

Integrity Commission Bill 2009
Clause Notes

PART 1	PRELIMINARY
Clause 1	Short Title
	Cites the title of the Bill.
Clause 2	Commencement
	Provides for the commencement of the Act on a day or days to be proclaimed.
Clause 3	Object and objectives
	<p>Sets out the objects and objectives of the Act.</p> <p>The purpose of these is to guide the work of the Integrity Commission and assist in the interpretation of the Act. They are consistent with the recommendations of the Joint Select Committee on Ethical Conduct.</p>
Clause 4	Interpretation
	<p>Contains definitions and other interpretive provisions.</p> <p>Misconduct and serious misconduct are defined for the purposes of the Act.</p>
Clause 5	Public authorities
	<p>Complaints about public authorities may be made to the Integrity Commission. This clause defines ‘public authorities’ to cover the public sector in the broadest sense with a small number of specific exceptions, such as judicial officers and the Governor.</p> <p>The coverage of the Act goes slightly further than recommended by the Joint Select Committee in recommendation 18.11.</p>
Clause 6	Designated public officers
	The Integrity Commission has specific responsibility for dealing with complaints in relation to certain categories of officials,

	including Members of Parliament, councillors, CEOs and holders of statutory office.
PART 2	INTEGRITY COMMISSION
<i>Division 1</i>	<i>Establishment of Integrity Commission</i>
Clause 7	Establishment of Integrity Commission
	This clause establishes the Integrity Commission.
Clause 8	Functions and powers of Integrity Commission
	This clause outlines the Integrity Commission's functions and powers. The clause provides of detail of the education and prevention and complaints and investigations functions proposed by the Joint Select Committee.
Clause 9	Principles of operation of Integrity Commission
	This clause gives guidance to the Integrity Commission about the performance of its functions and exercise of its powers. Two key principles are highlighted, namely not duplicating the work of other bodies and working cooperatively with other bodies to prevent and deal with misconduct.
Clause 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.
Clause 11	Annual and other reports
	The clause sets out reporting requirements for the Integrity Commission.
<i>Division 2</i>	<i>Board of Integrity Commission</i>
Clause 12	Establishment of Board of Integrity Commission
	The Board of the Integrity Commission is established.
Clause 13	Role of Board
	This clause sets out the role of the Board. Primarily it will oversee the work of the Integrity Commission staff, including the

	CEO and promote a culture of integrity in the public sector.
Clause 14	Members of Board
	This clause provides for membership of the Board. The Minister will be required to consult with a new Parliamentary Standing Committee in relation to the skills based lay members prior to appointment.
Clause 15	Chief Commissioner
	The clause sets out the process for the appointment of the Chief Commissioner, including qualifications and the requirement to consult with the new Parliamentary Standing Committee.
Clause 16	Delegation
	This clause gives the Board the power to delegate.
<i>Division 3</i>	<i>Staff of Integrity Commission</i>
<i>Subdivision 1</i>	<i>Chief executive officer</i>
Clause 17	Chief executive officer
	This provides for the appointment of the CEO of the Integrity Commission following consultation with the new Parliamentary Standing Committee.
Clause 18	Responsibilities of chief executive officer
	The clause outlines the responsibilities of the CEO.
Clause 19	Delegation by chief executive officer
	This clause gives the CEO power to delegate.
<i>Subdivision 2</i>	<i>Officers, employees and authorised persons</i>
Clause 20	Officers and employees

