

TASMANIA

INTEGRITY COMMISSION AMENDMENT BILL 2017

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INTEGRITY COMMISSION AMENDMENT BILL 2017

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
4 May 2017

*(Brought in by the Acting Attorney-General, the Honourable
Matthew Guy Groom)*

A BILL FOR

An Act to amend the *Integrity Commission Act 2009*

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

1. Short title

This Act may be cited as the *Integrity Commission Amendment Act 2017*.

2. Commencement

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

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3. Principal Act

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

4. Section 6 amended (Designated public officers)

Section 6(1)(d) of the Principal Act is amended by inserting “other than the Chief Commissioner and the chief executive officer” after “office”.

5. Section 13 amended (Role of Board)

Section 13 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) provide guidance to facilitate the functions and powers of the Integrity Commission, under this or any other Act, being performed and exercised by the chief executive officer and staff of the Integrity Commission in accordance with sound public administration practice and principles of procedural fairness and the objectives of this Act; and

6. Section 14 amended (Members of Board)

Section 14 of the Principal Act is amended as follows:

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- (a) by omitting paragraphs (a), (b) and (c) from subsection (1) and substituting the following paragraph:

- (a) the Chief Commissioner; and

- (b) by omitting from subsection (1)(g)(iv) “a person who has”;

- (c) by omitting from subsection (1)(g)(iv) “administration.” and substituting “administration;”;

- (d) by inserting the following subparagraph after subparagraph (iv) in subsection (1)(g):

- (v) experience, in a government organisation, in both human resources and industrial relations.

- (e) by inserting the following subsection after subsection (1):

- (1A) The Chief Commissioner is the chairperson of the Board.

- (f) by inserting the following subsections after subsection (8):

- (9) If a person holding the office of Chief Commissioner vacates that office in accordance with section 15B(1), he or she ceases to be a member of the Board.

- (10) In this section –

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government ***organisation***
means –

- (a) a Government department; and
- (b) a State authority within the meaning of the *State Service Act 2000*.

7. Section 15 amended (Chief Commissioner)

Section 15 of the Principal Act is amended by omitting subsections (4), (5) and (6) and substituting the following subsections:

- (4) A person is not eligible to be appointed as Chief Commissioner unless he or she is an Australian legal practitioner of not less than 7 years' standing and either –
 - (a) he or she has not previously been appointed as Chief Commissioner under subsection (1); or
 - (b) he or she has previously been appointed under subsection (1) as Chief Commissioner and section 15A(2) applies in relation to his or her appointment.
- (5) A person is not eligible to be appointed as Chief Commissioner if he or she is, or has been, in the period of 5 years immediately preceding the date on which

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it is proposed that he or she be appointed –

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

8. Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J and 15K inserted

After section 15 of the Principal Act, the following is inserted in Division 2:

15A. Terms of office and terms and conditions of appointment to office of Chief Commissioner

- (1) Subject to this Act, a person appointed as Chief Commissioner holds that office for the period, not exceeding 5 years, which is specified in his or her instrument of appointment.
- (2) A person may be appointed as Chief Commissioner more than once, but the

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period of appointment specified in any instrument of appointment after the first instrument of appointment must not be a period such that the total of all periods for which he or she is appointed as Chief Commissioner is more than a period of 10 years.

- (3) Subject to this Act, a person appointed as Chief Commissioner holds that office on the terms and conditions –
 - (a) determined by the Governor; and
 - (b) specified in his or her instrument of appointment as Chief Commissioner.
- (4) A person holding an office who is required by the terms of his or her appointment 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 Chief Commissioner; or
 - (b) accepting any remuneration payable to the Chief Commissioner.
- (5) A person appointed to the office of Chief Commissioner is entitled to be paid the remuneration and allowances that are specified in the Chief Commissioner's instrument of appointment.

- (6) A person appointed to the office of Chief Commissioner who is a State Service officer or State Service employee is not entitled to remuneration or allowances under subsection (5) except with the approval of the Minister administering the *State Service Act 2000*.

15B. Vacation of office of Chief Commissioner

- (1) A person holding the office of Chief Commissioner vacates the office –
 - (a) at the end of the term of his or her appointment; or
 - (b) on his or her resignation from that office under subsection (2); or
 - (c) on the revocation of his or her appointment to the office under section 15J.
- (2) A person holding the office of Chief Commissioner may at any time resign his or her office by notice in writing delivered to the Governor.

15C. Leave of absence

The Governor may grant a person holding the office of Chief Commissioner leave of absence from that office on any terms and conditions that the Governor determines.

