignation

A member of the Joint Committee may resign his or her office as a member of the Joint Committee by writing under his or her hand addressed to the presiding officer of the House of Parliament of which the member is a Member of Parliament.

26. Report to Parliament

The Joint Committee, before the commencement of each session of Parliament, is to make a report of its proceedings under this Act and the report is to be laid before both Houses of Parliament within 14 days after the making of it, if Parliament is sitting, and, if Parliament is not sitting, then within 14 days after the commencement of the next session of Parliament.

Division 3 – Parliamentary standards

27. Parliamentary Standards Commissioner

- (1) The office of Parliamentary Standards Commissioner is established.
- (2) The Chief Commissioner, on advice from the Board, is to appoint a person to the office of Parliamentary Standards Commissioner.
- (3) The Parliamentary Standards Commissioner holds office on such terms and conditions as are specified in his or her instrument of appointment.

28. Function of Parliamentary Standards Commissioner

- (1) The function of the Parliamentary Standards Commissioner is to provide advice to Members of Parliament and the Integrity Commission –
 - (a) about conduct, propriety and ethics and the interpretation of any relevant codes of conduct and guidelines relating to the conduct of Members of Parliament; and
 - (b) relating to the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register relating to the conduct of Members of Parliament; and

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- (c) relating to guidance and training for Members of Parliament and persons employed in the offices of Members of Parliament on matters of conduct, integrity and ethics; and
- (d) relating to the operation of any codes of conduct and guidelines that apply to Members of Parliament.

- (2) The advice provided under subsection (1) may be provided by the Parliamentary Standards Commissioner on a confidential basis.

29. Restriction of functions of Parliamentary Standards Commissioner

The Parliamentary Standards Commissioner is not to be involved in the assessment or investigation of, or any inquiry in relation to, a complaint under this Act, if the Parliamentary Standards Commissioner has provided advice about a matter that relates to that complaint.

30. Functions of chief executive officer in relation to Members of Parliament

The chief executive officer is to –

- (a) monitor the operation of the Parliamentary disclosure of interests register, declarations of conflicts of interest register and any other register

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relating to the conduct of Members of Parliament; and

- (b) prepare guidance and provide training for Members of Parliament and persons employed in the offices of Members of Parliament on matters of conduct, integrity and ethics; and
- (c) review, develop and monitor the operation of any codes of conduct and guidelines that apply to Members of Parliament; and
- (d) where appropriate, propose to a Parliamentary integrity entity possible modifications of any code of conduct or guidelines.

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Part 4 – Educative, Preventative and Advisory Functions of Commission

**PART 4 – EDUCATIVE, PREVENTATIVE AND
ADVISORY FUNCTIONS OF COMMISSION**

31. Educative, preventative and advisory functions

The Integrity Commission has the following educative, preventative and advisory functions:

- (a) to take such steps as the Integrity Commission considers necessary to uphold, promote and ensure adherence to standards of conduct, propriety and ethics in public authorities;
- (b) to review and make recommendations about practices, procedures and standards in relation to conduct, propriety and ethics in public authorities and to evaluate their application within those authorities;
- (c) to provide advice to public officers and the public about standards of conduct, propriety and ethics in public authorities;
- (d) to consult with, and provide assistance to, principal officers of public authorities in relation to the development and implementation of codes of conduct relevant to those authorities;
- (e) to evaluate the adequacy of systems and procedures in public authorities for ensuring compliance with relevant codes of conduct;

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- (f) to develop and coordinate education and training programs for public authorities in relation to ethical conduct;
- (g) to enter into contracts, agreements and partnerships with other entities to support its educative, preventative and advisory functions;
- (h) undertake research into matters related to ethical conduct and investigatory processes;
- (i) to prepare information and material and provide educative resources to increase awareness of ethical conduct in the community.

32. 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

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- (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.

PART 5 – COMPLAINTS

Division 1 – Receipt of complaints

33. Complaints

- (1) Subject to this section, a complaint may be made in writing to the Integrity Commission by a person about alleged misconduct.
- (2) When a complaint is made in writing it is to be made in a manner and form approved by the Board.
- (3) A complaint under subsection (1) may be made about a person who was a public officer at the time the alleged misconduct specified in the complaint occurred, whether or not that person is a public officer when the complaint is made.

34. Registration of complaints

- (1) On receipt of a complaint, the Integrity Commission must enter the details of the complaint in a register of complaints.
- (2) The register of complaints is to be in a form approved by the Board.

Division 2 – Actions on receipt of complaint

35. Assessment of complaint

- (1) On receipt of a complaint, the chief executive officer –
 - (a) may dismiss the complaint under section 36; or
 - (b) accept the complaint for assessment.
- (2) If the chief executive officer accepts a complaint for assessment, the chief executive officer is to appoint an assessor to assess the complaint as to whether the complaint should be accepted for investigation.
- (3) If the assessor conducts an assessment in relation to a complaint about a public officer, the assessor may, if he or she considers it appropriate, give written notice of his or her intention to conduct the assessment to –
 - (a) the principal officer of the relevant public authority; and
 - (b) to the complainant; and
 - (c) to any public officer to whom the complaint relates.
- (4) In conducting an assessment under subsection (3), the assessor may exercise any of the powers of an investigator under Part 6 if the assessor considers it is reasonable to do so.

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- (5) Section 97 applies to a notice under subsection (3) if the notice provides that it is a confidential document.

36. Dismissal of complaint

- (1) The chief executive officer may dismiss a complaint for investigation if he or she considers that –
- (a) it is frivolous or vexatious; or
 - (b) it was not made in good faith; or
 - (c) it lacks substance or credibility; or
 - (d) it does not relate to the functions of the Integrity Commission; or
 - (e) investigating the complaint would be an unjustifiable use of resources; or
 - (f) it is not in the public interest for the Integrity Commission to investigate the complaint; or
 - (g) in the case of a complaint about misconduct occurring after the commencement of this section, if the complainant had had knowledge of the subject matter of the complaint for more than a year and fails to give a satisfactory explanation for the delay in making the complaint.

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- (2) Factors which the chief executive officer may consider in determining the public interest under subsection (1)(f) include, but are not limited to –
- (a) the nature and seriousness of the alleged misconduct; and
 - (b) the time that has elapsed since the alleged misconduct occurred; and
 - (c) the availability of evidence and the recollection of any witnesses; and
 - (d) the likely degree of culpability, in connection with the alleged misconduct, of any public officer about whom the complaint has been made; and
 - (e) whether the alleged misconduct could be of significant public concern; and
 - (f) whether the alleged misconduct has been previously investigated and appropriately dealt with; and
 - (g) whether the alleged misconduct is being appropriately dealt with; and
 - (h) the sanctions available to deal with the alleged misconduct; and
 - (i) whether the alleged misconduct may be indicative of, or may expose, entrenched or systemic behaviour.
- (3) The applicability of and weight to be given to other relevant factors specified in subsection (2)

and any other factors depend on the particular circumstances of each complaint.

37. Report of assessor

- (1) On completion of an assessment or review of a complaint, the assessor is to prepare a report of his or her assessment and forward that report to the chief executive officer.
- (2) The report of the assessor is to recommend that the complaint –
 - (a) be dismissed under section 36; or
 - (b) be referred to the principal officer of any relevant public authority for investigation and action; or
 - (c) be referred to an appropriate integrity entity for investigation and action; or
 - (d) be referred to a Parliamentary integrity entity for investigation and action; or
 - (e) be referred to the Commissioner of Police for investigation if the assessor considers a crime or other offence may have been committed; or
 - (f) be referred to any other person who the assessor considers appropriate for investigation and action; or
 - (g) be investigated by the Integrity Commission.

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- (3) In making his or her recommendation to the chief executive officer, the assessor may consider any or all of the following:
- (a) the principles of operation of the Integrity Commission specified in section 9;
 - (b) the nature and seriousness of the alleged misconduct if it were to be proven;
 - (c) the capacity of any relevant public authority to investigate the complaint;
 - (d) whether it is in the public interest, or is likely to increase public confidence, for the Integrity Commission to investigate the complaint;
 - (e) any other matters the assessor considers relevant.

38. Actions of chief executive officer on receipt of assessment

- (1) On receipt of a report from an assessor prepared under section 37, the chief executive officer is to make a determination –
- (a) to dismiss or not accept the complaint; or
 - (b) to refer the complaint to which the report relates, any relevant material and the report to any relevant public authority with recommendations for investigation and action; or

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- (c) to refer the complaint to which the report relates, any relevant material and the report to an appropriate integrity entity with recommendations for investigation and action; or
 - (d) to refer the complaint to which the report relates, any relevant material and the report to an appropriate Parliamentary integrity entity; or
 - (e) to refer the complaint to which the report relates, any relevant material and the report to the Commissioner of Police with a recommendation for investigation; or
 - (f) to refer the complaint to which the report relates, any relevant material and the report to any person who the chief executive officer considers appropriate for action; or
 - (g) that the Integrity Commission investigate the complaint.
- (2) The chief executive officer is to give written notice of his or her determination under subsection (1) to the principal officer of any relevant public authority and may, if he or she considers it appropriate, give written notice to –
- (a) the complainant; and
 - (b) any public officer to whom the complaint relates.

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- (3) Section 97 applies to a notice under subsection (2) if the notice provides that it is a confidential document.

39. Referral of complaint to relevant public authority

- (1) If a complaint is referred to a relevant public authority under section 38(1)(b), the chief executive officer is to notify the principal officer of that public authority in writing that the chief executive officer is to be informed of the outcome of the investigation, including any action taken, or to be taken, by the public authority.
- (2) The chief executive officer may also –
- (a) require the relevant public authority to provide progress reports on the investigation at such times as the chief executive officer considers necessary; or
 - (b) monitor the conduct of the investigation; or
 - (c) audit the investigation after it has been completed.

