

TASMANIA

# **INDEPENDENT COMMISSION AGAINST CORRUPTION BILL 2008**

*(Brought in by the Honourable Terrence Lewis Martin)*

**An Act to constitute the Tasmanian Independent Commission Against  
Corruption and to provide a framework for greater accountability of and a  
greater community confidence in the Tasmanian Parliament and the Tasmanian  
public sector.**

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**Part 1 Preliminary**

**1 Name of Act**

This Act may be cited as the Independent Commission Against Corruption Act 2008.

**2 Commencement**

This Act commences on Royal Assent.

**3 Principal objects of Act**

The principal objects of this Act are:

(a) to promote the integrity and accountability of public administration by constituting a Tasmanian Independent Commission Against Corruption as an independent and accountable body:

(i) to investigate, expose and prevent corruption involving or affecting public authorities and public officials, and

(ii) to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community, and

(b) to confer on the Commission special powers to inquire into allegations of corruption.

**4 Definitions**

(1) In this Act:

***Assistant Commissioner*** means an Assistant Commissioner for the Tasmanian Independent Commission Against Corruption.

***authorised officer*** means:

(a) a Magistrate, or

(b) an employee of the Department administered by the Attorney General authorised by the Attorney General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.

***Commission*** means the Tasmanian Independent Commission Against Corruption constituted by this Act.

***Commissioner*** means the Commissioner for the Tasmanian Independent Commission Against Corruption.

***compulsory examination*** means a compulsory examination under this Act.

***conduct*** includes neglect, failure and inaction.

***corrupt conduct*** has the meaning given by Part 3.

***Inspector*** means the Inspector of the Tasmanian Independent Commission Against Corruption, appointed under this Act.

***investigate*** includes examine.

***investigation*** means an investigation under this Act, and (without limitation) includes a preliminary investigation referred to in section 24.

***Joint Committee*** means the joint committee called the Committee on the Tasmanian Independent Commission Against Corruption, constituted under this Act.

***local government authority*** has the same meaning as a council within the meaning of the *Local Government Act 1993*.

***member of staff of the Commission*** means:

(a) a member of staff appointed by the Commissioner under section 149, or

(b) a person whose services are made use of under section 150 or who performs services for the Commission under that section.

***officer of the Commission*** means:

- (a) the Commissioner, or
- (b) an Assistant Commissioner, or
- (c) a member of staff of the Commission, or
- (d) a person engaged by the Commission under section 151 to provide the Commission with services, information or advice.

***officer of the Inspector*** means the Inspector or a member of staff of the Inspector.

***Police Service*** means the Police Service established under the *Police Service Act 2003*.

***premises*** includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part thereof.

***public authority*** includes the following:

- (a) a Government department within the meaning of the *State Service Act 2000*; and
- (b) a body or authority, whether incorporated or not, which is established or constituted 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 State authority, but does not include a Government department;
- (c) a local government authority,
- (d) the Police Service,
- (c) a body, or the holder of an office, declared by the regulations to be a body or office within this definition.

*public inquiry* means a public inquiry under this Act.

*public official* means an individual having public official functions or acting in a public official capacity, and includes any of the following:

- (a) the Governor (whether or not acting with the advice of the Executive Council),
- (b) a person appointed to an office by the Governor,
- (c) a Minister of the Crown or a member of the Executive Council,
- (d) a member of the Legislative Council or of the House of Assembly,
- (e) a person employed by the President of the Legislative Council or the Speaker of the House of Assembly or both,
- (f) a judge, a magistrate or the holder of any other judicial office (whether exercising judicial, ministerial or other functions),
- (g) an officer or temporary employee of the State Service,
- (h) an individual who constitutes or is a member of a public authority,
- (i) a person in the service of the Crown or of a public authority,
- (j) a member of the Police Service,
- (k) the holder of an office declared by the regulations to be an office within this definition,
- (l) an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs.

***search warrant*** means a search warrant issued under this Act.

***State Service*** has the same meaning as in the *State Service Act 2000*.

***task force*** includes a body of persons that is similar to a task force, however the body is described.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes included in this Act do not form part of this Act.

## **Part 2 Constitution of Commission**

### **5 Commission**

- (1) There is constituted by this Act a corporation with the corporate name of the Tasmanian Independent Commission Against Corruption.
- (2) The Commission has the functions conferred or imposed on it by or under this or any other Act.
- (3) The functions of the Commission are exercisable by the Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, shall be taken to have been done by the Commission.
- (4) A reference in this Act to a compulsory examination or public inquiry before the Commission or anything done or omitted by, to or in relation to the Commission includes a reference to a compulsory examination or public inquiry before, or a thing done or omitted by, to or in relation to, the Commissioner or another officer of the Commission having authority in the circumstances.

### **6 Commissioner**

- (1) The Governor may appoint a Commissioner for the Tasmanian Independent Commission Against Corruption.
- (2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.

### **7 Veto of proposed appointment as Commissioner**

- (1) A person is not to be appointed as Commissioner until:
  - (a) a proposal that the person be appointed has been referred to the Joint Committee under section 78, and
  - (b) either the period that the Joint Committee has under that section to veto



the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.

(2) A person may be proposed for appointment on more than one occasion.

(3) In this section and section 78, *appointment* includes re-appointment.

## **8 Assistant Commissioners**

(1) The Governor may, with the concurrence of the Commissioner, appoint one or more Assistant Commissioners for the Tasmanian Independent Commission Against Corruption.

(2) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under this or any other Act.

(3) An Assistant Commissioner shall assist the Commissioner, as the Commissioner requires.

## **Part 3 Corrupt conduct**

### **9 Corrupt conduct**

(1) For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 9, but which is not excluded by section 11.

(2) Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 10 (1) or (2) shall itself be regarded as corrupt conduct under section 10 (1) or (2).

(3) Conduct comprising such a conspiracy or attempt is not excluded by section 10 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.

### **10 General nature of corrupt conduct**

(1) Corrupt conduct is:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not

for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),

(b) bribery,

(c) blackmail,

(d) obtaining or offering secret commissions,

(e) fraud,

(f) theft,

(g) perverting the course of justice,

(h) embezzlement,

(i) election bribery,

(j) election funding offences,

(k) election fraud,

(l) matters of the same or a similar nature to any listed above,

(m) any conspiracy or attempt in relation to any of the above.