	Integrity Commission staff will be <i>State Service Act 2000</i> employees.
Clause 21	Authorised persons
	The Integrity Commission will be able to second people from other public authorities to assist it to perform its functions. This includes secondments from Tasmania Police or other Australian law enforcement agencies.
PART 3	RELATIONSHIP WITH PARLIAMENT
<i>Division 1</i>	<i>Preliminary</i>
Clause 22	Interpretation: Part 3, Division 1
	The Auditor General is excluded from the definition of ‘integrity entity’ in this Part because there is already a Parliamentary Committee in place to oversee the work of the Auditor-General.
<i>Division 2</i>	<i>Joint Standing Committee on Integrity</i>
Clause 23	Joint Standing Committee on Integrity
	This clause establishes a new Joint standing Committee on Integrity.
Clause 24	Functions and powers of Joint Committee
	<p>This sets out the Committee’s functions and powers which include to oversight of the work of the Integrity Commission, the Ombudsman and the State Service Commissioner in relation to misconduct.</p> <p>The Committee can provide broad guidance and advice, but not direct the conduct of investigations or review decisions of the Integrity Commission.</p>
Clause 25	Resignation
	This sets out process for resignation from the Committee.
Clause 26	Report to Parliament
	The Committee is required to report to Parliament in each session.
<i>Division 3</i>	Parliamentary standards
<i>Clause 27</i>	Parliamentary Standards Commissioner

	This establishes the office of the Parliamentary Standards Commissioner.
Clause 28	Function of Parliamentary Standards Commissioner
	This outlines the functions of the Parliamentary Standards Commissioner which are advisory in nature.
Clause 29	Restriction of functions of Parliamentary Standards Commissioner
	The Parliamentary Standards Commissioner cannot be involved in any complaint relating to the conduct of a Member of Parliament if the Commissioner has provided advice on that matter.
Clause 30	Functions of chief executive officer in relation to Members of Parliament
	The CEO can provide assistance in the preparation of guidelines for Members of Parliament and their staff.
PART 4	EDUCATIVE, PREVENTATIVE AND ADVISORY FUNCTIONS OF COMMISSION
Clause 31	Educative, preventative and advisory functions
	This clause details the Commission's educative, preventative and advisory functions.
Clause 32	Public officers to be given education and training relating to ethical conduct
	This requires public authorities to train their staff in ethical conduct.
PART 5	COMPLAINTS
Division 1	<i>Receipt of complaints</i>
Clause 33	Complaints
	Complaints to the Integrity Commission must be made in writing and may be made about former public officers.
Clause 34	Registration of complaints
	Complaints must be entered into a register.
Division 2	<i>Actions on receipt of complaint</i>

Clause 35	Assessment of complaint
	Once a complaint is received the CEO makes a decision to dismiss the complaint or accept for a complaint for assessment.
Clause 36	Dismissal of complaint
	This clause describes the grounds upon which a complaint may be dismissed. A ‘public interest test’ is included in this clause. There is no bar to retrospective complaints, however, the CEO may dismiss old complaints on a number of grounds including that it is not in the public interest to be investigated.
Clause 37	Report of assessor
	The complaints assessor must make a recommendation about whether the complaint should be dismissed, referred to another body or handled by the Integrity Commission.
Clause 38	Actions of chief executive officer on receipt of assessment
	The CEO makes a decision about how to handle a complaint and is required to notify the relevant public authority of this decision. The complainant and the subject of the complaint may also be notified if appropriate.
Clause 39	Referral of complaint to relevant public authority
	When a complaint is referred to another body for action the Integrity Commission may require progress reports, monitor or audit the conduct of the investigation.
Clause 40	Referral of complaint to integrity entity
	When a complaint is referred to an integrity entity (the Ombudsman, Auditor-General or State Service Commissioner) the integrity entity must advise the CEO of the outcome.
Clause 41	Referral of complaint to Parliamentary integrity entity
	When a complaint is referred to a Parliamentary integrity entity (the Speaker of the House of Assembly or President of the Legislative Council) the Parliamentary integrity entity must advise the CEO of the outcome.
Clause 42	Referral of complaint to Commissioner of Police
	When a complaint is referred the Commissioner of Police for action the Integrity Commission may require progress reports, monitor or audit the conduct of the investigation.
Clause 43	Referral of complaint to other person