40. Referral of complaint to integrity entity

If a complaint is referred to an integrity entity under section 38(1)(c), the chief executive officer is to notify the integrity entity in writing that the chief executive officer is to be informed

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of the outcome of the investigation including any action taken, or to be taken, by the integrity entity.

41. Referral of complaint to Parliamentary integrity entity

If a complaint is referred to a Parliamentary integrity entity under section 38(1)(d), the chief executive officer is to notify the Parliamentary integrity entity in writing that the chief executive officer is to be informed of the outcome of the investigation including any action taken, or to be taken, by the Parliamentary integrity entity.

42. Referral of complaint to Commissioner of Police

- (1) If a complaint is referred to the Commissioner of Police under section 38(1)(e), the chief executive officer is to notify the Commissioner of Police in writing that the chief executive officer is to be informed of the outcome of the investigation including any action taken, or to be taken, by the Commissioner of Police.
- (2) The chief executive officer may also –
 - (a) require the Commissioner of Police to provide progress reports on the investigation at such times as the chief executive officer considers necessary; or
 - (b) monitor the investigation; or

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- (c) audit the investigation after it has been completed.

43. Referral of complaint to other person

- (1) If a complaint is referred to a person under section 38(1)(f), the chief executive officer is to notify the person in writing that the chief executive officer is to be informed of the outcome of the investigation including any action taken, or to be taken, by the person.
- (2) The chief executive officer may also –
 - (a) require the person to provide progress reports on the investigation at such times the chief executive officer considers necessary; or
 - (b) monitor the investigation; or
 - (c) audit the investigation after it has been completed.

PART 6 – INVESTIGATIONS

Division 1 – Conduct of investigations

44. Appointment of investigator

- (1) If the chief executive officer makes a determination that the Integrity Commission should investigate a complaint, the chief executive officer is to appoint an investigator to conduct an investigation of the complaint.
- (2) If a determination to investigate a complaint is made, the chief executive officer may, if he or she considers it appropriate, give written notice to –
 - (a) the principal officer of any relevant public authority; and
 - (b) the complainant; and
 - (c) any public officer who is the subject of the complaint –that an investigator has been appointed to investigate the complaint.
- (3) Any notice given under subsection (2) –
 - (a) may include details of the complaint; and
 - (b) may include, if the chief executive officer considers it appropriate, any report of the assessor in relation to the complaint.

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- (4) Section 97 applies to a notice under subsection (2) if the notice provides that it is a confidential document.

45. Own motion investigations

- (1) The Board may determine that an investigator be appointed to conduct an investigation on its own motion in respect of any matter that is relevant to the achievement of the objectives of this Act in relation to misconduct, including but not limited to –
- (a) an investigation into misconduct by a public officer; and
 - (b) an investigation into misconduct by a designated public officer; and
 - (c) an investigation into misconduct or serious misconduct generally; and
 - (d) an investigation 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.
- (2) If the Board makes a determination under subsection (1), it is to advise the chief executive officer, who is to appoint an investigator to conduct an investigation –
- (a) into whether or not any particular public officer, designated public officer or other

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person may have committed misconduct;
or

(b) into whether or not any serious
misconduct or other misconduct is
suspected; or

(c) into whether or not any person under
investigation who was a public officer at
any relevant time is still a public officer
at the time of the investigation.

(3) If the Board makes a determination under
subsection (1), the chief executive officer may, if
he or she considers it appropriate, give written
notice of the investigation to –

(a) the principal officer of any relevant
public authority; and

(b) any responsible Minister; and

(c) any public officer suspected of
misconduct.

(4) Section 97 applies to a notice under
subsection (3) if the notice provides that it is a
confidential document.

46. Procedure on investigation

(1) Subject to this Act, an investigator –

(a) may conduct an investigation in any
manner he or she considers appropriate;
and

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- (b) may obtain information from any persons in any manner he or she considers appropriate; and
 - (c) must observe the rules of procedural fairness; and
 - (d) may make any investigations he or she considers appropriate.
- (2) The investigator may take into account in an investigation any information obtained by an assessor in the course of conducting an assessment under section 35.
- (3) The chief executive officer may authorise any person to assist an investigator.

47. Conduct of investigation

- (1) In conducting an investigation under section 46(1), the investigator, by written notice given to a person, may require or direct the person to do any or all of the following:
 - (a) to provide the investigator or any person assisting the investigator with any information or explanation that the investigator requires;
 - (b) to attend and give evidence before the investigator or any person assisting the investigator;
 - (c) to produce to the investigator or any person assisting the investigator any

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record, information, material or thing in
the custody or possession or under the
control of a person.

- (2) The investigator may require or direct that –
 - (a) the information, explanation or answers to questions be given orally or in writing, as the investigator requires; and
 - (b) the information, explanation or answers to questions be verified or the person give an oath or affirmation that the information or evidence the person has given is true.
- (3) The investigator may administer an oath or affirmation for the purposes of this Act.
- (4) If a person required or directed to give evidence to an investigator is –
 - (a) a prisoner or detainee under the *Corrections Act 1997* or the *Youth Justice Act 1997*; or
 - (b) a patient detained in an approved hospital under the *Mental Health Act 1996*; or
 - (c) a person who is subject to a restriction under the *Criminal Justice (Mental Impairment) Act 1999* –

the notice requiring or directing the person to provide any information or explanation authorises and requires the Director of Corrective Services, the Secretary within the

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meaning of the *Youth Justice Act 1997*, the controlling authority of the approved hospital or the responsible medical officer, within the meaning of the *Criminal Justice (Mental Impairment) Act 1999*, to allow the person to provide that information or explanation to the investigator in accordance with the notice.

- (5) For the purpose of obtaining any record, information, material or thing under subsection (1), the investigator may –
 - (a) inspect and take copies of or take extracts from any such record, information, material or thing; and
 - (b) require or direct any person to give such assistance as may be required.
- (6) Any record, information, material or thing obtained by the investigator may be used for the purposes of the investigation or any subsequent inquiry under Part 7.
- (7) Section 97 applies to a notice under subsection (1) if the notice provides that it is a confidential document.

48. Investigation to be conducted in private unless otherwise authorised by chief executive officer

An investigation by an investigator is to be conducted in private unless otherwise authorised by the chief executive officer.

49. Representation

A person required or directed to give evidence or answer questions as part of an investigation may be represented by a legal practitioner or other agent.

50. Investigator's power to enter premises

For the purpose of conducting an investigation, an investigator and any person assisting an investigator may enter any premises of a public authority without the need for consent or a search warrant and may enter other premises at any time with the consent of the occupier or under the authority of a search warrant issued under section 51.

51. Search warrants

- (1) For the purpose of conducting an investigation, an investigator may apply to a magistrate for a warrant to enter premises.
- (2) The magistrate may, on application made under this section, issue a search warrant to an investigator if the investigator satisfies the magistrate that there are reasonable grounds to suspect that material relevant to the investigation is located at the premises.
- (3) A search warrant authorises an investigator and any person assisting an investigator –

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- (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
 - (b) to exercise the powers in section 52.
- (4) The warrant must state –
 - (a) that the investigator and any person assisting the investigator may, with any necessary force, enter the premises and exercise the investigator's powers under this Part; and
 - (b) the reason for which the warrant is issued; and
 - (c) the hours when the premises may be entered; and
 - (d) the date, within 28 days after the day of the warrant's issue, of the warrant's expiry.
- (5) Section 97 applies to a warrant if the warrant specifies that it is a confidential document.
- (6) Except as provided in this section, the provisions in respect of search warrants under the *Search Warrants Act 1997* extend and apply to warrants issued under this section.

52. Powers of investigator while on premises

- (1) An investigator or any person assisting an investigator who enters premises under this Part may exercise any or all of the following powers:
- (a) to search the premises and examine anything on the premises;
 - (b) to search for any record, information, material or thing relating to the matter to which the investigation relates;
 - (c) to operate equipment or facilities on the premises for a purpose relevant to the investigation;
 - (d) to take possession of any record, information, material or thing and retain it for as long as may be necessary to examine it to determine its evidentiary value;
 - (e) to make copies of any record, information, material or thing or any part of any record, information, material or thing;
 - (f) to seize and take away any record, information, material or thing or any part of any record, information, material or thing;
 - (g) to use (free of charge) photocopying equipment on the premises for the purpose of copying any record, information, material or thing;

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- (h) in respect of any computer or other equipment that the investigator suspects on reasonable grounds may contain any record, information, material or thing –
 - (i) to inspect and gain access to the computer or equipment; and
 - (ii) to download or otherwise obtain any record, information, material or thing; and
 - (iii) to make copies of any record, information, material or thing held in it; and
 - (iv) to seize and take away the computer or equipment or any part of it;
- (i) if any record, information, material or thing found on the premises cannot be conveniently removed, to secure it against interference;
- (j) to require or direct any person who is on the premises to do any of the following:
 - (i) to state his or her full name, date of birth and address;
 - (ii) to answer (orally or in writing) questions asked by the investigator relevant to the investigation;

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- (iii) to produce any record, information, material or thing;
 - (iv) to operate equipment or facilities on the premises for a purpose relevant to the investigation;
 - (v) to provide access (free of charge) to photocopying equipment on the premises the investigator reasonably requires to enable the copying of any record, information, material or thing;
 - (vi) to give other assistance the investigator reasonably requires to conduct the investigation;
 - (k) to do anything else reasonably necessary to obtain information or evidence for the purposes of the investigation.
- (2) Any record, information, material or thing obtained by the investigator may be used for the purposes of the investigation or any subsequent inquiry under Part 7.
- (3) If an investigator takes anything away from the premises, the investigator must issue a receipt in a form approved by the Board and –
- (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
 - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.

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- (4) An investigator and any assistants authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises and conducting the search.
- (5) A person required or directed to do anything under subsection (1)(j) must not, without reasonable excuse, fail to comply with the requirement or direction.

Penalty: Fine not exceeding 2 000 penalty units.