(3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.

(4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

(5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:

(a) matters arising in the State or matters arising under the law of the State, or

(b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.

(6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

## **11 Limitation on nature of corrupt conduct**

(1) Despite section 10, conduct does not amount to corrupt conduct unless it could constitute or involve:

(a) a criminal offence, or

(b) a disciplinary offence, or

(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or

(d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.

(2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.

(3) For the purposes of this section:

***applicable code of conduct*** means, in relation to:

(a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or

(b) a member of the Legislative Council or of the House of Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

***criminal offence*** means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

***disciplinary offence*** includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

(4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 9 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

(5) Without otherwise limiting the matters that it can under section 96 (1) include in a report under section 95, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.

(6) A reference to a disciplinary offence in this section and sections 96 and 97 includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 28E of the *Local Government Act 1993*, but does not include a reference to any other breach of such a requirement.

## 12 Complaints about possible corrupt conduct

- (1) Any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct.
- (2) The Commission may investigate a complaint or decide that a complaint need not be investigated.
- (3) The Commission may discontinue an investigation of a complaint.
- (4) If a prisoner informs the Director of Corrective Services that the prisoner wishes to make a complaint under this section, the Director must:
  - (a) take all steps necessary to facilitate the making of the complaint, and
  - (b) send immediately to the Commission, unopened, any written matter addressed to the Commission.
- (5) For the purposes of subsection (4), *prisoner* and *Director* have the same meanings as *prisoner* and *Director* have in the *Corrections Act 1997*.

## 13 Duty to notify Commission of possible corrupt conduct

- (1) This section applies to the following officers:
  - (a) the Ombudsman,
  - (b) the Commissioner of Police,
  - (c) the principal officer of a public authority,
  - (d) an officer who constitutes a public authority.
- (2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct.
- (3) Despite subsection (2), the Commissioner of Police is not under a duty to report to the Commission any

matter that concerns or may concern corrupt conduct of a police officer unless the Commissioner of Police suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of another public official.

(4) The Commission may issue guidelines as to what matters need or need not be reported.

(5) This section has effect despite any duty of secrecy or other restriction on disclosure.

(6) The regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.

## **Part 4 Functions of Commission**

### **Division 1 Functions generally**

#### **14 Public interest to be paramount**

In exercising its functions, the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns.

#### **15 Serious and systemic corrupt conduct**

In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

#### **16 Principal functions**

(1) The principal functions of the Commission are as follows:

(a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

(i) corrupt conduct, or

(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

(iii) conduct connected with corrupt conduct,

may have occurred, may be occurring or may be about to occur,

(b) to investigate any matter referred to the Commission by both Houses of Parliament,

(c) to communicate to appropriate authorities the results of its investigations,



(d) to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct,

(e) to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated,

(f) to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct,

(g) to co-operate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct,

(h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct,

(i) to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration,

(j) to enlist and foster public support in combating corrupt conduct,

(k) to develop, arrange, supervise, participate in or conduct such educational or advisory programs as may be described in a reference made to the Commission by both Houses of Parliament.

(2) Subsection (1) (d) and (f)–(h) do not extend to the conduct of police officers.

(3) The Commission is to conduct its investigations with a view to determining:

(a) whether any corrupt conduct, or any other conduct referred to in subsection (1) (a), has occurred, is occurring or is about to occur, and

(b) whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and

(c) whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.

(4) Subsection (3) (a) does not require the Commission to make a finding, on the basis of any investigation, that corrupt conduct, or other conduct, has occurred, is occurring or is about to occur.

(5) The principal functions of the Commission also include:

(a) the power to make findings and form opinions, on the basis of the results of its investigations, in respect of any conduct, circumstances or events with which its investigations are concerned, whether or not the findings or opinions relate to corrupt conduct, and

(b) the power to formulate recommendations for the taking of action that the Commission considers should be taken in relation to its findings or opinions or the results of its investigations.

(6) The Commission may make a finding that a person has engaged or is engaging in corrupt conduct of a kind described in paragraph (a), (b), (c) or (d) of section 10 (1) only if satisfied that a person has engaged in or is

engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

(7) The Commission is not to make a finding, form an opinion or formulate a recommendation which section 97 (Report not to include findings etc of guilt or recommending prosecution) prevents the Commission from including in a report, but section 11 (5) and this section are the only restrictions imposed by this Act on the Commission's powers under subsection (5).

(8) The following are examples of the findings and opinions permissible under subsection (5) but do not limit the Commission's power to make findings and form opinions:

(a) findings that particular persons have engaged, are engaged or are about to engage in corrupt conduct,

(b) opinions as to:

(i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or

(ii) whether consideration should or should not be given to the taking of other action against particular persons,

(c) findings of fact.

## **17 Other functions of Commission**

(1) Other functions of the Commission are as follows:

(a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the State in connection with corrupt conduct and to furnish any such evidence to the Director of Public Prosecutions,

(b) to furnish other evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against a law of another State, the Commonwealth or a Territory) to the Attorney General or to the appropriate authority of the jurisdiction concerned.

(2) Evidence of the kind referred to in subsection (1) (b) may be accompanied by any observations that the Commission considers appropriate and (in the case of evidence furnished to the Attorney General) recommendations as to what action the Commission considers should be taken in relation to the evidence.

(3) A copy or detailed description of any evidence furnished to the appropriate authority of another jurisdiction, together with a copy of any accompanying observations, is to be furnished to the Attorney General.

(4) If the Commission obtains any information in the course of its investigations relating to the exercise of the functions of a public authority, the Commission may, if it considers it desirable to do so:

(a) furnish the information or a report on the information to the authority or to the Minister for the authority, and

(b) make to the authority or the Minister for the authority such recommendations (if any) relating to the exercise of the functions of the authority as the Commission considers appropriate.

(5) A copy of any information or report furnished to a public authority under subsection (4), together with a copy of any such recommendation, is to be furnished to the Minister for the authority.

(6) If the Commission furnishes any evidence or information to a person under this section on the understanding that the information is confidential, the person is subject to the secrecy provisions of section 143 in relation to the information.