	When a complaint is referred to any person other than those already specified for action the Integrity Commission may require progress reports, monitor or audit the conduct of the investigation.
PART 6	INVESTIGATIONS
<i>Division 1</i>	<i>Conduct of investigations</i>
Clause 44	Appointment of investigator
	If a complaint is accepted for investigation by the Integrity Commission an investigator is appointed.
Clause 45	Own motion investigations
	The Integrity Commission does not need to receive a formal complaint before it appoints an investigator to investigate a matter.
Clause 46	Procedure on investigation
	An investigator has the freedom to decide how to investigate a matter provided that procedural fairness is observed.
Clause 47	Conduct of investigation
	The clause provides an investigator the necessary powers to obtain information and evidence. An investigator may direct a person to answer a question or produce documents.
Clause 48	Investigation to be conducted in private unless authorised by chief executive officer
	Most investigations will be conducted in private because of the potential for damage to reputations.
Clause 49	Representation
	A person required to give evidence or answer questions as part of an investigation may be represented by a legal practitioner or other agent.
Clause 50	Investigator's power to enter premises
	An investigator may enter any public authority's premises at any time, but will require consent or a warrant to enter other premises.
Clause 51	Search warrants

	An investigator can apply to a Magistrate for a search warrant.
Clause 52	Powers investigator while on premises
	This clause outlines the powers an investigator has while on premises. Receipts must be issued for things removed from the premises.
Clause 53	Application for use of surveillance device
	An investigator, with the approval of the CEO, can apply to a Magistrate for a warrant for a surveillance device (e.g. audio, visual or tracking device).
Clause 54	Offences relating to investigations
	It is an offence not to comply with the direction of an investigation, unless the person has a reasonable excuse. There is provision for a person to claim privilege (refer clause 92). It is an offence to retaliate against a person who has give evidence to an investigator. It is also an offence to obstruct an investigator.
Division 2	Procedure after investigation
Clause 55	Investigator's report
	The investigator's report is to be submitted to the Board via the CEO.
Clause 56	Opportunity to provide comment on report
	Before a report of an investigation is finalised, the CEO may seek comments from interested parties about the report. The draft report may be required to be kept confidential.
Clause 57	Report of investigation
	In providing a report of an investigation to the Board, the CEO is to make a recommendation as to further action. Further action may include referring the complaint to an Integrity Tribunal for an inquiry or recommendation to the Premier that a Commission of Inquiry be established.
Clause 58	Determination of Board

	The Board must make a decision on the report made by the CEO about an investigation and decide on further action.
Clause 59	Persons to whom notice of determination to be given
	Once the Board has made a decision about what action is to be taken in respect of a complaint it must notify the relevant public authority and may notify others.
PART 7	INQUIRY BY INTEGRITY TRIBUNAL
<i>Division 1</i>	<i>Integrity Tribunal</i>
Clause 60	Power of Board to convene Integrity Tribunal
	If the Board wants to make further inquiries in relation to a complaint the Chief Commissioner is to set up an Integrity Tribunal.
Clause 61	Function of Integrity Tribunal
	This clause sets out how an Integrity Tribunal will do its work.
Clause 62	Constitution of Integrity Tribunal
	An Integrity Tribunal may be made up of the Chief Commissioner sitting alone or with others including lay members of the Board. The clause also provides an alternative where the Chief Commissioner has a conflict of interest.
Clause 63	Persons appointed to assist Integrity Tribunal
	An Integrity Tribunal may have counsel assisting or other expert assistance.
<i>Division 2</i>	<i>Conduct on inquiry</i>
Clause 64	Powers of Integrity Tribunal on inquiry
	The clause provides an Integrity Tribunal with the necessary powers to obtain information and evidence. An Integrity Tribunal may direct a person to answer a question or produce documents. A hearing may be conducted.
Clause 65	Notice of complaint
	Before the commencement of an inquiry the Integrity Tribunal must notify the person who is the subject of the complaint.