53. Application for use of surveillance device

An investigator with the approval of the chief executive officer may apply for a warrant under Part 2 of the *Police Powers (Surveillance Devices) Act 2006* as if the investigator were a law enforcement officer within the meaning of that Act and a reference in that Part to a relevant offence were read as a reference to misconduct.

54. Offences relating to investigations

- (1) A person who, without reasonable excuse, fails to comply with a requirement or direction under section 47 within 14 days of receiving it commits an offence.

Penalty: Fine not exceeding 5 000 penalty units.

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- (2) A person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to another person for or on account of that other person having given evidence to an investigator or produced or surrendered any record, information, material or thing to an investigator.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.

- (3) A person must not obstruct or hinder an investigator or any person assisting an investigator in the performance of a function or the exercise of a power under section 47.

Penalty: Fine not exceeding 2 000 penalty units.

Division 2 – Procedure after investigation

55. Investigator's report

- (1) On completion of an investigation, the investigator is to prepare a report of his or her findings for the chief executive officer.
- (2) The chief executive officer is to submit a report of the investigation to the Board.

56. Opportunity to provide comment on report

- (1) Before finalising any report for submission to the Board, the chief executive officer may, if he or she considers it appropriate, give a draft of the report to –
 - (a) the principal officer of the relevant public authority; and
 - (b) the public officer who is the subject of the complaint; and
 - (c) any other person who in the chief executive officer's opinion has a special interest in the report.
- (2) A notice may be attached to a draft of a report specifying that the draft of the report is a confidential document.
- (3) A person referred to in subsection (1)(a), (b) or (c) may give the chief executive officer written submissions or comments in relation to the draft of the report within such time and in such a manner as the chief executive officer directs.
- (4) The chief executive officer must include in his or her report prepared under section 57 any submissions or comments given to the chief executive officer under subsection (3) or a fair summary of those submissions or comments.
- (5) Section 97 applies to a notice under subsection (2) if the notice provides that the draft of the report is a confidential document.

57. Report of investigation

- (1) The chief executive officer is to give to the Board a report of the investigation that includes –
 - (a) the investigator's report; and
 - (b) submissions or comments given under section 56; and
 - (c) a recommendation referred to in subsection (2).
- (2) The chief executive officer is to recommend –
 - (a) that the complaint be dismissed; or
 - (b) that the complaint, the report of any findings and any other information obtained in the conduct of the investigation be referred to –
 - (i) the principal officer of the relevant public authority for action; or
 - (ii) an appropriate integrity entity for action; or
 - (iii) an appropriate Parliamentary integrity entity; or
 - (iv) the Commissioner of Police or DPP for action; or
 - (v) the responsible Minister; or

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- (vi) a person who the chief executive officer considers appropriate for action; or
- (c) 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; or
- (d) that an inquiry into the complaint be conducted by an Integrity Tribunal.

58. Determination of Board

- (1) On receipt of a report under section 57, the Board may make a determination referred to in subsection (2) in relation to the complaint that was the subject matter of the investigation.
- (2) The Board may –
 - (a) dismiss the complaint; or
 - (b) refer the complaint and the report of the investigation and any information obtained in the conduct of the investigation relating to the complaint to –
 - (i) the principal officer of the relevant public authority for action; or
 - (ii) an appropriate integrity entity for action; or

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- (iii) an appropriate Parliamentary integrity entity; or
 - (iv) the Commissioner of Police or DPP for action; or
 - (v) the responsible Minister; or
 - (vi) a person who the Board considers appropriate; or
- (c) recommend to the Premier that a commission of inquiry be established under the *Commissions of Inquiry Act 1995* in relation to the matter; or
 - (d) require that a further investigation of the complaint be conducted by the investigator; or
 - (e) determine that an inquiry into the complaint be undertaken by an Integrity Tribunal under Part 7.
- (3) In referring a matter to a person under subsection (2)(b), the Board may make a recommendation as to appropriate action that it considers should be taken in relation to the matter.
 - (4) A person to whom a complaint and report are referred under subsection (2)(b) must notify the Board of any action taken in relation to the complaint within such time and in such manner as the Board may require.

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59. Persons to whom notice of determination is to be given

(1) The Board –

- (a) is to give written notice of its determination to the principal officer of the relevant public authority; or
- (b) may, if it considers it appropriate, give written notice of its determination to –
 - (i) the public officer to whom the complaint relates; or
 - (ii) any other person who, in the opinion of the chief executive officer, has a special interest in the matter.

(2) Section 97 applies to a notice under subsection (1) if the notice provides that it is a confidential document.

PART 7 – INQUIRY BY INTEGRITY TRIBUNAL

Division 1 – Integrity Tribunal

60. Power of Board to convene Integrity Tribunal

If the Board determines that an inquiry be conducted, the Chief Commissioner is to convene an Integrity Tribunal for the purpose of conducting that inquiry.

61. Function of Integrity Tribunal

- (1) The function of an Integrity Tribunal is to conduct an inquiry into a complaint or a matter referred to in section 45(1) and make findings and determinations in respect of the complaint or matter.
- (2) In conducting an inquiry, the Integrity Tribunal may –
 - (a) hold hearings; and
 - (b) receive submissions or evidence; and
 - (c) inform itself in any matter it considers appropriate; and
 - (d) exercise all or any of the powers conferred on it by this Act.

62. Constitution of Integrity Tribunal

- (1) An Integrity Tribunal convened under section 60 is to consist of –
 - (a) the Chief Commissioner sitting alone; or
 - (b) the Chief Commissioner and not more than two members of the Board referred to in section 14(1)(e), (f) or (g) and such other persons (if any) appointed by the Chief Commissioner who the Chief Commissioner considers have the requisite experience and expertise relevant to the inquiry to be undertaken by the Integrity Tribunal.
- (2) Any person specified in subsection (1)(b), other than a member of the Board, is to be appointed by the Chief Commissioner on such terms and conditions as are specified in his or her instrument of appointment.
- (3) If the Chief Commissioner considers that he or she has a conflict of interest in being a member of an Integrity Tribunal, the Chief Commissioner is to nominate another member of the Board to perform the functions or exercise the powers of the Chief Commissioner in relation to the Integrity Tribunal.
- (4) Any other person proposed to be appointed to an Integrity Tribunal who considers that he or she has a conflict of interest in being a member of the Integrity Tribunal is not to accept the appointment.

63. Persons appointed to assist Integrity Tribunal

- (1) An Integrity Tribunal may appoint one or more of the following persons to assist it in its inquiry:
 - (a) a legal practitioner;
 - (b) an expert in any field to provide technical or specialist advice.
- (2) An Integrity Tribunal may require an officer or employee of the Integrity Commission or other person authorised under section 21 to assist with the conduct of an inquiry.

Division 2 – Conduct of inquiry

64. Powers of Integrity Tribunal on inquiry

- (1) In respect of an inquiry, an Integrity Tribunal may do any or all of the following:
 - (a) require or direct any person, whose evidence, in the opinion of the Integrity Tribunal, appears to be material to the inquiry, to appear before the Integrity Tribunal;
 - (b) proceed to hold a hearing in the absence of any person who has been duly required or directed to appear;
 - (c) take evidence by affidavit or by statutory declaration;

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- (d) take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations;
 - (e) require or direct any person to produce or to authorise another person to produce any records, information, material or things in that person's possession or subject to that person's control that, in the opinion of the Integrity Tribunal, appear to be material to the inquiry;
 - (f) require or direct a person to answer any questions that, in the opinion of the Integrity Tribunal, appear to be material to the inquiry;
 - (g) adjourn the inquiry from place to place and from time to time.
- (2) An Integrity Tribunal at an inquiry may –
- (a) receive in evidence the transcript of evidence in any proceeding before a court, tribunal or other integrity entity and draw any conclusion of fact from that transcript; and
 - (b) receive any transcript of any proceedings of either House of Parliament or a Parliamentary Committee; and
 - (c) receive any transcript or minute of any proceedings of a local authority; and

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- (d) take into account any finding or decision of a court, tribunal or other integrity entity; and
 - (e) receive in evidence any investigation report of an investigator; and
 - (f) receive in evidence any evidence taken on oath or by affirmation during the course of an investigation under Part 6.
- (3) In respect of any inquiry, an Integrity Tribunal is not bound to observe the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it thinks fit.

65. Notice of complaint

- (1) At the commencement of an inquiry by an Integrity Tribunal the Integrity Tribunal must give the public officer who is the subject of a complaint written notice of the complaint including –
 - (a) the allegation of misconduct; and
 - (b) the substance of the evidence supporting the allegation.
- (2) Section 97 applies to a notice referred to in subsection (1) if the notice specifies that it is a confidential document.

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66. Right of representation

- (1) A person appearing before an Integrity Tribunal may, with its approval, be represented by a legal practitioner or other agent.
- (2) A legal practitioner or agent who represents any person at a hearing of the Integrity Tribunal may examine or cross-examine witnesses on behalf of the person.

67. Right of appearance

- (1) An Integrity Tribunal may allow any person or any person's legal practitioner or agent to participate in an inquiry, to the extent that the Integrity Tribunal considers appropriate.
- (2) In making a decision under subsection (1), an Integrity Tribunal may have regard to –
 - (a) any direct or special interest a person may have in the matters relevant to an inquiry; and
 - (b) the probability that an inquiry may make a finding adverse to that person's interests; and
 - (c) the ability of a person to assist an inquiry.

68. Directions conference

- (1) Before an inquiry is held, an Integrity Tribunal may conduct a directions conference in relation to the inquiry.
- (2) An Integrity Tribunal, by written notice, may require or direct any person to –
 - (a) attend a directions conference; and
 - (b) provide and produce any specified record, information, material or thing at a directions conference.
- (3) A person, without reasonable excuse, must not fail to comply with a requirement or direction notified under subsection (2).

Penalty: Fine not exceeding 10 penalty units.