## 18 Task forces

The Commission may, in connection with its principal functions:

- (a) arrange for the establishment of task forces within the State, and
- (b) seek the establishment of joint task forces with authorities of the Commonwealth or other States or Territories, and
- (c) co-operate with State task forces, Commonwealth task forces, joint task forces or other task forces, and
- (d) co-ordinate or co-operate in co-ordinating any such task forces.

## **19 Co-operation with other agencies**

- (1) In exercising its principal functions relating to the investigation of conduct, the Commission:
  - (a) shall, as far as practicable, work in co-operation with law enforcement agencies, and
  - (b) may work in co-operation with the Auditor-General, the Ombudsman, the Australian Crime Commission, the Australian Bureau of Criminal Intelligence and such other persons and bodies as the Commission thinks appropriate.
- (2) In exercising its other principal functions, the Commission shall, as far as practicable, work in co-operation with the Auditor-General, the Ombudsman, educational institutions, management consultants and such other persons and bodies as the Commission thinks appropriate.
- (3) The Commission may consult with and disseminate intelligence and information to law enforcement agencies, the Australian Crime Commission, the Australian Bureau of Criminal Intelligence and such other persons and bodies (including any task force and any member of a task force) as the Commission thinks appropriate.
- (4) If the Commission disseminates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 158 in relation to the information.

(5) In this section:

*law enforcement agency* means:

- (a) the Police Force, or
- (b) a police force of another State or Territory, or
- (c) the Australian Federal Police, or
- (d) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the State, another State or a Territory.

## **20 Evidence and procedure**

(1) The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

(2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and compulsory examinations and public inquiries shall be conducted with as little emphasis on an adversarial approach as is possible.

(3) Despite subsection (1), section 127 (Religious confession) of the *Evidence Act 2001* applies to any compulsory examination or public inquiry before the Commission.

## **21 Court proceedings**

(1) The Commission may do any or all of the following:

- (a) commence, continue, discontinue or complete any investigation,
- (b) furnish reports in connection with any investigation,
- (c) do all such acts and things as are necessary or expedient for those purposes,

despite any proceedings that may be in or before any court, tribunal, coroner, Magistrate or other person.

(2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commission must, to the extent to which the Commission thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

(a) ensure that, as far as practicable, the investigation is conducted in private during the currency of the proceedings, and

(b) give directions under section 161, having effect during the currency of the proceedings, and

(c) defer making a report to Parliament in relation to the investigation during the currency of the proceedings.

(3) Subsection (2) does not apply:

(a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings, and

(b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

(4) This section has effect whether or not the proceedings commenced before or after the relevant investigation commenced and has effect whether or not the Commission or an officer of the Commission is a party to the proceedings.

## **22 Incidental powers**

(1) The Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions, and any specific powers conferred on the Commission by this Act shall not be taken to limit by implication the generality of this section.

(2) The Commission or an officer of the Commission may seek the issue of a warrant under the *Listening Devices Act 1991*.

## **Division 2 Investigations**

### **23 Investigations generally**

(1) The Commission may conduct an investigation on its own initiative, on a complaint made to it, on a report made to it or on a reference made to it.

(2) The Commission may conduct an investigation even though no particular public official or other person has been implicated.

(3) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation (other than in relation to a matter referred by both Houses of Parliament), have regard to such matters as it thinks fit, including whether or not (in the Commission's opinion):

(a) the subject-matter of the investigation is trivial, or

(b) the conduct concerned occurred at too remote a time to justify investigation, or

(c) if the investigation was initiated as a result of a complaint—the complaint was frivolous, vexatious or not in good faith.

(4) If the Commission decides to discontinue or not to commence an investigation of a complaint or report made to it, the Commission must inform the complainant or officer who made the report in writing of its decision and the reasons for it.

### **24 Preliminary investigations**

(1) An investigation may be in the nature of a preliminary investigation.

(2) A preliminary examination can be conducted, for example, for the purpose of assisting the Commission:



(a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act, or

(b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.

(3) Nothing in this section affects any other provision of this Act.

## **25 Power to obtain information**

(1) For the purposes of an investigation, the Commission may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information.

(2) A notice under this section must specify or describe the information concerned, must fix a time and date for compliance and must specify the person (being the Commissioner, an Assistant Commissioner or any other officer of the Commission) to whom the production is to be made.

(3) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public official and may, but need not, specify the person or class of persons who may so act.

## **26 Power to obtain documents etc**

(1) For the purposes of an investigation, the Commission may, by notice in writing served on a person (whether or not a public authority or public official), require the person:

(a) to attend, at a time and place specified in the notice, before a person (being the Commissioner, an Assistant Commissioner or any other officer of the Commission) specified in the notice, and

(b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

(2) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the

person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.

## **27 Power to enter public premises**

(1) For the purposes of an investigation, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time:

- (a) enter and inspect any premises occupied or used by a public authority or public official in that capacity, and
- (b) inspect any document or other thing in or on the premises, and
- (c) take copies of any document in or on the premises.

(2) The public authority or public official shall make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.

## **28 Privilege as regards information, documents etc**

(1) This section applies where, under section 25 or 26, the Commission requires any person:

- (a) to produce any statement of information, or
- (b) to produce any document or other thing.

(2) The Commission shall set aside the requirement if it appears to the Commission that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commission that the person consents to compliance with the requirement.

(3) The person must however comply with the requirement despite:

- (a) any rule which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest, or

(b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or

(c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

## **29 Privilege as regards entry on public premises**

(1) This section applies to the powers of entry, inspection and copying conferred by section 27.

(2) The powers shall not be exercised if it appears to the Commissioner or authorised officer that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist inspection of the premises or production of the document or other thing and it does not appear to the Commissioner or authorised officer that the person consents to the inspection or production.

(3) The powers may however be exercised despite:

(a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest, or

(b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or

(c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

## **30 Self-incrimination**

(1) This section applies where, under section 25 or 26, the Commission requires any person:

(a) to produce any statement of information, or

(b) to produce any document or other thing.

(2) If the statement, document or other thing tends to incriminate the person and the person objects to production at the time, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against this Act).

(3) They may however be used for the purposes of the investigation concerned, despite any such objection.

### **31 Injunctions**

The Supreme Court may, on application made by the Commission, grant an injunction restraining any conduct in which a person (whether or not a public authority or public official) is engaging or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the Commission.