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15D. Acting Chief Commissioner

- (1) The Governor may appoint a person, who is eligible under this Act for appointment to the office of Chief Commissioner, to act as Chief Commissioner during any particular, or every, period during which the Chief Commissioner is absent.
- (2) The appointment of an Acting Chief Commissioner under subsection (1) is subject to, and has effect in accordance with, the terms and conditions (including remuneration and allowances) specified in the instrument of appointment.
- (3) While a person is appointed as Acting Chief Commissioner under subsection (1) –
 - (a) that person is taken to be the Chief Commissioner; and
 - (b) this Act and any other Act applies to that person as if he or she were the Chief Commissioner.
- (4) An appointment under subsection (1) –
 - (a) may be revoked at any time by the Governor; and
 - (b) is revoked by the return to office of the Chief Commissioner who while absent has been represented by the Acting Chief Commissioner; and

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- (c) is revoked once the person who has been represented by the Acting Chief Commissioner is able to perform the functions of the office of Chief Commissioner again.
- (5) Anything done by or in relation to a person appointed as Acting Chief Commissioner under subsection (1) is not invalid on the ground that –
 - (a) the occasion for the person's appointment as Acting Chief Commissioner had not arisen; or
 - (b) there is a defect or irregularity in connection with the person's appointment as Acting Chief Commissioner; or
 - (c) the person's appointment as Acting Chief Commissioner ceased to have effect; or
 - (d) the occasion for the person to act as Acting Chief Commissioner had not arisen or had ceased.

15E. Suspension from office of Chief Commissioner

- (1) The Governor may suspend from office a person holding the office of Chief Commissioner if the Governor is satisfied that the person –

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- (a) except by reason of temporary illness, is, by reason of disability or infirmity, incapable of performing the functions of that office; or
 - (b) has become bankrupt, applied to take or has taken advantage of any law relating to bankruptcy or insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration or estate for their benefit; or
 - (c) has been convicted in Tasmania of –
 - (i) a crime; or
 - (ii) an offence that is punishable by imprisonment for a term of 12 months or more –or has been convicted of a crime, or of an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.
- (2) The Governor may suspend from office a person holding the office of Chief Commissioner if the Governor is satisfied that the person has been charged with –

- (a) a crime; or
 - (b) an offence that is punishable by imprisonment for a term of 12 months or more; or
 - (c) a crime, or an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.
- (3) The Governor may suspend from office a person holding the office of Chief Commissioner if the Governor is satisfied that the person –
- (a) has been guilty of conduct, or an attempt to engage in conduct, which if engaged in by a public officer is misconduct; or
 - (b) has engaged in misbehaviour that brings the office of Chief Commissioner into disrepute.

15F. Minister to lay before each House of Parliament a statement in relation to suspension of person from office of Chief Commissioner

If a person is suspended from the office of Chief Commissioner under section 15E, the Minister must cause a statement setting out the grounds for the suspension to be laid before each House of Parliament during the first 7 sitting-

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days of that House following the suspension, or a longer period allowed by resolution of the House of Parliament before which it is laid.

15G. House of Parliament may confirm or revoke suspension for misconduct or misbehaviour

- (1) If a person is suspended from the office of Chief Commissioner under section 15E(3), a House of Parliament, within 30 sitting-days after the day on which a statement is laid before the House under section 15F, or a longer period allowed by resolution of that House of Parliament, may pass a resolution –
 - (a) confirming the suspension; or
 - (b) revoking the suspension.
- (2) If both Houses of Parliament pass a resolution under subsection (1)(b) revoking the suspension of a person from the office of Chief Commissioner, the suspension of the person from the office of Chief Commissioner is revoked on and from the day on which the resolution is passed by both Houses.

15H. Governor may revoke or vary suspension of person from office of Chief Commissioner

- (1) The Governor may revoke or vary a suspension imposed under section 15E.

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- (2) If a suspension is revoked or varied under subsection (1), the Minister must cause a statement setting out the grounds for the revocation or variation to be laid before each House of Parliament during the first 7 sitting-days of that House following the revocation or variation, or a longer period allowed by resolution of the House of Parliament before which it is laid.
- (3) If a suspension is revoked or varied under subsection (1), a House of Parliament, within 30 sitting-days after the day on which a statement setting out the grounds for the revocation or variation has been laid before the House under subsection (2), or a longer period allowed by resolution of that House of Parliament, may pass a resolution –
- (a) confirming the revocation or variation of the suspension; or
 - (b) revoking the revocation or variation of the suspension.
- (4) If both Houses of Parliament pass a resolution under subsection (3)(b) –
- (a) revoking the revocation of a suspension, the suspension is to be taken to continue on and from the day on which the resolution is passed by both Houses until the

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suspension is revoked, if at all,
under this Act; or

- (b) revoking the variation of a suspension, the variation of the suspension is to be taken to cease on and from the day on which the resolution has been passed by both Houses.