- (4) A directions conference is to be held in private.
- (5) An Integrity Tribunal may give any directions it considers necessary to ensure that the inquiry is conducted fairly and expeditiously.
- (6) An Integrity Tribunal may adjourn a directions conference from place to place and from time to time.

69. Procedure of inquiry

Subject to this Act, an Integrity Tribunal –

- (a) may conduct an inquiry in any manner it considers appropriate; and

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- (b) must observe the rules of procedural fairness; and
- (c) is not required to hold a hearing for an inquiry; and
- (d) may obtain information from any persons in any manner it considers appropriate; and
- (e) may make any inquiries it considers appropriate; and
- (f) may determine its own procedure in conducting an inquiry.

70. Response to notice of complaint

A public officer who receives notice of a complaint under section 65 may respond to that complaint by doing any or all of the following:

- (a) making oral or written submissions to the Integrity Tribunal;
- (b) giving evidence to the Integrity Tribunal to contradict or explain the allegation or evidence;
- (c) cross-examining any person making any statement regarding the complaint;
- (d) calling witnesses on matters relevant to the complaint or evidence;

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- (e) producing any record, information, material or thing.

71. Conduct of inquiry

- (1) An Integrity Tribunal may, by notice served on a person, require or direct that person to attend an inquiry to do either or both of the following:
 - (a) give evidence;
 - (b) produce to the Integrity Tribunal, or a person designated by the Integrity Tribunal, any record, information, material or thing in that person's possession or control which the Integrity Tribunal considers relevant to its inquiry.
- (2) If the Integrity Tribunal considers it expedient to do so because of the distance a person resides from the place at which the Integrity Tribunal would otherwise require or direct that person to attend to give evidence, or because of any other circumstance, the Integrity Tribunal may appoint a person to take the evidence of that person and provide that evidence to the Integrity Tribunal.
- (3) The Integrity Tribunal may permit a person to participate in an inquiry by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Integrity Tribunal.

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(4) If a person required or directed to give evidence to an Integrity Tribunal is –

- (a) a prisoner or detainee under the *Corrections Act 1997* or the *Youth Justice Act 1997*; or
- (b) a patient detained in an approved hospital under the *Mental Health Act 1996*; or
- (c) a person who is subject to a restriction under the *Criminal Justice (Mental Impairment) Act 1999* –

the notice requiring or directing the person to provide any information or explanation authorises and requires the Director of Corrective Services, the Secretary within the meaning of the *Youth Justice Act 1997*, the controlling authority of the approved hospital or the responsible medical officer, within the meaning of the *Criminal Justice (Mental Impairment) Act 1999*, to allow the person to provide that information or explanation to the Integrity Tribunal in accordance with the notice.

(5) An Integrity Tribunal may, by notice served on a person, require or direct that person to do either or both of the following:

- (a) provide the Integrity Tribunal or an inquiry officer with any information or explanation either orally or in writing that the Integrity Tribunal or inquiry officer requires;

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- (b) produce to the Integrity Tribunal or an inquiry officer any record, information, material or thing in the custody or possession or under the control of that person.
 - (6) Any record, information, material or thing obtained by the inquiry officer may be used for the purposes of the inquiry.
 - (7) For the purpose of obtaining any record, information, material or thing under subsection (1), the Integrity Tribunal may –
 - (a) inspect and take copies of or take extracts from that record, material or thing; and
 - (b) require or direct any person to give such assistance as may be required.
 - (8) Section 97 applies to a notice under subsection (1) if the notice provides that it is a confidential document.

72. Power to enter premises

An inquiry officer, for the purposes of assisting with the conduct of an inquiry, may enter any premises of a public authority without the need for consent or a search warrant and may enter other premises at any time with the consent of the occupier or under the authority of a search warrant issued under section 73.

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73. Search warrants

- (1) For the purpose of conducting an inquiry, an inquiry officer, with the approval of the Chief Commissioner, may apply to a magistrate for a warrant to enter premises.
- (2) The magistrate may, on application made under this section, issue a search warrant to an inquiry officer if the inquiry officer satisfies the magistrate that there are reasonable grounds to suspect that material relevant to the inquiry is located at the premises.
- (3) A search warrant authorises an inquiry officer –
 - (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
 - (b) to exercise the powers under section 74.
- (4) The warrant must state –
 - (a) that the inquiry officer and any person assisting the inquiry officer may, with any necessary force, enter the premises and exercise the inquiry officer's powers under this Part; and
 - (b) the reason for which the warrant is issued; and
 - (c) the hours when the premises may be entered; and

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- (d) the date, within 28 days after the day of the warrant's issue, of the warrant's expiry.
 - (5) Section 97 applies to a warrant if the warrant specifies that it is a confidential document.
 - (6) Except as provided in this section, the provisions in respect of search warrants under the *Search Warrants Act 1997* extend and apply to warrants issued under this section.

74. Powers of inquiry officer while on premises

- (1) An inquiry officer who enters premises under this Part may exercise any or all of the following powers:
 - (a) search the premises and examine anything on the premises;
 - (b) search for any record, information, material or thing relating to the matter to which the inquiry relates;
 - (c) operate equipment or facilities on the premises for a purpose relevant to the inquiry;
 - (d) take possession of any record, information, material or thing and retain it for as long as may be necessary to examine it to determine its evidentiary value;

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- (e) make copies of any record, information, material or thing or any part of any record, information, material or thing;
- (f) seize and take away any record, information, material or thing or any part of any record, information, material or thing;
- (g) use (free of charge) photocopying equipment on the premises for the purpose of copying any record, information, material or thing;
- (h) in respect of any computer or other equipment that the investigator suspects on reasonable grounds may contain any record, information, material or thing –
 - (i) inspect and gain access to the computer or equipment; and
 - (ii) download or otherwise obtain any record, information, material or thing; and
 - (iii) make copies of any record, information, material or thing held in it; and
 - (iv) seize and take away the computer or equipment or any part of it;
- (i) if any record, information, material or thing found on the premises cannot be conveniently removed, secure it against interference;

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- (j) require or direct any person who is on the premises to do any or all of the following:
 - (i) to state his or her full name, date of birth and address;
 - (ii) to answer (orally or in writing) questions asked by the inquiry officer relevant to the inquiry;
 - (iii) to produce any record, information, material or thing;
 - (iv) to operate equipment or facilities on the premises for a purpose relevant to the inquiry;
 - (v) to provide access (free of charge) to photocopying equipment on the premises the inquiry officer reasonably requires to enable the copying of any record, information, material or thing;
 - (vi) to give other assistance the inquiry officer reasonably requires to conduct the inquiry;
 - (k) do anything else reasonably necessary to obtain information or evidence for the purposes of the inquiry.
- (2) Any record, information, material or thing obtained by the inquiry officer may be used for the purposes of the inquiry.

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- (3) If an inquiry officer takes anything away from the premises, the inquiry officer must issue a receipt in a form approved by the Integrity Commission and –
 - (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
 - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.
- (4) An inquiry officer and any assistants authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises and conducting the search.
- (5) A person required or directed to do anything under subsection (1)(j) must not, without reasonable excuse, fail to comply with the request.

Penalty: Fine not exceeding 2 000 penalty units.

75. Application for use of surveillance device

An inquiry officer, with the approval of the Chief Commissioner or other person nominated under section 62(3), may apply for a warrant under Part 2 of the *Police Powers (Surveillance Devices) Act 2006* as if the inquiry officer were a law enforcement officer within the meaning of

that Act and a reference in that Part to a relevant offence were read as a reference to misconduct.

76. Hearings of Integrity Tribunal

If an Integrity Tribunal holds a hearing, Schedule 6 applies to the conduct of that hearing.

77. Presiding at hearings

- (1) The Chief Commissioner or the member nominated under section 62(3) is to preside at all hearings of an Integrity Tribunal at which he or she is present.
- (2) If the Chief Commissioner or the member nominated under section 62(3) is not present at a hearing of an Integrity Tribunal, a member of the Integrity Tribunal specified by the Chief Commissioner or the person nominated under section 62(3) is to preside at the hearing.

Division 3 – Procedure after inquiry

78. Determination of Integrity Tribunal

- (1) At the conclusion of an inquiry, an Integrity Tribunal may make a determination in relation to the complaint or matter that was the subject of the inquiry.

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- (2) An Integrity Tribunal may do any one or more of the following:
- (a) dismiss the complaint;
 - (b) make a finding that misconduct or serious misconduct has occurred;
 - (c) recommend to the Premier that a commission of inquiry be established under the *Commissions of Inquiry Act 1995* in relation to the matter;
 - (d) make such report as it considers appropriate in relation to the matter.
- (3) If the Integrity Tribunal makes a determination under subsection (2)(b), it may refer the determination and any material that it considers relevant to –
- (a) the principal officer of the relevant public authority for action; or
 - (b) an appropriate integrity entity for action; or
 - (c) an appropriate Parliamentary integrity entity; or
 - (d) the Commissioner of Police or DPP for action; or
 - (e) the responsible Minister for action; or
 - (f) a person who the Tribunal considers is appropriate for action.

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- (4) In referring a matter to a person or body under subsection (3), an Integrity Tribunal may make a recommendation as to appropriate sanctions that should be imposed or action that should be taken in relation to the matter.
 - (5) The Integrity Tribunal may require the person referred to in subsection (3) to report on any action taken in relation to the determination referred to in this section.
 - (6) An Integrity Tribunal must serve notice of its determination under subsection (2)(b) on the principal officer of the relevant public authority and, if the Integrity Tribunal considers it appropriate, may serve notice of its determination on –
 - (a) the person who is the subject of the complaint; and
 - (b) the responsible Minister.
 - (7) Section 97 applies to a notice referred to in subsection (6) if the notice specifies that it is a confidential document.
 - (8) The Integrity Tribunal may publish, in such manner as it thinks fit, its determination.