### **32 Provisions relating to injunctions**

(1) The Supreme Court shall not grant an injunction under section 31 unless it is of the opinion that:

(a) the conduct sought to be restrained is likely to impede the conduct of the investigation or proposed investigation,  
or

(b) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of corrupt conduct or suspected corrupt conduct.

(2) The Commission shall not be required, as a condition for the granting of an injunction under section 31, to give any undertaking as to damages.

### **33 Powers exercisable whether or not compulsory examination or public inquiry being held**

Powers may be exercised under this Division in relation to an investigation whether or not a compulsory examination or public inquiry before the Commission is being held for the purposes of the investigation.

## **Division 3 Compulsory examinations and public inquiries**

### **34 Compulsory examinations**

- (1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a compulsory examination.
- (2) A compulsory examination is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.
- (3) A person required to attend a compulsory examination is entitled to be informed, before or at the commencement of the compulsory examination, of the nature of the allegation or complaint being investigated.
- (4) A failure to comply with subsection (3) does not invalidate or otherwise affect the compulsory examination.
- (5) A compulsory examination is to be conducted in private.

**Note.** Section 20 (2) requires the Commission to conduct compulsory examinations with as little emphasis on an adversarial approach as possible.

- (6) The Commission may (but is not required to) advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed as a result of the compulsory examination.

### **35 Public inquiries**

- (1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.
- (2) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:
  - (a) the benefit of exposing to the public, and making it aware, of corrupt conduct,
  - (b) the seriousness of the allegation or complaint being investigated,

(c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),

(d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

(3) An Assistant Commissioner may determine to conduct a public inquiry only with the concurrence of the Commissioner. However, concurrence is not required if the Commissioner would or might have a conflict of interest in relation to the inquiry.

**Note.** Powers of the Commission under this Division may be delegated to an Assistant Commissioner under section 154 (5) (e).

(4) A public inquiry is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.

(5) At a public inquiry, the person presiding must announce the general scope and purpose of the inquiry.

(6) A person required to attend a public inquiry is entitled to be informed of the general scope and purpose of the public inquiry and the nature of the allegation or complaint being investigated before or at the time the person is required to appear at the inquiry.

(7) A failure to comply with subsection (6) does not invalidate or otherwise affect the public inquiry.

(8) A public inquiry is to be held in public.

(9) Despite subsection (8), the Commission may decide to hold part of the inquiry in private if it considers this to be in the public interest.

(10) Without limiting subsection (9), the Commission may decide to hear closing submissions in private. This extends to a closing submission by a person appearing before the Commission or an Australian legal practitioner representing such a person, as well as to a closing submission by an Australian legal practitioner assisting the Commission as counsel.

**Note.** Section 20 (2) requires the Commission to conduct public inquiries with as little emphasis on an adversarial approach as possible.

### **36 Directions as to presence of persons at compulsory examinations and public inquiries**

The Commissioner may give directions as to the persons who may be present at a compulsory examination or any part of a public inquiry that is held in private. A person must not be present in contravention of any such direction.

**Note.** It is an offence to contravene a direction under section 36—see section 125.

### **37 Right of appearance of affected person**

If it is shown to the satisfaction of the Commission that any person is substantially and directly interested in any subject-matter of a public inquiry, the Commission may authorise the person to appear at the public inquiry or a specified part of the public inquiry.

### **38 Legal representation**

(1) The Commission may, in relation to a compulsory examination or public inquiry, authorise:

(a) a person giving evidence at the compulsory examination or public inquiry, or

(b) a person referred to in section 37,

to be represented by an Australian legal practitioner at the compulsory examination or public inquiry or a specified part of the compulsory examination or public inquiry.

(2) The Commission is required to give a reasonable opportunity for a person giving evidence at the compulsory examination or public inquiry to be legally represented.

(3) An Australian legal practitioner appointed by the Commission to assist it may appear before the Commission.

### **39 Groups and unincorporated associations**

(1) A group or unincorporated association may be authorised to appear at a compulsory examination or public inquiry or authorised or required to give evidence at a compulsory examination or public inquiry.

(2) Accordingly, references in sections 37 and 38, and in other provisions of this Act, to a “person” extend for this purpose to a group or unincorporated association.

(3) However, this section does not affect the application in any other context of the principle that a reference to a word in the singular form includes a reference to the word in the plural form.

### **40 Examination and cross-examination**

(1) An Australian legal practitioner appointed by the Commission to assist it, or a person or a person’s Australian legal practitioner authorised to appear at a compulsory examination or public inquiry, may, with the leave of the Commission, examine or cross-examine any witness on any matter that the Commission considers relevant.

(2) Any witness so examined or cross-examined has the same protection and is subject to the same liabilities as if examined by the Commissioner or an Assistant Commissioner.

### **41 Power to summon witnesses and take evidence**

(1) The Commissioner may summon a person to appear before the Commission at a compulsory examination or public inquiry at a time and place named in the summons:

(a) to give evidence, or

(b) to produce such documents or other things (if any) as are referred to in the summons,

or both.

(2) The person presiding at a compulsory examination or public inquiry before the Commission may require a



person appearing at the compulsory examination or public inquiry to produce a document or other thing.

(3) The Commission may, at a compulsory examination or public inquiry, take evidence on oath or affirmation and for that purpose:

(a) the person presiding at the compulsory examination or public inquiry may require a person appearing at the compulsory examination or public inquiry to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and

(b) the person presiding, or a person authorised for the purpose by the person presiding, may administer an oath or affirmation to a person so appearing at the compulsory examination or public inquiry.

(4) A witness who has been summoned to attend before the Commission shall appear and report himself or herself from day to day unless the witness is excused from attendance or until the witness is released from further attendance by the person presiding at the compulsory examination or public inquiry.

(5) A person who, without being so excused or released, fails to appear and report shall be taken to have failed to appear before the Commission in obedience to the summons.

(6) A Judge or Magistrate may, on the application of the Commissioner, issue any summons that the Commissioner is authorised to issue under this section.

(7) The purpose of subsection (6) is to enable the summons to be given the character of a summons issued by a judicial officer, for the purposes of the *Service and Execution of Process Act 1992* of the Commonwealth and any other relevant law.

## **42 Arrest of witness**

(1) If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory

declaration of the service of the summons, issue a warrant for the arrest of the witness.