Clause 66	Right of representation
	The Integrity Tribunal has to give permission for a person who has been required to attend before it to be represented during any of the Tribunal's proceedings.
Clause 67	Right of appearance
	The Integrity Tribunal may allow another person (or their legal representative) to appear before it if they have a sufficient interest in the matter. This allows an Integrity Tribunal to control who appears before it.
Clause 68	Directions conference
	An Integrity Tribunal may commence with a directions conference to sort out procedural issues with the parties before starting an inquiry into a matter. The purpose of a directions conference is to make the inquiry more efficient.
Clause 69	Procedure of inquiry
	An Integrity Tribunal has the freedom to decide how to inquire into a matter provided that procedural fairness is observed.
Clause 70	Response to notice of complaint
	This clause sets out the options for how a public officer who is the subject of the complaint may respond.
Clause 71	Conduct of inquiry
	An Integrity Tribunal has a number of options about how to gather evidence. It may require a person attend an inquiry; provide information, answers to question and material. The provision allows for evidence to be taken by video conference, telephone or third party. A person does not necessarily attend an inquiry to produce any information or material.
Clause 72	Power to enter premises
	An inquiry officer (see definition at clause 3) may enter any public authority's premises at any time, but will require consent or a warrant to enter other premises.
Clause 73	Search warrants
	An inquiry officer, with the approval of the Chief Commissioner, can apply to a Magistrate for a search warrant.
Clause 74	Powers of inquiry officer while on premises

	This clause outlines the powers an inquiry officer has while on premises. Receipts must be issued for things removed from the premises.
Clause 75	Application for use of surveillance device
	An inquiry officer, with the approval of the Chief Commissioner, can apply to a Magistrate for a warrant for a surveillance device (e.g. audio, visual or tracking device).
Clause 76	Hearings of Integrity Tribunal
	Schedule 6 applies to hearings of an Integrity Tribunal.
Clause 77	Presiding at hearings
	The Chief Commissioner, or their substitute in the case of a conflict, presides at hearings of an Integrity Tribunal.
Division 3	<i>Procedure after inquiry</i>
Clause 78	Determination of Integrity Tribunal
	At the conclusion of an inquiry the Integrity Tribunal may dismiss a complaint, make a finding that misconduct or serious misconduct occurred, recommend the establishment of a Commission of Inquiry or any other report. If a finding of misconduct is made the Integrity Tribunal may report the finding to an appropriate body for action. The exception being a Parliamentary Integrity entity where the Parliament shall decide what action to take. The Integrity Tribunal may make recommendations as to sanction.
Clause 79	Review of determination
	The Judicial Review Act 2000 applies to integrity Tribunal determinations which means that the decision may be reviewed by the Supreme Court in relation to process and points of law.
Division 4	<i>Offences</i>
Clause 80	Offences relating to Integrity Tribunal
	It is an offence to prevent a person from appearing before an Integrity Tribunal. It is an offence to retaliate against a person who has give evidence to an Integrity Tribunal. It is also an offence to obstruct an investigator. There are several contempt

	<p>type provisions included in this clause.</p> <p>It is an offence not to comply with the direction of an Integrity Tribunal, unless the person has a reasonable excuse. There is provision for a person to claim privilege (refer clause 92).</p>
Clause 81	Offences against inquiry officers
	<p>It is offence for a person, without reasonable excuse, to comply with a direction of an inquiry officer. A person cannot retaliate against a witness or intimidate or interfere with an inquiry officer.</p> <p>.</p>
Division 5	<i>Costs and expenses</i>
Clause 82	Interpretation
	This defines witness of Integrity Tribunals.
Clause 83	Legal costs of witnesses
	A witness can apply for their legal cost. The CEO must approve these claims.
Clause 84	Allowances to witnesses
	Witnesses may also claim the out of pocket costs incurred in attending an Integrity Commission. The CEO may approve the payment of these claims.
Clause 85	Compensation to witnesses for loss of income
	Witnesses may also be compensated for income lost as a result of appearing before an Integrity Tribunal.
Clause 86	Costs and expenses of inquiry, &c.
	The costs associated with inquiries are reserved by law.
PART 8	MISCONDUCT BY CERTAIN PUBLIC OFFICERS
Division 1	<i>Misconduct by designated public officers</i>
Clause 87	Investigation or dealing with misconduct by designated public officers
	The Integrity Commission is required to deal itself with complaints in relation to designated public officers (see clause 6),