79. Review of determination

A determination of the Integrity Tribunal under section 78 is a reviewable matter under the *Judicial Review Act 2000*.

Division 4 – Offences

80. Offences relating to Integrity Tribunal

- (1) A person must not intentionally prevent or intentionally try to prevent a person who is required by an Integrity Tribunal to appear before it from attending as a witness or producing any record, information, material or thing to the Integrity Tribunal.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.

- (2) A person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage in relation to another person for or on account of –

- (a) that other person having given evidence before an Integrity Tribunal or produced or surrendered any record, information, material or thing to an Integrity Tribunal; or
- (b) any evidence given by that other person before an Integrity Tribunal or any record, information, material or thing produced or surrendered by that other person to an Integrity Tribunal.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.

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(3) If an Integrity Tribunal is holding a hearing, a person must not –

- (a) insult a member of the Integrity Tribunal in relation to the performance of his or her functions as a member; or
- (b) interrupt proceedings of the Integrity Tribunal; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Integrity Tribunal is sitting; or
- (d) do anything that would, if the Integrity Tribunal were a court of record, constitute a contempt of that court.

Penalty: Fine not exceeding 2 000 penalty units.

(4) A person must not obstruct or improperly influence the conduct of an inquiry of the Integrity Tribunal or attempt to do so.

Penalty: Fine not exceeding 2 000 penalty units.

(5) A person who fails without reasonable excuse to –

- (a) attend an inquiry of the Integrity Tribunal as required by the Integrity Tribunal; or
- (b) take an oath or make an affirmation at an inquiry of the Integrity Tribunal; or

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- (c) produce or authorise another person to produce any record, information, material or thing when required by the Integrity Tribunal to do so; or
- (d) answer any question when required by the Integrity Tribunal to do so; or
- (e) assist in the course of an inquiry of the Integrity Tribunal –

is guilty of an offence.

Penalty: Fine not exceeding 5 000 penalty units.

81. Offences against inquiry officers

- (1) A person who, without reasonable excuse, fails to comply with a requirement or direction of an inquiry officer within 14 days of receiving it commits an offence.

Penalty: Fine not exceeding 5 000 penalty units.

- (2) A person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage in relation to another person for or on account of that other person having given evidence to an inquiry officer or produced or surrendered any record, information, material or thing to an inquiry officer.

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Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.

- (3) A person must not obstruct or hinder an inquiry officer or any person assisting an inquiry officer in the performance of a function or the exercise of a power under section 74.

Penalty: Fine not exceeding 5 000 penalty units.

Division 5 – Costs and expenses

82. Interpretation

In this Division –

“**witness**” means a person who –

- (a) is required to appear before an Integrity Tribunal; or
- (b) is requested by an Integrity Tribunal to attend at a place to be interviewed.

83. Legal costs of witnesses

- (1) A witness may apply to the chief executive officer for financial assistance in relation to the witness’s legal costs.
- (2) In determining whether to approve the payment of financial assistance to a witness, the chief

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executive officer may have regard to the following matters:

- (a) whether the witness has shown that he or she had a valid reason to seek legal representation;
 - (b) the significance of the evidence that the witness is to give or appears likely to give;
 - (c) whether in all the circumstances, it would be a hardship or injustice for the witness to bear the costs;
 - (d) the nature and possible effect of any findings made about the witness;
 - (e) any other relevant matter.
- (3) If legal costs of the witness are approved to be paid under subsection (1), the costs are to be taxed by a taxing officer of the Supreme Court.
- (4) If the chief executive officer approves the payment of financial assistance to a witness, the chief executive officer may authorise the payment of the financial assistance.
- (5) The financial assistance may be provided unconditionally or subject to conditions determined by the chief executive officer.
- (6) The chief executive officer may delegate any of his or her functions under this section.

84. Allowances to witnesses

- (1) A witness is entitled to receive such of the following as are applicable to that person:
 - (a) an allowance for meals;
 - (b) an allowance for travelling;
 - (c) an allowance for accommodation;
 - (d) any other allowance that the Integrity Tribunal considers reasonable.
- (2) A person who appears before an Integrity Tribunal otherwise than as a witness to an inquiry may apply in writing to the chief executive officer for such of the following as are applicable to that person:
 - (a) an allowance for meals;
 - (b) an allowance for travelling;
 - (c) an allowance for accommodation;
 - (d) any other allowance that the chief executive officer considers reasonable.
- (3) On an application under subsection (2), the chief executive officer in his or her discretion may, having regard to such matters as he or she considers relevant, approve that the applicant be paid such allowances as the chief executive officer specifies.
- (4) An allowance under this section is payable on the same terms and at the same rate as is

prescribed from time to time for the equivalent allowance in the Tasmanian State Service Award made under the *Industrial Relations Act 1984*.

85. Compensation to witnesses for loss of income

- (1) A person who appears as a witness at an Integrity Tribunal may apply in writing to the chief executive officer for compensation for loss of income.
- (2) On an application under subsection (1), the chief executive officer in his or her discretion may, having regard to such matters as he or she considers relevant, approve that the applicant be paid compensation for loss of income.

86. Costs and expenses of inquiry, &c.

The following are a charge on the Consolidated Fund and are payable out of the Consolidated Fund without further appropriation than this section:

- (a) the costs and expenses incurred in, or in connection with, the conduct of an inquiry under this Act;
- (b) the amount of any legal costs approved to be paid under section 83(1) that have been taxed under section 83(3);
- (c) the amount of any allowance that a person is entitled to receive or approved

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to be paid under section 84;

- (d) the amount of any compensation that a person is entitled to receive or is approved to be paid under section 85.

PART 8 – MISCONDUCT BY CERTAIN PUBLIC OFFICERS

Division 1 – Misconduct by designated public officers

87. Investigation or dealing with misconduct by designated public officers

- (1) The Integrity Commission is to assess, investigate, inquire into or otherwise deal with, in accordance with this Act, complaints relating to misconduct by –
 - (a) a designated public officer; or
 - (b) a commissioned police officer; or
 - (c) the holder of a senior executive office.
- (2) In assessing, investigating, inquiring into or otherwise dealing with a complaint under subsection (1), the Integrity Commission may have regard to –
 - (a) established procedures or procedures of the relevant public authority; and
 - (b) any codes of conduct relevant to the designated public officer who is the subject of the complaint; and
 - (c) any statutory obligations or relevant law relating to that designated public officer.

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Division 2 – Police misconduct

88. Integrity Commission’s role in relation to police misconduct

- (1) The Integrity Commission is to, having regard to the principles stated in section 9 –
 - (a) assess, investigate, inquire into or otherwise deal with complaints relating to serious misconduct by a commissioned police officer in accordance with Parts 6 and 7; or
 - (b) provide advice in relation to the conduct of investigations by the Commissioner of Police into police misconduct; or
 - (c) audit the way the Commissioner of Police has dealt with police misconduct, in relation to either a particular complaint or a class of complaint; or
 - (d) assume responsibility for and complete in accordance with Parts 6 and 7 an investigation commenced by the Commissioner of Police into misconduct by a police officer.
- (2) If requested by the Integrity Commission, the Commissioner of Police is to give the Integrity Commission reasonable assistance –
 - (a) to undertake a review or audit; or
 - (b) to assume responsibility for an investigation.

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- (3) If the Integrity Commission assumes responsibility for an investigation, the Commissioner of Police must stop his or her investigation or any other action that may impede the investigation if directed to do so by the Integrity Commission.

89. Own motion investigations

- (1) The Integrity Commission may conduct an investigation on its own motion in respect of any matter that is relevant to police misconduct, including but not limited to –
- (a) an investigation into the conduct of a commissioned police officer; or
 - (b) an investigation into police misconduct generally; or
 - (c) an investigation into any of the policies, practices or procedures of Tasmania Police in relation to misconduct.
- (2) For the purposes of subsection (1), the Integrity Commission may conduct an investigation –
- (a) whether or not any particular police officer or other person may have committed misconduct; or
 - (b) whether or not any person under investigation who was a police officer at any relevant time is still a police officer at the time of the investigation.

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- (3) The Integrity Commission may give written notice of an investigation on its own motion to the Commissioner of Police.
 - (4) Section 97 applies to a notice under subsection (3) if the notice provides that it is a confidential document.

90. Consultation with Commissioner of Police

If, at any time during the course of an investigation into police misconduct, it appears to the Integrity Commission that there may be grounds for making a report adverse to Tasmania Police, the Integrity Commission may, before making the report, give the Commissioner of Police the opportunity to comment on the report.

91. Commissioner of Police to respond to Integrity Commission

- (1) If the Integrity Commission requests the Commissioner of Police to take any action, or to conduct a further investigation, the Commissioner of Police must give a written response to the Integrity Commission stating –
 - (a) whether or not the Commissioner of Police proposes to take the action or conduct the further investigation; and
 - (b) if the Commissioner of Police proposes not to take the action or not to conduct

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the further investigation, the reasons for
that decision.

- (2) Following the completion of any investigation under subsection (1), the Commissioner of Police is to report the outcome of that investigation to the Integrity Commission.

PART 9 – MISCELLANEOUS

92. Claims of privilege

(1) This section applies if a person claims privilege in respect of –

- (a) any requirement or direction of an assessor exercising the powers of an investigator under Part 6; and
- (b) any requirement or direction given to a person by an investigator or the chief executive officer under Part 6; and
- (c) any requirement or direction given to a person by the Integrity Tribunal or an inquiry officer under Part 7 –

to provide information or explanation, answer any question or produce any record, information, material or thing.

(2) A person may, during an assessment of a complaint under section 35, an investigation under Part 6 or an inquiry under Part 7, claim privilege and refuse to –

- (a) answer any question or provide any information or explanation; or
- (b) produce any record, material or thing.

