

## TASMANIA

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# **PUBLIC INTEREST DISCLOSURES AMENDMENT BILL 2009**

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**PUBLIC INTEREST DISCLOSURES AMENDMENT  
BILL 2009**

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

**A BILL FOR**

**An Act to amend the *Public Interest Disclosures Act 2002***

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:

**1. Short title**

This Act may be cited as the *Public Interest Disclosures Amendment Act 2009*.

**2. Commencement**

This Act commences on a day to be proclaimed.

**3. Principal Act**

In this Act, the *Public Interest Disclosures Act 2002*\* is referred to as the Principal Act.

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\*No. 16 of 2002

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THIS BILL IS COGNATE WITH THE *INTEGRITY COMMISSION BILL 2009*

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**4. Long title amended**

The long title of the Principal Act is amended by inserting **“to provide all parties involved in those disclosures with natural justice”** after **“with”**.

**5. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “police force” from the definition of “agency” and substituting “Police Service”;
- (b) by omitting the definition of “contractor” and substituting the following definition:

**“contractor”** means –

- (a) a person who at any time has entered into a contract with a public body for the supply of goods or services to, or on behalf of, the public body; or
- (b) an employee of the contractor; or
- (c) a subcontractor engaged by the contractor to fulfil all or part of a contract with a public body for the supply of goods or

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services to, or on behalf  
of, the public body;

- (c) by inserting the following definition after  
the definition of “councillor”:

**“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;

- (d) by omitting the definitions of “improper  
conduct” and “police force” and  
substituting the following definitions:

**“improper conduct”** means –

- (a) conduct that constitutes  
an illegal or unlawful  
activity; or
- (b) corrupt conduct; or
- (c) conduct that constitutes  
maladministration; or
- (d) conduct that constitutes  
professional misconduct;  
or
- (e) conduct that constitutes a  
waste of public resources;  
or
- (f) conduct that constitutes a  
danger to public health or

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safety or to both public health and safety; or

(g) conduct that constitutes a danger to the environment; or

(h) misconduct, including breaches of applicable codes of conduct; or

(i) conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act –

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman;

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

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

**“principal officer”** means –

(a) the Secretary of a State Service Agency; or

(b) the general manager of a council, but only in



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relation to the employees  
of that council; or

(c) the chief executive officer  
of a State-owned  
company or council-  
owned company; or

(d) the chief executive officer  
of a Government Business  
Enterprise; or

(e) the principal  
administrative officer of a  
public body; or

(f) such other person as may  
be prescribed;

(e) by inserting the following definitions  
after the definition of “protected  
disclosure”:

**“Public Accounts Committee”** means  
the Parliamentary Standing  
Committee of Public Accounts  
established under the *Public  
Accounts Committee Act 1970*;

**“public interest disclosure officer”**  
means a person appointed as a  
public interest disclosure officer  
under section 62A;

(f) by omitting the definitions of “public  
body” and “public officer” and  
substituting the following definitions:

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**“public body”** means a public body referred to in section 4;

**“public officer”** means a public officer referred to in section 4;

**6. Section 4 substituted**

Section 4 of the Principal Act is repealed and the following section is substituted:

**4. Public bodies and officers**

(1) Subject to subsection (3), the following bodies and authorities are public bodies for the purposes of this Act:

- (a) the Parliament of Tasmania;
- (b) a State Service Agency;
- (c) the Police Service;
- (d) a council;
- (e) a Government Business Enterprise;
- (f) a State-owned Company;
- (g) a council-owned company;
- (h) a body or authority, whether incorporated or not, whose members or a majority of whose members are appointed by the Governor or a Minister;

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- (i) any other prescribed body or authority, whether incorporated or not –
  - (i) to which any money is paid by way of appropriation from the Public Account; or
  - (ii) over which the Government or a Minister exercises control.
- (2) Subject to subsection (3), the following persons are public officers for the purposes of this Act:
  - (a) a Member of Parliament;
  - (b) a councillor;
  - (c) a member, officer or employee of a public body;
  - (d) a member of the governing body of a public body;
  - (e) an employee of a council;
  - (f) any person performing functions under the *Parliamentary Privilege Act 1898*;
  - (g) 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*,

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*Parliamentary Privilege Act 1898*  
or otherwise;

- (h) any person performing functions under the *Governor of Tasmania Act 1982*;
  - (i) a person appointed to an office by the Governor or a Minister under an Act.
- (3) The following bodies are not public bodies for the purposes of this Act:
- (a) a court;
  - (b) a tribunal;
  - (c) the Tasmanian Industrial Commission;
  - (d) the Integrity Commission;
  - (e) any other prescribed body.
- (4) The following persons are not public officers 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;

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- (e) the Director of Public Prosecutions;
- (f) any other prescribed person.