(2) If the Commissioner is satisfied by evidence on oath or affirmation that it is probable that a person whose evidence is desired and is necessary and relevant to an investigation under this Act:

(a) will not attend before the Commission to give evidence without being compelled to do so, or

(b) is about to or is making preparations to leave the State and the person's evidence will not be obtained by the Commission if the person departs,

the Commissioner may issue a warrant for the arrest of the person.

(3) The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).

(4) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.

(5) A warrant may be issued under subsection (2) after the issue of a summons to the person whose evidence is desired, even though the time named in the summons for the person to attend has not yet passed.

(6) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in a prison or elsewhere for that purpose until released by order of the Commissioner.

(7) A warrant issued under this section may be executed by any member of the Police Force, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.

(8) The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.

### **43 Conditional release of witness**

(1) The release of a witness by order of the Commissioner under section 42 (6) may (but need not) be made subject to one or more of the following conditions (or any other conditions):

(a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant compulsory examination or public inquiry of the Commission, and

(b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).

(2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

### **44 Review by Supreme Court**

(1) A witness who has not been released by the Commissioner under section 42 (6) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.

(2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.

(3) Such an order is taken to be an order of the Commissioner.

#### **45 Privilege as regards answers, documents etc**

(1) A witness summoned to attend or appearing before the Commission at a compulsory examination or public inquiry is not entitled to refuse:

(a) to be sworn or to make an affirmation, or

(b) to answer any question relevant to an investigation put to the witness by the Commissioner or other person presiding at a compulsory examination or public inquiry, or

(c) to produce any document or other thing in the witness's custody or control which the witness is required by the summons or by the person presiding to produce.

(2) A witness summoned to attend or appearing before the Commission at a compulsory examination or public inquiry is not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.

(3) An answer made, or document or other thing produced, by a witness at a compulsory examination or public inquiry before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.

(4) Nothing in this section makes inadmissible:

(a) any answer, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or

(b) any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the

witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (2), or

(c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

(5) Where:

(a) an Australian legal practitioner or other person is required to answer a question or produce a document or other thing at a compulsory examination or public inquiry before the Commission, and

(b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between an Australian legal practitioner (in his or her capacity as an Australian legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a compulsory examination or public inquiry before the Commission,

the Australian legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

#### **46 Declaration as to objections by witness**

The Commissioner or person presiding at the compulsory examination or public inquiry may declare that all or any classes of answers given by a witness or that all or any classes of documents or other things produced by a witness will be regarded as having been given or produced on objection by the witness, and there is accordingly no need for the witness to make an objection in respect of each such answer, document or other thing.

## **47 Attendance of prisoner before Commission**

- (1) If the Commissioner requires the attendance at a compulsory examination or public inquiry before the Commission of a prisoner, the Commissioner may, by order in writing served on the Director of Corrective Services, direct the Director to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.
- (2) Such an order is sufficient authority to the Director of Corrective Services for producing or having produced the prisoner, who shall be produced accordingly.
- (3) A prisoner shall, when produced under this section in the actual custody of the Director of Corrective Services, a correctional officer or a member of the Police Force, be taken to be in lawful custody.
- (4) The Director of Corrective Services, correctional officer or member of the Police Force shall in due course return the prisoner to the prison.
- (5) In this section, *Director of Corrective Services*, *prison* and *prisoner* have the same meanings as *Director*, *prison* and *prisoner* have in the *Corrections Act 1997*.

### **Division 4 Search warrants**

## **48 Issue of search warrant**

- (1) An authorised officer to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (2) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.
- (3) Search warrants should, as far as practicable, be issued by authorised officers, but nothing in this subsection affects the discretion of the Commissioner to issue them.

(4) An officer of the Commission may apply to an authorised officer or the Commissioner for a search warrant if the officer has reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises.

#### **49 Authority conferred by warrant**

(1) A search warrant authorises any member of the Police Force, or any other person, named in the warrant:

(a) to enter the premises, and

(b) to search the premises for documents or other things connected with any matter that is being investigated under this Act, and

(c) to seize any such documents or other things found in or on the premises and deliver them to the Commission.

(2) A member of the Police Force, or a senior Commission investigator, named in and executing a search warrant may search a person found in or on the premises whom the member of the Police Force or senior Commission investigator reasonably suspects of having a document or other thing mentioned in the warrant.

(3) In this section:

*senior Commission investigator* means an officer of the Commission who is designated by the Commissioner as a senior investigator and who is issued by the Commissioner with means of identification as such a senior Commission investigator.

#### **50 Duty to show warrant**

A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

## 51 Use of force

(1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to enter premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.

## 52 Use of assistants to execute warrant

A person may execute a search warrant with the aid of such assistants as the person considers necessary.

## 53 Execution of warrant by day or night

(1) A search warrant may be executed by day, but shall not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.

(2) In this section:

*by day* means during the period between 6 am and 9 pm on any day.

*by night* means during the period between 9 pm on any day and 6 am on the following day.

## 54 Expiry of warrant

A search warrant ceases to have effect:

- (a) one month after its issue, or
- (b) if it is withdrawn by the person who issued the warrant, or
- (c) when it is executed,

whichever first occurs.



## 55 Seizure pursuant to warrant—special provisions

(1) If, in the course of searching, in accordance with the terms of a search warrant, for documents or other things:

(a) the person executing the warrant finds a document or other thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth, a State or a Territory, and

(b) the first-mentioned person believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence,

that person may seize the document or other thing and, if it is so seized, it shall be taken, for the purposes of this Act, to have been seized pursuant to the warrant.

(2) If a document or other thing is seized pursuant to a search warrant:

(a) the Commission may retain the document or other thing if, and for so long as, its retention by the Commission is reasonably necessary for the purposes of an investigation to which it is relevant, and

(b) if the retention of the document or other thing by the Commission is not, or ceases to be, reasonably necessary for such purposes, the Commission shall cause it to be delivered to:

(i) the person who appears to the Commission to be entitled to possession of the document or other thing, or

(ii) the Attorney General or the Director of Public Prosecutions, with a recommendation as to what action should be taken in relation to the document or other thing.

## **Division 5 Disposal of property**

### **56 Application to property**

This Division applies to property:

- (a) that is lawfully in the custody of the Commission in connection with an investigation, and
- (b) is not required for the purposes of an investigation or a criminal prosecution or disciplinary or other proceeding.