15I. Request for revocation of appointment

The Governor may cause to be laid before both Houses of Parliament a statement requesting the Houses of Parliament to revoke the appointment of a person as Chief Commissioner on the grounds for suspension, referred to in section 15E(1) or (3), that are specified in the statement, if –

- (a) the Governor is satisfied that the person may be suspended from the office of Chief Commissioner on the grounds, referred to in section 15E(1) or (3), specified in the statement; and
- (b) the Governor has suspended the person from office under section 15E on any grounds referred to in that section, whether or not they are the same grounds as the grounds to which the statement relates; and

- (c) the statement required by section 15F to be laid before both Houses of Parliament in relation to the suspension of the person from the office of Chief Commissioner has been laid before each House; and
- (d) where the person has been suspended from office under section 15E(3) – the suspension has been confirmed under section 15G(1)(a).

15J. House of Parliament may revoke appointment or suspension of person from office of Chief Commissioner

- (1) A House of Parliament, after 10 sitting-days, or a longer period allowed by resolution of the House, after the day on which a statement requesting the Houses of Parliament to revoke the appointment of a person as Chief Commissioner has been laid before the House under section 15I, may resolve –
 - (a) to refuse the request made in the statement and, if the suspension of the person from office has not been revoked, to revoke the suspension; or
 - (b) to revoke the appointment of the person as Chief Commissioner.
- (2) If both Houses have resolved –

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(a) under subsection (1)(a) to revoke the suspension of a person from the office of Chief Commissioner, the suspension of the person from the office of Chief Commissioner is revoked; or

(b) under subsection (1)(b) to revoke the appointment of a person as Chief Commissioner, the appointment of the person as Chief Commissioner is revoked –

on and from the day on which the resolution is passed by both Houses.

15K. Payment of person suspended from office of Chief Commissioner

(1) If a person is suspended from the office of Chief Commissioner under section 15E, the Governor is to specify in the instrument of suspension the proportion (which may be all, none or part) of the salary of the Chief Commissioner to which the person is to be entitled in respect of the period of suspension.

(2) If a person is suspended from the office of Chief Commissioner under section 15E, the person is not entitled, in respect of the period of suspension, to any more of the salary of the Chief Commissioner, to which, but for the

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suspension, or any variation of the suspension, the person would be entitled under this Act, than the proportion of that salary that is specified in the instrument of suspension, as so varied, if at all.

- (3) Despite subsection (2), if the suspension of a person from the office of Chief Commissioner for a period under section 15E is revoked under section 15G(2), section 15H(1) or section 15J(2)(a), the person is entitled to the amount of the salary in respect of the period to which, but for the suspension of the person from the office, the person would be entitled under this Act.

9. Section 27 amended (Parliamentary Standards Commissioner)

Section 27 of the Principal Act is amended by omitting subsection (4).

10. Schedule 2 amended (Membership of Board of Integrity Commission)

Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting “the Chief Commissioner and” from the definition of *member* in clause 1;

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- (b) by omitting paragraph (g) from clause 8(2) and substituting the following paragraph:
 - (g) has been guilty of conduct, or an attempt to engage in conduct, which if engaged in by a public officer is misconduct.
- (c) by inserting in clause 10(1) “or in the office of Chief Commissioner” after “member”;
- (d) by inserting the following subclause after subclause (2) in clause 10:
 - (3) 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 person to the office of Chief Commissioner or that any other person was disqualified from acting as, or incapable of being, appointed to the office of Chief Commissioner, as valid as if the Chief Commissioner had been duly appointed and was qualified to act as, or capable of being, the Chief Commissioner, and as if the Integrity Commission had been fully constituted.

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(e) by inserting the following paragraph after paragraph (a) in clause 11:

(ab) the appointment of a person to the office of Chief Commissioner; or

11. Schedule 3 amended (Meetings of Board of Integrity Commission)

Schedule 3 to the Principal Act is amended as follows:

(a) by omitting the definition of *member* from clause 1 and substituting the following definition:

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

(b) by omitting from clause 4(1) “Four” and substituting “Three”.

12. Repeal of Act

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