(3) If a claim of privilege is made under subsection (2), the assessor, investigator, chief executive officer, inquiry officer or Integrity

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Tribunal may withdraw the requirement or direction to –

- (a) answer any question or provide any information or explanation; or
 - (b) produce any record, material or thing.
- (4) If the requirement or direction to –
 - (a) answer any question or provide any information or explanation; or
 - (b) produce any record, material or thing –

is not withdrawn, the assessor, investigator, chief executive officer, inquiry officer or Integrity Tribunal must issue a notice to comply with the requirement or direction.
- (5) A person must comply with the requirement or direction under subsection (4) or make application to the Supreme Court, within 14 days of being given notice to comply, for the Court to determine the claim of privilege.
- (6) A person who makes application to the Supreme Court under subsection (5) must give notice of the application to the Integrity Commission and the Integrity Commission is taken to be a party to the application.
- (7) The Supreme Court may determine that the answer, information or material is –
 - (a) privileged; or
 - (b) not privileged; or

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- (c) partly privileged.
- (8) The assessor, investigator, chief executive officer, inquiry officer or Integrity Tribunal must give effect to any determination or order or other direction made by the Supreme Court.
- (9) The Supreme Court may make Rules of Court relating to applications under subsection (5).
- (10) If a person who is subject to a notice to comply does not apply under subsection (5), the person is not entitled to claim privilege as a reasonable excuse in respect of –
 - (a) any requirement or direction of an assessor exercising the powers of an investigator under Part 6; and
 - (b) any requirement or direction given to a person by an investigator or the chief executive officer under Part 6; and
 - (c) any requirement or direction given to a person by the Integrity Tribunal or an inquiry officer under Part 7 –

to provide information or explanation, answer any question or produce any record, information, material or thing.

- (11) If the Supreme Court does not determine that a claim of privilege exists and the person who is subject to the notice to comply does not comply with the notice, that person is not entitled to claim privilege as a reasonable excuse for not complying with the requirement or direction of

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an assessor, investigator, chief executive officer, inquiry officer or Integrity Tribunal.

- (12) Nothing in this section prevents a person entitled to claim privilege from waiving its application to any record, information, material or thing and a waiver once made cannot later be revoked.

93. Information confidential

- (1) This section applies to a person who is or has been –
- (a) a member of the Board; or
 - (b) an officer or employee of the Integrity Commission; or
 - (c) a person authorised or appointed under section 21 to undertake work on behalf of the Integrity Commission; or
 - (d) an assessor or investigator; or
 - (e) a member of the Joint Committee; or
 - (f) a member of an Integrity Tribunal; or
 - (g) an inquiry officer or other person appointed to assist an Integrity Tribunal.
- (2) A person to whom this subsection applies must preserve confidentiality in respect of all matters that come to the person's knowledge in the course of employment or duties under this Act and must not disclose, without authorisation

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from the Board or chief executive officer or Integrity Tribunal, any information as to matters of that kind to any person, except –

- (a) as may be required in connection with the administration or operation of this Act; or
- (b) as may be required in connection with any proceedings under this Act, any other written law or the *Criminal Code*; or
- (c) as authorised by the Board, chief executive officer or Integrity Tribunal; or
- (d) to any other prescribed person.

Penalty: Fine not exceeding 5 000 penalty units.

94. Protection from personal liability

- (1) No civil or criminal proceedings lie in respect of any action done, or omission made, in good faith in the exercise or intended exercise of, any powers or functions under this Act by the following persons:
 - (a) the Board;
 - (b) any members of the Board;
 - (c) an Integrity Tribunal;

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- (d) any persons appointed to assist the Integrity Tribunal;
 - (e) legal representatives of any witness at an inquiry;
 - (f) the chief executive officer;
 - (g) an assessor, investigator or inquiry officer;
 - (h) officers and employees of the Integrity Commission;
 - (i) any persons authorised or appointed under section 21 to undertake work on behalf of the Integrity Commission.
- (2) No civil proceedings lie against a person for loss, damage or inquiry of any kind suffered by another person by the providing of any information or the making of any statement in good faith to any of the following persons:
- (a) the Board;
 - (b) any members of the Board;
 - (c) an Integrity Tribunal;
 - (d) any persons appointed to assist the Integrity Tribunal;
 - (e) legal representatives of any witness at an inquiry;
 - (f) the chief executive officer;

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- (g) an assessor, investigator or inquiry officer;
 - (h) officers and employees of the Integrity Commission;
 - (i) any persons authorised or appointed under section 21 to undertake work on behalf of the Integrity Commission.

95. False or misleading statements

A person, in making a complaint, giving any information or advice or producing any record under this Act, must not –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.

96. Destruction or alteration of records or things

A person must not knowingly destroy, dispose of or alter any record or thing required to be produced under this Act for the purpose of misleading any investigation or inquiry.

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Penalty: Fine not exceeding 5 000 penalty units
or imprisonment for a term not
exceeding one year.

97. Certain notices to be confidential documents

- (1) A person must not disclose the existence of a notice that is a confidential document to another person unless the person on whom the notice was served has a reasonable excuse.

Penalty: Fine not exceeding 2 000 penalty
units.

- (2) It is a reasonable excuse for a person to disclose the existence of a notice that is a confidential document if –
- (a) the disclosure is made for the purpose of –
 - (i) seeking legal advice in relation to the notice or an offence against subsection (1); or
 - (ii) obtaining information in order to comply with the notice; or
 - (iii) the administration of this Act; and
 - (b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the notice to another person unless the first-

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mentioned person has a reasonable
excuse.

98. Injunctions

- (1) The Supreme Court may, on application made by the Integrity Commission, grant an injunction restraining any conduct in which a person (whether or not a public authority or public officer) is engaging or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of –
 - (a) an investigation or proposed investigation by an investigator; or
 - (b) an inquiry or proposed inquiry by an Integrity Tribunal.
- (2) The conduct referred to in subsection (1) does not include conduct relating to a proceeding of Parliament.

99. Right to Information Act does not apply

The *Right to Information Act 2009* does not apply to information, as defined in that Act, in the possession of the Integrity Commission if the information relates to a complaint, the register of complaints, an assessment, investigation or inquiry including reports, notices and recommendations made under this Act and any action taken in relation to a complaint.

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100. Personal information may be disclosed to Integrity Commission

A personal information custodian, within the meaning of the *Personal Information Protection Act 2004*, is authorised to disclose personal information, within the meaning of that Act, to the Integrity Commission for the purpose of and in accordance with this Act.

101. Non-application of Act to certain allegations, &c.

This Act does not apply to a code of conduct allegation that was made, or to an investigation relating to such an allegation that was commenced but not finally disposed of, before the commencement of this section.

102. Amendment of Schedule 1

- (1) The Governor may, by order, amend Column 1 of Schedule 1 –
 - (a) by omitting the name of any public authority; or
 - (b) by inserting the name of any public authority; or
 - (c) where the name of a public authority is changed, by omitting the name of that public authority and substituting its new name.

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- (2) The Governor may, by order, amend Column 2 of Schedule 1 by inserting, opposite the name of a public authority, the title or other description of a principal officer or by omitting or amending that title or other description.
- (3) The Governor may, by order, omit Schedule 1 and substitute a Schedule containing in Column 1 the names of public authorities and containing in Column 2 the titles or other descriptions of principal officers.

103. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by any person specified in the regulations.

104. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

**PART 10 – ACTS INTERPRETATION ACT 1931
AMENDED**

105. Principal Act

In this Part, the *Acts Interpretation Act 1931** is referred to as the Principal Act.

106. Section 46 amended (Definitions of certain common phrases)

Section 46 of the Principal Act is amended by inserting after the definition of “instigate” the following definition:

“Integrity Commission” means the Integrity Commission established under the *Integrity Commission Act 2009*;

*No. 59 of 1931

PART 11 – AUDIT ACT 2008 AMENDED

107. Principal Act

In this Part, the *Audit Act 2008** is referred to as the Principal Act.

108. Section 4 amended (Interpretation)

Section 4(1) of the Principal Act is amended by inserting after the definition of “independent auditor” the following definition:

“Joint Committee” has the same meaning as in the *Integrity Commission Act 2009*;

109. Section 23 amended (Examinations and investigations)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting “The” and substituting “(1) The”;
- (b) by inserting after paragraph (b) the following paragraph:
 - (ba) investigating any matter referred to the Auditor-General by the Integrity Commission;

*No. 49 of 2008

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Part 11 – Audit Act 2008 Amended

s. 110

(c) by inserting the following subsections:

- (2) Any examination or investigation carried out by the Auditor-General under subsection (1) is to be carried out in accordance with the powers of this Act.
- (3) Any investigation into a matter referred under subsection (1)(ba) must be reported to the Integrity Commission.

110. Section 30 amended (Report on examination or investigation)

Section 30(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “Committee.” and substituting “Committee; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) the Joint Committee.

**PART 12 – COMMISSIONS OF INQUIRY ACT 1995
AMENDED**

111. Principal Act

In this Part, the *Commissions of Inquiry Act 1995** is referred to as the Principal Act.

112. Section 22 amended (Notices to witnesses)

Section 22 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

- (5) If a person required or directed to give evidence to a Commission is –
- (a) a prisoner or detainee under the *Corrections Act 1997* or the *Youth Justice Act 1997*; or
 - (b) a patient detained in an approved hospital under the *Mental Health Act 1996*; or
 - (c) a person who is subject to a restriction under the *Criminal Justice (Mental Impairment) Act 1999* –

the notice requiring or directing the person to provide any information or explanation authorises and requires the

*No. 70 of 1995

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Part 12 – Commissions of Inquiry Act 1995 Amended

s. 113

Director of Corrective Services, the Secretary within the meaning of the *Youth Justice Act 1997*, the controlling authority of the approved hospital or the responsible medical officer, within the meaning of the *Criminal Justice (Mental Impairment) Act 1999*, to allow the person to provide that information or explanation to the Commission in accordance with the notice.