**7. Section 6 amended (Disclosures about improper conduct or detrimental action)**

Section 6 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “on reasonable grounds”;
- (b) by omitting from subsection (2) “on reasonable grounds”.

**8. Section 7 amended (Persons to whom disclosures may be made)**

Section 7 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
  - (b) if the disclosure relates to a member, officer or employee of a public body other than the Police Service, that public body, the Integrity Commission or the Ombudsman; or

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- (b) by inserting in subsection (1)(c) “the Integrity Commission,” after “body,”;
- (c) by omitting from subsection (1)(c) “Commissioner.” and substituting “Commissioner; or”;
- (d) by inserting the following paragraph after paragraph (c) in subsection (1):
  - (d) the Integrity Commission.
- (e) by omitting from subsection (2) “police force” and substituting “Police Service”;
- (f) by inserting the following subsections after subsection (5):
  - (5A) A disclosure that relates to persons employed under the provisions of the *Parliamentary Privilege Act 1898* is to be made to the Ombudsman or the Integrity Commission.
  - (5B) A disclosure that relates to the Auditor-General is to be made to the chairman of the Public Accounts Committee.
  - (5C) A disclosure that relates to the State Service Commissioner is to be made to the Joint Committee.
  - (5D) A disclosure that relates to the Ombudsman is to be made to the Joint Committee.

(5E) A disclosure that relates to a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament is to be made to the Ombudsman.

**9. Section 7A inserted**

After section 7 of the Principal Act, the following section is inserted in Part 2:

**7A. Disclosures by other persons**

A person to whom a disclosure may be made under this Part may, if the person considers that it would be in the public interest to do so, treat any other person who is not a public officer or a contractor as a contractor for the purposes of this Act.

**10. Section 8 amended (Anonymous disclosure)**

Section 8 of the Principal Act is amended by inserting “if the person receiving the disclosure is satisfied that the disclosure is being made by a public officer or a contractor” after “anonymous disclosure”.

**11. Section 13 substituted**

Section 13 of the Principal Act is repealed and the following section is substituted:

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**13. Application of Part**

- (1) This Part only applies to a protected disclosure.
- (2) This Part does not apply to a person who has been convicted of an offence against section 87 in relation to the disclosure that is the subject of the conviction.

**12. Section 15 amended (Certain further information also protected)**

Section 15 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Subject to section 24, if” and substituting “If”;
- (b) by inserting the following paragraphs after paragraph (e) in subsection (2):
  - (ea) the chairman of the Public Accounts Committee; or
  - (eb) the Joint Committee; or
- (c) by inserting the following subsection after subsection (2):
  - (3) If a person provides further information, relating to a matter already determined to be a public interest disclosure, through a process under this Act, that further information is to be



treated as if it were a protected disclosure for the purposes of this Part.

**13. Section 17 amended (Confidentiality provisions do not apply)**

Section 17(2) of the Principal Act is amended by inserting “, except where the further disclosure of information is made in accordance with this Act” after “made”.

**14. Section 23 amended (Offence to reveal confidential information)**

Section 23(1)(a) of the Principal Act is amended by inserting “, the chairman of the Public Accounts Committee, the Integrity Commission” after “Commissioner”.

**15. Section 24 repealed**

Section 24 of the Principal Act is repealed.

**16. Section 27 amended (Referral of disclosure to State Service Commissioner)**

Section 27 of the Principal Act is amended by omitting “reasonably suspects” and substituting “considers”.