	commissioned police officer (i.e. police officers of the rank of inspector and above) and members of the senior executive service.
Division 2	<i>Police misconduct</i>
Clause 88	Integrity Commission's role in relation to police misconduct
	This clause describes the Integrity Commission's role with the handling of complaints of police misconduct generally.
Clause 89	Own motion investigations
	The Integrity Commission can investigate a matter relating to police misconduct without having received a formal complaint.
Clause 90	Consultation with Commissioner of Police
	Before making a potentially adverse report, the Integrity Commission may seek comments from the Commissioner of Police.
Clause 91	Commissioner of Police to respond to Integrity Commission
	The Commissioner of Police must advise the Integrity Commission of any action taken in relation to the investigation of a complaint.
PART 9	MISCELLANEOUS
Clause 92	Claims of privilege
	This clause sets out a process for dealing with claims of privilege which may provide a reasonable for non compliance with a direction or requirement of the Integrity Commission (see clause 7(2)). Applications may be made to the Supreme Court to determine a dispute in relation to a claim of privilege.
Clause 93	Information confidential
	Strict confidentiality applies to the Integrity Commission, Board, the CEO and its staff and appointees in relation to information received in the course of their duties.
Clause 94	Protection from personal liability
	This clause provides a protection from legal liability for acts done in good faith by the Integrity Commission, Board, the CEO

	and its staff and appointees. Witnesses and their legal representatives are also protected from suit.
Clause 95	False or misleading statements
	It is an offence to make a false complaint or give misleading information to the Integrity Commission.
Clause 96	Destruction or alteration of records or things
	This provides that it is an offence to destroy anything for the purpose of misleading an investigation or inquiry.
Clause 97	Certain notices to be confidential documents
	Under the Act certain documents may be required to be kept confidential. It is an offence to disclose the existence of these documents with a few exceptions, such as seeking legal advice.
Clause 98	Injunctions
	The Integrity Commission may apply to the Supreme Court for an injunction to prevent conduct likely to prejudice an investigation or inquiry.
Clause 99	Right to Information Act does not apply
	Information held by the Integrity Commission cannot be required to be released under the Right to Information Act 2009.
Clause 100	Personal information may be disclosed to Integrity Commission
	Personal Information custodians do not infringe the Personal Information Protection Act 2004 by providing information to the Integrity Commission.
Clause 101	Non-application of Act to certain allegations, &c.
	This is a transitional provision to prevent duplication in relation to existing code of conduct allegations and investigations.
Clause 102	Amendment of Schedule 1
	This allows amendments to be made to the list of public authorities when their name changes.
Clause 103	Regulations
	This is the regulation making power for this Act.

Clause 104	Administration of Act
	The Minister for Justice will administer this Act through the Department of Justice.
PART 10	ACTS INTERPRETATION ACT 1931 AMENDED
Clause 105	Principal Act
Clause 106	Section 46 amended (Definitions of certain phrases)
	The Acts Interpretation Act will include a definition of the Integrity Commission.
PART 11	AUDIT ACT 2008 AMENDED
Clause 107	Principal Act
Clause 108	Section 4 amended (Interpretation)
	The Audit Act is amended to take account of the establishment of the Integrity Commission.
Clause 109	Section 23 substituted 23. Examinations and investigations
	The Audit Act is amended to take account of the establishment of the Integrity Commission.
Clause 110	Section 30 amended (Report on examination or investigation)
	The Audit Act is amended to take account of the establishment of the Integrity Commission.
PART 12	COMMISSIONS OF INQUIRY ACT 1995 AMENDED
Clause 111	Principal Act