113. Section 24A inserted

After section 24 of the Principal Act, the following section is inserted in Division 3:

24A. Application for use of surveillance device

A Commission may apply for a warrant under Part 2 of the *Police Powers (Surveillance Devices) Act 2006* as if the Commission were a law enforcement officer within the meaning of that Act and a reference in that section to a relevant offence were read as a reference to the matter of the inquiry being undertaken by the Commission.

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Part 13 – Judicial Review Act 2000 Amended

PART 13 – JUDICIAL REVIEW ACT 2000 AMENDED

114. Principal Act

In this Part, the *Judicial Review Act 2000** is referred to as the Principal Act.

115. Schedule 1 amended (Decisions to which Act does not apply)

Schedule 1 to the Principal Act is amended by inserting after item 4 the following items:

- 4A.** A report of an assessor under section 37 of the *Integrity Commission Act 2009* recommending that a complaint be dismissed under section 36 of that Act.
- 4B.** A decision made by the chief executive officer of the Integrity Commission in relation to a determination to dismiss a complaint under section 38 of the *Integrity Commission Act 2009*.

*No. 54 of 2000

PART 14 – OMBUDSMAN ACT 1978 AMENDED

116. Principal Act

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

117. Section 12 amended (Matters subject to investigation)

Section 12(1) of the Principal Act is amended by inserting “or any matter that the Ombudsman has power to deal with under this Act that is referred to the Ombudsman by the Integrity Commission” after “authority”.

118. Section 16A inserted

After section 16 of the Principal Act, the following section is inserted in Division 2:

16A. Investigation on reference by Integrity Commission

- (1) The chief executive officer of the Integrity Commission, the Board of the Integrity Commission or an Integrity Tribunal, within the meaning of the *Integrity Commission Act 2009*, may refer to the Ombudsman any matter within the jurisdiction of the

*No. 82 of 1978

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Part 14 – Ombudsman Act 1978 Amended

Ombudsman for investigation and report under the provisions of this Act.

- (2) As soon as practicable after any matter is referred to the Ombudsman under subsection (1), the Ombudsman is to carry out the investigation and report –
- (a) to the chief executive officer of the Integrity Commission in such manner as the chief executive officer requires; or
 - (b) to the Board of the Integrity Commission in such manner as the Board requires; or
 - (c) to an Integrity Tribunal in such manner as the Integrity Tribunal requires.

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Part 15 – Personal Information Protection Act 2004 Amended

s. 119

**PART 15 – PERSONAL INFORMATION PROTECTION
ACT 2004 AMENDED**

119. Principal Act

In this Part, the *Personal Information Protection Act 2004** is referred to as the Principal Act.

120. Section 7 amended (Courts and tribunals)

Section 7 of the Principal Act is amended by inserting after paragraph (g) the following paragraph:

(ga) the Integrity Commission;

*No. 46 of 2004

Integrity Commission Act 2009
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s. 121

Part 16 – State Service Act 2000 Amended

PART 16 – STATE SERVICE ACT 2000 AMENDED

121. Principal Act

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

122. Section 18 amended (Functions of Commissioner)

Section 18(1) of the Principal Act is amended by omitting paragraph (f).

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

Section 24 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Integrity Commission,” after “Ombudsman,”;
- (b) by inserting in subsection (2) “Integrity Commission,” after “Ombudsman,”.

124. Schedule 1 amended (Agencies)

Schedule 1 to the Principal Act is amended by inserting after

*No. 85 of 2000

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Part 16 – State Service Act 2000 Amended

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Agency	Head of Agency
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in Part 2 the following item:

Integrity Commission	Chief executive officer
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SCHEDULE 1 – PRINCIPAL OFFICERS

PART 1 – ENTITIES

Section 4

	Public authority	Principal officer
1.	State Service Agency	Head of Agency
2.	Police Service	Commissioner of Police
3.	Local authority	General Manager of a council or other principal officer of the local authority
4.	Council-owned company	Chief executive officer of that council-owned company
5.	Government Business Enterprise	Chief executive officer of that Government Business Enterprise
6.	State-owned company	Chief executive officer of that State-owned company
7.	Public authority specified in section 5(1)(j), (g), (i) and (n)	President, chairperson or other principal or presiding member of the public authority or, if the public authority comprises a single person, that person

PART 2 – PERSONS

	Public authority	Principal officer
1.	Person performing functions or exercising powers under the <i>Parliamentary Privilege Act 1898</i> in the House of Assembly	Clerk of the House of Assembly

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	Public authority	Principal officer
2.	Person performing functions or exercising powers under the <i>Parliamentary Privilege Act 1898</i> in the Legislative Council	Clerk of the Legislative Council
3.	Person performing functions or exercising powers under the <i>Parliamentary Privilege Act 1898</i> for the Legislature-General	Clerk of a House of Parliament
4.	Person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament, whether in accordance with <i>State Service Act 2000</i> , <i>Parliamentary Privilege Act 1898</i> or otherwise	Minister, Parliamentary Secretary or other Member of Parliament responsible for the office
5.	Principal officer of a local authority that is not a council	Minister administering the <i>Local Government Act 1993</i>
6.	Persons performing functions and exercising powers under the <i>Governor of Tasmania Act 1982</i>	Official Secretary
7.	General Manager of a council	Mayor or Lord Mayor
8.	Councillors of a council	Mayor of the council
9.	Clerk of the Legislative Council	President of the Legislative Council
10.	Clerk of the House of Assembly	Speaker of the House of Assembly
11.	Head of a State Service Agency	Premier
12.	Commissioner of Police	Premier
13.	Official Secretary	Premier

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	Public authority	Principal officer
14.	Mayor of a council	Deputy Mayor
15.	Chief executive officer of a council-owned company	Chairperson of the council-owned company
16.	Chief executive officer of a Government Business Enterprise that is not a State Service Agency	Chairperson of the Board of the Government Business Enterprise
17.	Chairperson of the Board of a Government Business Enterprise	Portfolio Minister within the meaning of the <i>Government Business Enterprises Act 1995</i>
18.	Chief executive officer of a State-owned company	Chairperson of the Board of the State-owned company
19.	Chairperson of the Board of a State-owned company	Treasurer
20.	A person appointed to an office by the Governor or a Minister under an Act	The Minister responsible for the administration of the Act
21.	Minister	Premier
22.	Parliamentary Secretary	Premier

**SCHEDULE 2 – MEMBERSHIP OF BOARD OF
INTEGRITY COMMISSION**

Section 14(7)

1. Interpretation

In this Schedule –

“member” means the Chief Commissioner
and a member of the Board appointed
under section 14(1)(e), (f) or (g).

2. Term of office

A member is appointed for such period, not
exceeding 5 years, as is specified in the
member’s instrument of appointment and, if
eligible, may be reappointed.

3. Holding other office

The holder of an office who is required by the
terms of his or her employment to devote the
whole of his or her time to the functions of that
office is not disqualified from –

- (a) holding that office and also the office of
a member; or
- (b) accepting any remuneration payable to a
member.

4. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

5. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as are specified in the member's instrument of appointment.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such terms and conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Leave of absence

The Governor may grant a member leave of absence on such terms and conditions as the Governor determines.

7. Resignation

A member may resign office by written notice given to the Governor.

8. Suspension or removal of member from office

- (1) A member may, at any time, be removed from office by the Governor by resolution of each House of Parliament.
- (2) The Governor may suspend a member from office if the Governor is satisfied that the member –
 - (a) is incapable of properly performing the functions of a member; or
 - (b) has shown himself or herself incompetent to properly perform those functions or has neglected to perform those functions; or
 - (c) has been absent without leave granted under clause 6 from 3 consecutive meetings of the Integrity Commission; or
 - (d) is or has become bankrupt or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the member's creditors or made an assignment of the member's remuneration or estate for their benefit; or

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- (e) has been convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer or a fine of 300 penalty units or more; or
 - (f) has contravened clause 8 of Schedule 3; or
 - (g) has been guilty of misconduct.
- (3) If a member has been suspended from office under subclause (2), the member is to be restored to office unless –
 - (a) a statement of the grounds of the member's suspension is laid before each House of Parliament during the first 7 sitting-days of the House following the suspension; and
 - (b) each House of Parliament, during the session of the House in which the statement is so laid, and within 30 sitting-days of the statement being so laid, passes a resolution requesting the removal of the member from office.

9. Acting members

- (1) In the absence of a member, the Governor may appoint a person to act in the place of the member if that person is eligible for appointment as a member.

- (2) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that –
- (a) the occasion for the person's appointment had not arisen; or
 - (b) there is a defect or irregularity in connection with the person's appointment; or
 - (c) the person's appointment ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

10. Validation of proceedings, &c.

- (1) An act or proceeding of the Integrity Commission or of a person acting under any direction of the Integrity Commission is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Integrity Commission or of a person acting under a direction of the Integrity Commission are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was

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qualified to act as, or capable of being, a member, and as if the Integrity Commission had been fully constituted.

11. Presumptions

In any proceeding by or against the Integrity Commission, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Integrity Commission; or
- (b) the appointment of any member.

**SCHEDULE 3 – MEETINGS OF BOARD OF
INTEGRITY COMMISSION**

Section 14(8)

1. Interpretation

In this Schedule –

“member” means a member of the Board.

2. Convening of meetings

The Chief Commissioner is to convene such meetings of the Board as are necessary for the efficient conduct of its functions.

3. Presiding at meetings

- (1) The Chief Commissioner is to preside at all meetings of the Board at which he or she is present.
- (2) If the Chief Commissioner is not present at a meeting of the Board, another member is to preside.

4. Quorum and voting at meetings

- (1) Four members constitute a quorum at a meeting of the Board.

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- (2) A meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also a casting vote.

5. Conduct of meetings

- (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit members to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Board.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

6. Resolutions without meetings

- (1) If all members appointed sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.
- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
 - (a) advised immediately of the matter; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

7. Minutes

The Board is to keep accurate minutes of its meetings.