### **57 Disposal of property on application to court**

- (1) The Commission may apply to a court for an order under this Division in relation to property to which this Division applies if it appears to the Commission that no person is lawfully entitled to the property.
- (2) A court to which such an application is made may order that the property be dealt with as the court thinks fit.
- (3) Without limiting subsection (2), in determining an application a court may:
  - (a) order that the property be forfeited to the Crown, and
  - (b) make any necessary incidental or ancillary orders.
- (4) Property ordered to be forfeited to the Crown:
  - (a) if money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
  - (b) in any other case, may be sold by or on behalf of the Commissioner at public

auction and the proceeds of sale paid to the Treasurer for payment into the Consolidated Fund.

(5) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner.

## **58 Application to Treasurer for recovery of money or proceeds of sale**

A person who is lawfully entitled to any property that has been dealt with in accordance with this Division may recover from the Treasurer the money or proceeds of sale held by the Treasurer. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

## **59 Courts having jurisdiction under this Division**

The court to which an application under this Division may be made is:

(a) a Magistrates Court for the district in which the property is held, if the estimated value of the property (or the amount of the money) does not exceed \$40,000, or

(b) the District Court, if the estimated value of the property (or the amount of the money) exceeds \$40,000 but does not exceed \$250,000, or

(c) the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.

## **Division 6 Miscellaneous**

### **60 Indemnities and undertakings**

(1) The Commission may recommend to the Attorney General that a person be granted an indemnity from prosecution.

(2) The Commission may recommend to the Attorney General that a person be given an undertaking that:

(a) an answer, statement or disclosure in proceedings before the Commission, or

(b) the fact of a disclosure or production of a document in proceedings before the Commission,

will not be used in evidence against the person.

(3) A reference in this section to proceedings before the Commission includes a reference to a compulsory examination or public inquiry conducted by the Commission or any other investigative activity involving the Commission or an officer of the Commission.

## **61 Protection of witnesses and persons assisting Commission**

(1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary:

(a) to protect the safety of any such person, or

(b) to protect any such person from intimidation or harassment.

(2) In this section, a reference to a person who is assisting the Commission is a reference to a person who:

(a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing, or

(b) has produced or proposes to produce a document or other thing to the Commission under this Act, or

(c) has assisted, is assisting or is to assist the Commission in some other manner.

(3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:

(a) to provide any protection referred to in subsection (1), or

(b) to provide personnel or facilities or both to assist in providing that protection, or

(c) to otherwise assist in the provision of that protection.

(4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible.

(5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).

(6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(7) Nothing in this section affects the *Witness Protection Act 2000*.

## **62 Reimbursement of expenses of witnesses**

A witness appearing before the Commission shall be paid, out of money provided by Parliament, in respect of the expenses of the witness's attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Commission determines.

## **63 Legal and financial assistance for witness**

(1) A witness who is appearing or about to appear before the Commission may apply to the Attorney General for legal or financial assistance.

(2) The Attorney General may approve the provision of legal or financial assistance to the applicant if of the opinion that this is appropriate, having regard to any one or more of the following:

(a) the prospect of hardship to the witness if assistance is declined,

(b) the significance of the evidence that the witness is giving or appears likely to give,

(c) any other matter relating to the public interest.

(3) On giving the approval, the Attorney General may authorise the provision to the witness of legal or financial assistance determined by the Attorney General in respect of the witness's appearance before the Commission. The assistance is to be provided out of money provided by Parliament for the purpose.

(4) The assistance may be provided unconditionally or subject to conditions determined by the Attorney General.

(5) The Attorney General may delegate one or more of his or her functions under this section to the Secretary of the Justice Department.

## **Part 5 Referral of matters by Commission**

### **64 Referral of matter**

- (1) The Commission may, before or after investigating a matter (whether or not the investigation is completed, and whether or not the Commission has made any findings), refer the matter for investigation or other action to any person or body considered by the Commission to be appropriate in the circumstances.
- (2) The person or body to whom a matter is referred is called in this Part a *relevant authority*.
- (3) The Commission may, when referring a matter, recommend what action should be taken by the relevant authority and the time within which it should be taken.
- (4) The Commission may communicate to the relevant authority any information which the Commission has obtained during the investigation of conduct connected with the matter.
- (5) The Commission shall not refer a matter to a person or body except after appropriate consultation with the person or body and after taking into consideration the views of the person or body.
- (6) If the Commission communicates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 158 in relation to the information.

### **65 Report to Commission**

- (1) The Commission may, when referring a matter under this Part, require the relevant authority to submit to the Commission a report or reports in relation to the matter and the action taken by the relevant authority.
- (2) A report shall be of such a nature as the Commission directs.
- (3) A report shall be submitted to the Commission within such time as the Commission directs.

## **66 Further action by Commission**

(1) If the Commission is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred under this Part, the Commission shall inform the relevant authority of the grounds of the Commission's dissatisfaction and shall give the relevant authority an opportunity to comment within a specified time.

(2) If, after considering any comments received from the relevant authority within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister for the relevant authority setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the relevant authority and the Commission.

(3) If, after considering any comments received from the Minister for the authority within 21 days after the report was submitted to that Minister under subsection (2), the Commission is still of the opinion that the recommendation should be adopted, the Commission may make a report as referred to in section 101.

## **67 Responsibility of relevant authority**

It is the duty of a relevant authority to comply with any requirement or direction of the Commission under this Part.

## **68 Revocation of referral, recommendation etc**

(1) The Commission may revoke a referral under this Part.

(2) The Commission may revoke or vary a recommendation, requirement or direction of the Commission under this Part.

(3) The Commission may vary any time within which a requirement under this Part is to be complied with.



## **Part 6 Inspector of the Independent Commission Against Corruption**

### **69 Inspector of the Independent Commission Against Corruption**

#### **(1) Appointment**

The Governor may appoint an Inspector of the Independent Commission Against Corruption.

#### **(2) Schedule of provisions relating to Inspector**

Schedule 2 has effect.

### **70 Principal functions of Inspector**

(1) The principal functions of the Inspector are:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- (c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
- (d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.

(3) The Inspector is not subject to the Commission in any respect.

(4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

- (a) contrary to law, or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) based wholly or partly on improper motives.

## **71 Powers of Inspector**

The Inspector:

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and
- (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
- (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and
- (e) may investigate and assess complaints about the Commission or officers of the Commission, and
- (f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and

(g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

## 72 Inquiries

(1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries.