Clause 112	Section 22 amended (Notice to witnesses)
	This clause updates the terminology of the Commissions of Inquiry Act to take account of the establishment of forensic mental health facilities.
Clause 113	Section 24A inserted 24A. Application for use of surveillance device
	This clause gives Commissions of Inquiry the power to apply to a magistrate for a surveillance warrant (e.g. audio, visual or tracking device). This implements and goes further than a recommendation by the Law Reform Institute and the Joint Select Committee on Ethical Conduct which related to listening devices only.
PART 13	JUDICIAL REVIEW ACT 2000 AMENDED
Clause 114	Principal Act
Clause 115	Schedule 1 amended (Decision to which Act does not apply)
	This exempts a limited number of decisions from judicial review.
PART 14	OMBUDSMAN ACT 1978 AMENDED
Clause 116	Principal Act
Clause 117	Section 12 amended (Matters subject to investigation)
	The Ombudsman Act is amended to take account of the establishment of the Integrity Commission.
Clause 118	Section 16A inserted 16A. Investigation on reference by Integrity Commission
	The Ombudsman Act is amended to take account of the establishment of the Integrity Commission.

PART 15	PERSONAL INFORMATION PROTECTION ACT 2004 AMENDED
Clause 119	Principal Act
Clause 120	Section 7 amended (Courts and tribunals)
	The Integrity Commission is exempted from the Personal Information Protection Act.
PART 16	STATE SERVICE ACT 2000 AMENDED
Clause 121	Principal Act
Clause 122	Section 18 amended (Functions of Commissioner)
	The handling of alleged breaches of the State Service Code of Conduct is to be dealt with by the Integrity Commission instead of the State Service Commissioner.
Clause 123	Section 24 amended (Relationship with Ombudsman and other persons)
	The State Service Commissioner is preventing from dealing with a matter which the Integrity Commission is handling.
Clause 124	Schedule 1 amended (Agencies)
	The Integrity Commission is to be a separate State Service agency.
Schedule 1	PRINCIPAL OFFICERS
	The drafting of the Integrity Commission Act uses a concept of ‘principal officer’. This schedule sets out which officer is the principal officer for each public authority.
Schedule 2	MEMBERSHIP OF BOARD OF INTEGRITY COMMISSION
	This schedule sets out provisions relating to terms of office of the Chief Commissioner and lay members of the Board.
Schedule 3	MEETINGS OF BOARD OF INTEGRITY COMMISSION
	This schedule details the procedures in relation to meetings of the Board. The Chief Commissioner may convene a meeting as necessary to conduct the Board’s functions. The clauses in the schedule provide generally for the conduct of meetings,

	including decision making by Board members.
Schedule 4	MEMBERSHIP OF JOINT STANDING COMMITTEE ON INTEGRITY
	This schedule specifies that where a vacancy occurs in the office of a member of the Joint Standing Committee it is to be filled by the practice regulating the appointment of Members of Parliament to service on select committees of the House of the Member who has vacated the office. The schedule also provides for a chair person, vice chair and secretary of the Joint Standing Committee and specifies that membership of the Joint Standing Committee is not an office of profit.
Schedule 5	MEETINGS OF JOINT STANDING COMMITTEE ON INTEGRITY
	This schedule sets out procedures and voting processes at meetings of the Joint Standing Committee. It also provides the Committee with power to summons witnesses and take evidence. Witness expenses may be paid in accordance with the scale prescribed under the <i>Public Works Committee Act 1914</i> .
Schedule 6	PROVISIONS IN RESPECT OF HEARINGS OF INTEGRITY TRIBUNAL
	<p>This Schedule provides that, as a general principle, hearings of an Integrity Tribunal are to be open to the public. An Integrity Tribunal has power to control its own proceedings and can request Tasmanian Police to maintain order. Specifically an Integrity Tribunal has power to close hearings, exclude people from a hearing or prohibit reporting if there are reasonable grounds to do this, for e.g. it may be considered necessary in the public interest or to protect the identity or privacy of a witness, or protect the reputation of a person or there may be a risk of prejudice to another investigation or court matter if the hearing is open.</p> <p>The Integrity Tribunal must serve notice of the date of a hearing to any person who is the subject of the complaint and the principal officer of the person who is subject to the complaint. There is power to for the Integrity Tribunal to apply to a Magistrate for a warrant to arrest a person who fails to appear at a hearing is they have served with a notice to attend and fail to attend.</p> <p>The Integrity</p>