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**17. Part 4A inserted**

After section 29 of the Principal Act, the following Part is inserted:

**PART 4A – DISCLOSURE MADE TO INTEGRITY COMMISSION**

**29A. Action by Integrity Commission on receipt of disclosure**

If a person makes a disclosure to the Integrity Commission in accordance with Part 2, the Integrity Commission may –

- (a) deal with the disclosure under the *Integrity Commission Act 2009*; or
- (b) refer the disclosure to the Ombudsman or a public body, as the case may require, to be dealt with as if it were a disclosure made to the Ombudsman or public body in accordance with Part 2.

**29B. Referral of disclosure to Integrity Commission**

If a person makes a disclosure to the Ombudsman or a public body in accordance with Part 2 and the Ombudsman or public body considers that the disclosure relates to misconduct

as defined in the *Integrity Commission Act 2009*, the Ombudsman or public body may refer the disclosure to the Integrity Commission.

**29C. Action by Integrity Commission on referred disclosure**

If a disclosure is referred to the Integrity Commission by the Ombudsman or a public body under section 29B, the Integrity Commission may –

- (a) deal with the disclosure under the *Integrity Commission Act 2009*; or
- (b) refer the disclosure to the Ombudsman or public body, as the case may require, to be dealt with as if it were a disclosure made to the Ombudsman or public body in accordance with Part 2.

**29D. Notice of referral**

- (1) If the Ombudsman or a public body refers a disclosure to the Integrity Commission under this Part, the Ombudsman or public body must, within a reasonable time, notify the person who made the disclosure of that referral.

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- (2) If a disclosure is referred to the Integrity Commission under section 29B, the Integrity Commission must, within a reasonable time, notify the referring body and the person who made the disclosure of its decision made under section 29C.
- (3) This section does not apply in respect of a person who made an anonymous disclosure.

**18. Section 33 amended (Determination by public body of disclosure as public interest disclosure)**

Section 33 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) This section does not apply to a disclosure that has been referred to the Integrity Commission under Part 4A and that the Integrity Commission has decided to deal with under the *Integrity Commission Act 2009*.

**19. Section 35 amended (Procedure where public body determines disclosure not to be public interest disclosure)**

Section 35 of the Principal Act is amended as follows:

(a) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:

(b) notify the Ombudsman that the public body has determined that the disclosure is not a public interest disclosure.

(b) by omitting subsection (2) and substituting the following subsections:

(2) On receipt of a notification that a public body has determined that a disclosure is not a public interest disclosure, the Ombudsman must review that determination.

(3) Subsection (1)(a) does not apply in respect of a person who made an anonymous disclosure.

**20. Section 36 repealed**

Section 36 of the Principal Act is repealed.

**21. Section 38 amended (Functions of Ombudsman under this Act)**

Section 38 of the Principal Act is amended as follows:

(a) by inserting in subsection (1)(c) “and standards” after “guidelines”;

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- (b) by inserting the following subparagraph after subparagraph (iii) in subsection (1)(c):
  - (iv) the application of natural justice to all parties involved in an investigation of a public interest disclosure; and
- (c) by omitting paragraphs (d) and (e) from subsection (1) and substituting the following paragraphs:
  - (d) to approve procedures developed by public bodies in accordance with the guidelines and standards, and review those procedures at least once in each 3-year period; and
  - (e) to receive notification of all public interest disclosures made internally to public bodies; and
  - (f) to prepare and publish guidelines and standards for the purpose of determining whether improper conduct is serious or significant; and
  - (g) to monitor the progress of investigations by public bodies under Part 7; and
  - (h) to provide advice to public bodies on this Act; and

- (i) any other function conferred on the Ombudsman by or under this Act.
- (d) by inserting in subsection (2) “and standards” after “guidelines”;
- (e) by omitting from subsection (2) “subsection (1)(c)” and substituting “subsection (1)”.

**22. Section 39A inserted**

After section 39 of the Principal Act, the following section is inserted in Division 2:

**39A. Investigation to be completed as soon as practicable**

- (1) The Ombudsman must complete investigations of disclosures made to him or her as soon as practicable after determining the disclosure is a public interest disclosure, unless a decision is made not to investigate under section 40, and must report to Parliament any investigation which extends beyond 12 months.
- (2) The report to Parliament is to include details of the type of improper conduct, details of progress to the date of the report and the reasons why the investigation is not completed, but must

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not identify the parties to the investigation.