(2) For the purposes of any inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by Part 3 of the *Commissions of Inquiry Act 1995* and that Act applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.

(3) A witness summoned by or appearing before the Inspector is to be paid such amount as the Inspector determines, but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

## 73 Staff of Inspector

(1) Such staff as may be necessary to assist the Inspector may be employed under the *State Service Act 2000*.

(2) The Inspector may also employ staff. The *State Service Act 2000* does not apply to or in respect of any such staff.

(3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.

(4) The Inspector may arrange for the use of the services of:

(a) any staff or facilities of the Commission, a Government Department or a local or public authority, or

(b) any staff who are employed by or for or assigned to the person who is Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).

(5) The Head of Agency in which staff of the Inspector are employed may delegate to the Inspector or a member of staff of the Inspector any of the Head's functions under the *State Service Act 2000* with respect to those staff (other than this power of delegation).

(6) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.

(7) In this section:

***Government Department*** has the same meaning as in the *State Service Act 2000*.

***Head of Agency*** has the same meaning as in the *State Service Act 2000*.

#### **74 Incidental powers**

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.

#### **75 Former officers of the Commission**

For the avoidance of doubt, a reference in any other provision of this Part to an officer of the Commission includes a reference to a former officer of the Commission.

## **Part 7 Parliamentary Joint Committee**

### **76 Constitution of Joint Committee**

As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Tasmanian Independent Commission Against Corruption, shall be appointed.

### **77 Functions**

(1) The functions of the Joint Committee are as follows:

(a) to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions,

(b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,

(c) to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,

(d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector,

(e) to inquire into any question in connection with its functions which is referred to it by both Houses of

Parliament, and report to both Houses on that question.

(2) Nothing in this Part authorises the Joint Committee:

(a) to investigate a matter relating to particular conduct, or

(b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or

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

## **78 Power to veto proposed appointment of Commissioner or Inspector**

(1) The Minister is to refer a proposal to appoint a person as Commissioner or Inspector to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.

(2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

(3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.

(4) A referral or notification under this section is to be in writing.

## **79 Membership**

(1) The Joint Committee shall consist of 7 members, of whom:

(a) 4 shall be members of, and appointed by, the Legislative Council, and

(b) 3 shall be members of, and appointed by, the House of Assembly.

(2) The appointment of members of the Joint Committee shall, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

(3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown.

## **80 Vacancies**

(1) A member of the Joint Committee ceases to hold office:

(a) when the House of Assembly is dissolved or expires by the effluxion of time, or

(b) if the member becomes a Minister of the Crown, or

(c) if the member ceases to be a member of the Legislative Council or House of Assembly, or

(d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or

(e) if, being a member of the House of Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the House of Assembly, or

(f) if the member is discharged from office by the House of Parliament to which the member belongs.

(2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.

## **81 Chair and Deputy Chair**

(1) There shall be a Chair and a Deputy Chair of the Joint Committee, who shall be elected by and from the members of the Joint Committee.

(2) A member of the Joint Committee ceases to hold office as Chair or Deputy Chair of the Joint Committee if:

(a) the member ceases to be a member of the Committee, or

(b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or

(c) the member is discharged from office by the Committee.

(3) At any time when the Chair is absent from Tasmania or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair under this Act.

## **82 Procedure**

(1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

(2) The Clerk of the House of Assembly shall call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.

(3) At a meeting of the Joint Committee, 5 members constitute a quorum, but the Committee shall meet as a joint committee at all times.

(4) The Chair or, in the absence of the Chair, the Deputy Chair or, in the absence of both the Chair and the Deputy Chair, a member of the Joint Committee elected to chair the meeting by the members present shall preside at a meeting of the Joint Committee.

(5) The Deputy Chair or other member presiding at a meeting of the Joint Committee shall, in relation to the meeting, have all the functions of the Chair.

(6) The Chair, Deputy Chair or other member presiding at a meeting of the Joint Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.



(7) A question arising at a meeting of the Joint Committee shall be determined by a majority of the votes of the members present and voting.

(8) The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.

(9) The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

### **83 Procedure if Parliament not in session**

(1) If a House of Parliament is not sitting when the Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.

(2) The report:

(a) on presentation and for all purposes is taken to have been laid before the House, and

(b) may be printed by authority of the Clerk, and

(c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and

(d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

### **84 Evidence**

(1) The Joint Committee shall have power to send for persons, papers and records.

(2) Subject to section 85, the Joint Committee shall take all evidence in public.

(3) Where the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at

any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.

(4) The production of documents to the Joint Committee shall be in accordance with the practice of the House of Assembly with respect to the production of documents to select committees of the House of Assembly.

## **85 Confidentiality**

(1) Where any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or producing the document shall:

- (a) take the evidence in private, or
- (b) direct that the document, or the part of the document, be treated as confidential.

(2) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to the proposed appointment of a person as Commissioner or Inspector, the Committee must (despite any other provision of this section):

- (a) take the evidence in private, or
- (b) direct that the document, or the part of the document, be treated as confidential.

(3) Despite any other provision of this section except subsection (9), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (2) applies.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(4) Despite any other provision of this section except subsection (9), the Joint Committee (including a

member of the Committee) must not, and any person assisting the Committee or present during the deliberations of the Committee must not, except in accordance with section 78 (3), disclose whether or not the Joint Committee or any member of the Joint Committee has vetoed, or proposes to veto, the proposed appointment of a person as Commissioner or Inspector.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(5) Where a direction under subsection (1) applies to a document or part of a document produced in evidence to the Joint Committee, the contents of the document or part shall, for the purposes of this section, be taken to be evidence given by the person producing the document and taken by the Committee in private.

(6) Where, at the request of a witness, evidence is taken by the Joint Committee in private:

(a) the Committee shall not, without the consent in writing of the witness, and

(b) a person (including a member of the Committee) shall not, without the consent in writing of the witness and the authority of the Committee under subsection (5),

disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(7) Where evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) shall not, without the authority of the Committee under subsection (8), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(8) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chair, authorise the disclosure or publication of evidence taken

in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (6).

(9) Nothing in this section prohibits:

(a) the disclosure or publication of evidence that has already been lawfully published, or

(b) the disclosure or publication by a person of a matter of which the person has become aware other than by reason, directly or indirectly, of the giving of evidence before the Joint Committee.