8. Disclosure of interests

- (1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the Board at a meeting of the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Integrity Commission.
- (2) The disclosure is to be recorded in the minutes of the Board and, unless the Board otherwise determines, a member who has made a disclosure under subclause (1) in relation to a matter must not –
 - (a) be present during any deliberation of the Board in relation to the matter; or
 - (b) take part in any decision of the Board in relation to the matter.
- (3) For the purpose of the making of a determination under subclause (2), the member to whom the matter relates must not –
 - (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in making the determination.
- (4) Subclause (1) does not apply in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

- (5) Subclause (1) does not apply in respect of an interest that arises only because the member is also the holder of an office specified in section 14(1)(b), (c) or (d).

9. General procedure

- (1) Except as provided by this Act, the Board may regulate its own proceedings.
- (2) The Board may inform itself on any matter in such manner as it thinks fit.

10. Presumptions

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Board; and
- (b) the presence of a quorum at any meeting of the Board.

**SCHEDULE 4 – MEMBERSHIP OF JOINT STANDING
COMMITTEE ON INTEGRITY**

Section 23(5)

1. Vacancies

- (1) The office of a member of the Joint Committee becomes vacant for any reason that would vacate his or her seat as a member of the Legislative Council or House of Assembly, as the case may be.
- (2) Where a vacancy occurs in the office of a member of the Joint Committee, it is to be filled by appointment as provided in section 23(4) within the next 10 sitting-days of the House of Parliament by which he or she was appointed as a member of the Joint Committee.
- (3) If a vacancy occurs when Parliament is not in session, the Governor may appoint a Member of the House of Parliament to temporarily fill the vacancy until it is filled as provided in section 23(4).

2. Proceedings of Joint Committee

There is to be a chairperson and vice-chairperson of the Joint Committee, who is to be elected by the members of the Joint Committee at the first meeting of the Joint Committee or as soon after the first meeting as is practicable.

3. Secretary of Joint Committee

The President of the Legislative Council and the Speaker of the House of Assembly jointly are to appoint an officer of one of the Houses of Parliament to be the secretary of the Joint Committee.

4. Membership of Joint Committee not an office of profit

The office of a member of the Joint Committee is not an office of profit or emolument within the meaning of the *Constitution Act 1934* and the acceptance and holding of such an office does not –

- (a) render the holder of the office incapable of sitting or voting as a member of either House of Parliament; or
- (b) make void the election of the holder of the office as a member of either House of Parliament.

**SCHEDULE 5 – MEETINGS OF JOINT STANDING
COMMITTEE ON INTEGRITY**

Section 23(6)

1. Proceedings of Joint Committee

- (1) Any 3 members of the Joint Committee, constitute a quorum of the Joint Committee, but the quorum may not be made up of members exclusively of one House of Parliament.
- (2) The chairperson of the Joint Committee, or, in the case of his or her absence or other inability to act as chairperson, the vice-chairperson of the Joint Committee, is to preside at all meetings of the Joint Committee at which he or she is present.
- (3) At a meeting of the Joint Committee at which a quorum is present, the members in attendance may, in the absence of the chairperson of the Joint Committee and vice-chairperson of the Joint Committee, appoint one of their number then present to be the temporary chairperson of the Joint Committee, and the temporary chairperson of the Joint Committee has, during the absence of the chairperson of the Joint Committee and vice-chairperson of the Joint Committee, all the powers of the chairperson of the Joint Committee.
- (4) The Joint Committee is to cause minutes of its proceedings to be kept.

- (5) The Joint Committee may sit and transact business during any adjournment or recess, and may sit at such times and in such places, and conduct its proceedings in such manner, as it thinks fit.

2. Voting at meeting of Joint Committee

- (1) At meetings of the Joint Committee –
 - (a) the chairperson of the Joint Committee or, in his or her absence, the vice-chairperson of the Joint Committee, has a deliberative vote only; and
 - (b) when the votes on a question are equal, the question passes in the negative.
- (2) Where a division is called for on any question, the names of the members voting are to be stated in the minutes and in the report of the Joint Committee.
- (3) A question is decided by the majority of votes of the members voting, where the vote is taken at a meeting of which a majority of members appointed by each House to serve on the Joint Committee is present.

3. Evidence before Joint Committee

- (1) The Joint Committee may summon witnesses to appear before it to give evidence and to produce documents, and for that purpose has all the

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power and authority of a Select Committee of the House of Assembly.

- (2) A witness who is summoned to appear, or who appears, before the Joint Committee has the same protection and privileges as a witness in an action tried in the Supreme Court.
- (3) Except where it considers that there is good and sufficient reason to take evidence in private, all evidence is to be taken by the Joint Committee in public.
- (4) In deciding to take evidence in private, the Joint Committee may seek advice from the Board about whether to take the evidence in private.
- (5) Notwithstanding anything in subclause (3), the Joint Committee, when requested so to do by a witness, must take in private any evidence that, in the opinion of the Joint Committee, relates to a secret or confidential matter.
- (6) Subject to subclause (7), the Joint Committee may, in its discretion, disclose or publish, or authorise the disclosure or publication of evidence taken in private.
- (7) If there is taken in private any evidence of a witness that the Joint Committee considers relates to a secret or confidential matter and the witness requests that that evidence be not published, the Joint Committee must not, without the consent in writing of the witness, disclose or publish, or authorise the disclosure or publication of, that evidence, unless it has already been lawfully published.

- (8) If evidence is taken by the Joint Committee in private, no person (whether a member of the Joint Committee or not) may, without the authority of the Joint Committee given in writing by the chairperson of the Joint Committee, disclose or publish that evidence unless it has already been lawfully published.
- (9) References in this section to evidence are to be construed as including references to documentary evidence, and references in this section to evidence given by a witness is to be construed as including references to any part of the evidence so given.
- (10) Any person who discloses or publishes any evidence contrary to the provisions of this section is guilty of an offence.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.
- (11) Sections 2A and 2B of the *Parliamentary Privilege Act 1858* apply to any matter being examined by the Joint Committee under this Act.

4. Continuation of proceedings

If the Joint Committee, as constituted at any time, has taken evidence in relation to any matter, but the Joint Committee as so constituted has ceased to exist before reporting on that matter, the Joint Committee as next constituted

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may consider that evidence as if it had been given before it.

5. Witnesses' expenses

A witness who appears before the Joint Committee to give evidence is entitled to be paid such fees and travelling expenses as the chairperson or vice-chairperson of the Joint Committee sees fit to allow, being fees and travelling expenses calculated in accordance with the scale for the time being prescribed under section 27 of the *Public Works Committee Act 1914*.

**SCHEDULE 6 – PROVISIONS IN RESPECT OF
HEARINGS OF INTEGRITY TRIBUNAL**

Section 76

1. Hearings to be open to public

- (1) Except as provided in subclause (2), a hearing of an Integrity Tribunal is to be open to the public.
- (2) An Integrity Tribunal may do any or all of the following at a hearing if it considers that there are reasonable grounds for doing so:
 - (a) make an order that the hearing be closed to the public;
 - (b) make an order excluding any person from the hearing;
 - (c) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the hearing or prohibiting the reporting or other disclosure of particular information in respect of the hearing.
- (3) If the Integrity Tribunal makes an order under subclause (2)(b), the Integrity Tribunal may determine who, other than the parties or their representative, may be present before it at any stage of the proceedings.

2. Requirement to attend hearing

- (1) If an Integrity Tribunal holds a hearing, it is to serve a notice in writing, not less than 14 days before the date of the hearing, on the person who is the subject of the complaint and the principal officer of the relevant public authority requesting that that person attend the hearing.
- (2) An Integrity Tribunal may, by written notice served on a person, require that person to attend a hearing if in the opinion of the Integrity Tribunal that person appears to be material to the hearing.
- (3) A person who has been required by the Integrity Tribunal to attend a hearing must continue to attend the hearing from day to day until the Integrity Tribunal excuses that person from so attending.
- (4) An Integrity Tribunal may apply to a magistrate for a warrant to have a person referred to in subclause (1) or (2) apprehended and brought before the Integrity Tribunal.
- (5) A magistrate to whom an application under subclause (4) is made may issue a warrant if satisfied that the person who is the subject of the application –
 - (a) has been served with a notice under subclause (1) or (2); and
 - (b) has failed, without reasonable excuse, to attend before the Integrity Tribunal or

produce any record, information,
material or thing specified in the notice.

- (6) A warrant issued under this section authorises any police officer to –
 - (a) apprehend the person named in the warrant and bring that person before the Integrity Tribunal that applied for the warrant; and
 - (b) detain that person in custody to secure the person's attendance before that Integrity Tribunal.
- (7) A police officer executing a warrant issued under this section is, for that purpose, authorised to enter and search any place, building, vehicle or vessel, using such force as is reasonably necessary.
- (8) A person who is apprehended and detained in custody pursuant to a warrant issued under this section may apply to a judge of the Supreme Court to be released from custody.
- (9) The release of a person from custody under this section may be made subject to any conditions the judge considers appropriate.

3. Control of proceedings at hearing

- (1) An Integrity Tribunal has power to –
 - (a) control its proceedings; and

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- (b) maintain order at any hearing or other proceeding conducted by the Integrity Tribunal.
- (2) An Integrity Tribunal may request the Commissioner of Police to assist it in maintaining order at any hearing or other proceeding conducted by it.
- (3) The Commissioner of Police is authorised and required to accede to a request made under subclause (2).

4. Control of public reporting of hearing

- (1) An Integrity Tribunal may, by order, prohibit or restrict the public reporting of a hearing or the publishing of any evidence taken or received by it if it is satisfied that the public interest in the reporting of that hearing or the publishing of that evidence is outweighed by any other consideration, including public security, privacy of personal or financial affairs or the right of any person to a fair trial.
- (2) An order under subclause (1) is to be made during a hearing which is open to the public, and on making the order an Integrity Tribunal must state, in general terms, the reasons for making the order.