**23. Section 40 amended (Matters that do not have to be investigated)**

Section 40(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “disclosure.” and substituting “disclosure; or”;
- (b) by inserting the following paragraphs after paragraph (d):
  - (e) if the disclosure relates solely to the personal interests of the person making the disclosure; or
  - (f) if the disclosure is based on false or misleading information; or
  - (g) if the matter which is the subject of the disclosure is a matter in respect of which a decision has been made that the matter –
    - (i) is not a public interest disclosure; or
    - (ii) is a matter which does not have to be investigated under this Act –



and the additional disclosure does not provide significant or substantial new information.

**24. Section 46 amended (Notice of investigation)**

Section 46(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “chief executive officer” and substituting “principal officer”;
- (b) by omitting from paragraph (b) “either the relevant Minister or the general manager of the relevant council” and substituting “the relevant Minister”;
- (c) by omitting from paragraph (c) “general manager of the relevant council” and substituting “relevant Minister”;
- (d) by omitting from paragraph (e) “council.” and substituting “council; or”;
- (e) by inserting the following paragraphs after paragraph (e):
  - (f) if the disclosed matter relates to a person performing functions under the *Parliamentary Privilege Act 1898* –
    - (i) in the House of Assembly, the Speaker of the House; and

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- (ii) in the Legislative Council,  
the President of the  
Council; or
- (g) if the disclosed matter relates to 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*,  
*Parliamentary Privilege Act 1898*  
or otherwise, the Minister  
administering this Act.

**25. Section 56 amended (Report on investigation)**

Section 56(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “chief executive officer” and substituting “principal officer”;
- (b) by omitting from paragraph (b) “either the relevant Minister or the general manager of the relevant council” and substituting “the relevant Minister”;
- (c) by omitting from paragraph (c) “general manager of the relevant council” and substituting “relevant Minister”;
- (d) by omitting from paragraph (e) “council.” and substituting “council; or”;

- (e) by inserting the following paragraphs after paragraph (e):
  - (f) in the case of a person performing functions under the *Parliamentary Privilege Act 1898* –
    - (i) in the House of Assembly, the Speaker of the House; and
    - (ii) in the Legislative Council, the President of the Council; or
  - (g) in the case of 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*, *Parliamentary Privilege Act 1898* or otherwise, the Minister administering this Act.

**26. Section 60 substituted**

Section 60 of the Principal Act is repealed and the following section is substituted:

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**60. Public body to establish procedures that comply with guidelines and standards**

- (1) A public body is to establish procedures that comply with any guidelines and standards referred to in section 38(1)(c).
- (2) The procedures established by a public body under subsection (1) are to include procedures for the protection of the welfare of a person making a disclosure.
- (3) A public body is to submit its procedures to the Ombudsman for approval, and is to submit its procedures to the Ombudsman at least once in each 3-year period following the initial approval.

**27. Section 62 amended (Review of procedures)**

Section 62 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and standards, but must review the procedures at least once in each 3-year period following approval under section 60(3)” after “guidelines”;
- (b) by inserting in subsection (2) “and standards” after “guidelines”.

**28. Sections 62A and 62B inserted**

After section 62 of the Principal Act, the following sections are inserted in Division 1:

**62A. Role of principal officer**

- (1) The principal officer is responsible for –
  - (a) preparing procedures for approval by the Ombudsman; and
  - (b) receiving public interest disclosures and ensuring they are dealt with in accordance with this Act; and
  - (c) ensuring the protection of witnesses; and
  - (d) ensuring the application of the principles of natural justice in the public body's procedures; and
  - (e) ensuring the promotion of the importance of public interest disclosures, including general education of all staff about the legislation, and ensuring easy access to information about both the legislation and the public body's procedures; and
  - (f) providing access, for persons making a disclosure and others involved in the process of investigation, to confidential

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employee assistance programs;  
and

- (g) providing access, for persons making a disclosure and others involved in the process of investigation, to appropriately trained internal support staff.
- (2) The principal officer of a public body is to appoint one or more persons as public interest disclosure officers.
- (3) A public interest disclosure officer may be appointed for a period not exceeding 3 years, and may be reappointed for further periods not exceeding 3 years.
- (4) Prior to the appointment or reappointment of a public interest disclosure officer, the principal officer must ensure that the officer to be appointed or reappointed has the skills and knowledge to fulfil the role of a public interest disclosure officer.

**62B. Delegation by principal officer**

- (1) The principal officer may by instrument in writing delegate to a public interest disclosure officer specified in the instrument the performance or exercise of such of his or her functions or powers under this Act (other than this power of delegation) as are specified in the instrument, and may, by instrument in

writing, revoke wholly or in part any such delegation.

- (2) Notwithstanding any delegation under this section, the principal officer may continue to perform or exercise all or any of the functions or powers delegated.
- (3) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section has the same force and effect as if the act or thing had been done by or to the principal officer, and is taken to have been done by or to the principal officer.

**29. Section 64 amended (Matters that do not have to be investigated)**

Section 64 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “disclosure.” and substituting “disclosure; or”;
- (b) by inserting the following paragraphs after paragraph (d):
  - (e) if the disclosure relates solely to the personal interests of the person making the disclosure; or
  - (f) if the disclosure is based on false or misleading information; or

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- (g) if the matter which is the subject of the disclosure has already been determined and the additional disclosure does not provide significant or substantial new information.

**30. Section 65 amended (Decision by public body not to investigate)**

Section 65 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
  - (b) notify the Ombudsman that the public body has determined that the disclosure will not be investigated.
- (b) by omitting subsection (2) and substituting the following subsections:
  - (2) On receipt of a notification that a public body has decided not to investigate a disclosure matter, the Ombudsman must review that decision.
  - (3) Subsection (1)(a) does not apply in respect of a person who made an anonymous disclosure.



**31. Section 66 repealed**

Section 66 of the Principal Act is repealed.

**32. Section 68 amended (Referral to Ombudsman by public body)**

Section 68 of the Principal Act is amended by omitting “its own investigation is being obstructed” and substituting “that its own investigation is being obstructed or that it is otherwise not within the capacity of the public body to complete the investigation”.

**33. Section 71 amended (Ombudsman’s powers in relation to certain investigations)**

Section 71(1) of the Principal Act is amended by omitting “section 69,” and substituting “section 69 or 77A,”.

**34. Section 77A inserted**

After section 77 of the Principal Act, the following section is inserted in Division 4:

**77A. Investigations to be completed within 6 months**

- (1) A public body must complete an investigation of a public interest disclosure as soon as practicable, but, in any event, not more than 6 months from

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the date of the determination that the disclosure is a public interest disclosure, unless it makes a decision not to investigate in accordance with section 64.

- (2) A public body may apply to the Ombudsman for an extension of up to 6 months in which to complete the investigation.
- (3) The Ombudsman may grant an extension if he or she considers, having regard to all the matters involved, that reasonable progress has been achieved by the public body.
- (4) If the investigation is not completed within the period referred to in subsection (1) or within any period of extension granted by the Ombudsman, the public body must refer the public interest disclosure to the Ombudsman together with all relevant information within 14 days of the end of that period.
- (5) The Ombudsman must complete the investigation referred to him or her under subsection (4) as soon as practicable after receiving the referral.
- (6) If the Ombudsman is unable to complete any investigation referred to him or her under subsection (4) within 6 months after receiving the referral, the

Ombudsman must provide the Joint Committee with a report.

- (7) The report referred to in subsection (6) is to include details of the type of improper conduct that is the subject of the public interest disclosure, details of the progress up to the date of the report and the reasons why the investigation has not been completed, but must not identify the parties to the investigation.

**35. Section 84 amended (Annual report by Ombudsman)**

Section 84(a) of the Principal Act is amended by inserting “and standards” after “guidelines”.

**36. Section 87 amended (Offence to make false disclosure)**

Section 87(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) “body.” and substituting “body; or”;
- (b) by inserting the following paragraphs after paragraph (f):
- (g) the chairman of the Public Accounts Committee; or
- (h) the Joint Committee.

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**37. Repeal of Act**

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