## **86 Application of certain Acts etc**

The:

(a) the Joint Committee shall be taken to be a joint committee of the Legislative Council and House of Assembly, and

(b) the proposal for the appointment of the Joint Committee shall be taken to have originated in the House of Assembly.

## **87 Validity of certain acts or proceedings**

Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

(a) a vacancy in the office of a member of the Committee, or

(b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

## **Part 8 Parliamentary ethical standards**

### **Division 1 Legislative Council**

#### **88 Definition**

In this Division:

*designated committee* means the committee of the Legislative Council that is for the time being designated under section 89.

#### **89 Designation of committee**

- (1) As soon as practicable after the commencement of this Division and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Division.
- (2) Another committee of the Legislative Council may be designated by such a resolution from time to time in place of any previously designated.
- (3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

#### **90 Functions of committee**

- (1) The functions of the designated committee are:
  - (a) to prepare for consideration by the Legislative Council draft codes of conduct for members of the Legislative Council and draft amendments to codes of conduct already adopted, and
  - (b) to carry out educative work relating to ethical standards applying to members of the Legislative Council, and
  - (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council, but not in relation to actual or alleged conduct of any particular person.

(2) The designated committee may seek comments from the public in relation to any of its functions under this section.

(3) Before presenting a draft code of conduct for consideration by the Legislative Council, the designated committee must:

(a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public, and

(b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice, and

(c) specify, in the notice, the period during which submissions may be made to the committee.

(4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.

(5) The designated committee is to review a code of conduct adopted by the Legislative Council at least once every 4 years.

## **Division 2 House of Assembly**

### **91 Definition**

In this Division:

*designated committee* means the committee of the House of Assembly that is for the time being designated under section 92.

### **92 Designation of committee**

(1) As soon as practicable after the commencement of this section and the commencement of the first session of each Parliament, a committee of the House of Assembly is to be designated by resolution of the House of Assembly as the designated committee for the purposes of this Division.

(2) Another committee of the House of Assembly may be designated by such a resolution from time to time in place of any previously designated.

(3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

### **93 Functions of committee**

(1) The functions of the designated committee are:

(a) to prepare for consideration by the House of Assembly draft codes of conduct for members of the House of Assembly and draft amendments to codes of conduct already adopted, and

(b) to carry out educative work relating to ethical standards applying to members of the House of Assembly, and

(c) to give advice in relation to such ethical standards in response to requests for advice by the House of Assembly, but not in relation to actual or alleged conduct of any particular person.

(2) The designated committee may appoint any member of the public for the purpose of assisting the committee to carry out any of its functions under this section in relation to a code of conduct.

(3) The designated committee may seek comments from the public in relation to any of its functions under this section.

(4) Before presenting a draft code of conduct for consideration by the House of Assembly, the designated committee must:

(a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public, and

(b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice, and

(c) specify, in the notice, the period during which submissions may be made to the committee.

(5) Any person may, during the period referred to in subsection (4) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.

(6) The designated committee is to review a code of conduct adopted by the House of Assembly at least once every 4 years.



## **Part 9 References by and reports to Parliament**

### **Division 1 References to Commission by, and reports by Commission to, Parliament**

#### **94 References by Parliament**

- (1) Both Houses of Parliament may, by resolution of each House, refer to the Commission any matter as referred to in section 16.
- (2) It is the duty of the Commission to fully investigate a matter so referred to it for investigation.
- (3) It is the duty of the Commission to comply as fully as possible with any directions contained in a reference of a matter referred to in section 16 (1) (k).
- (4) Both Houses of Parliament may, by resolution of each House, amend or revoke a reference made under this section.

#### **95 Reports on referred matters etc**

- (1) The Commission may prepare reports in relation to any matter that has been or is the subject of an investigation.
- (2) The Commission shall prepare reports in relation to a matter referred to the Commission by both Houses of Parliament, as directed by those Houses.
- (3) The Commission shall prepare reports in relation to matters as to which the Commission has conducted a public inquiry, unless the Houses of Parliament have given different directions under subsection (2).
- (4) The Commission shall furnish reports prepared under this section to the Presiding Officer of each House of Parliament.
- (5) A report required under this section shall be furnished as soon as possible after the Commission has concluded its involvement in the matter.
- (6) The Commission may defer making a report under this section if it is satisfied that it is desirable to do so in

the public interest, except as regards a matter referred to the Commission by both Houses of Parliament.

## **96 Content of reports to Parliament**

(1) The Commission is authorised to include in a report under section 95:

- (a) statements as to any of its findings, opinions and recommendations, and
- (b) statements as to the Commission's reasons for any of its findings, opinions and recommendations.

(2) The report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- (a) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,
- (b) the taking of action against the person for a specified disciplinary offence,
- (c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

(3) An "affected" person is a person described as such in the reference made by both Houses of Parliament or against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

(4) Subsection (2) does not limit the kinds of statement that a report can contain concerning any such "affected" person and does not prevent a report from containing a statement described in that subsection in respect of any other person.

## 97 Report not to include findings etc of guilt or recommending prosecution

(1) The Commission is not authorised to include in a report under section 95 a statement as to:

(a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence), or

(b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).

(2) A finding or opinion that a person has engaged, is engaging or is about to engage:

(a) in corrupt conduct (whether or not specified corrupt conduct), or

(b) in specified conduct (being conduct that constitutes or involves or could constitute or involve corrupt conduct),

is not a finding or opinion that the person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.

(3) In this section and section 96, ***criminal offence*** and ***disciplinary offence*** have the same meanings as in section 11.

## 98 Reports relating to local government authorities

(1) The Commission is authorised to include in a report under section 95 a recommendation that consideration be given to the making of a recommendation to the Governor under section 226 of the *Local Government Act 1993* that all the councillors of a local government authority be dismissed if the Commission is of the opinion that systemic corruption exists within the local government authority.

(2) The Commission is authorised to include in a report under section 95 a recommendation that consideration be given to the suspension of a councillor from civic office under the *Local Government Act 1993* with a view to his or her dismissal for serious corrupt conduct.

(3) The Commission is authorised to include in a report under section 95 a recommendation that consideration be given to the suspension from duty of a member of the staff of a local government authority with a view to the institution of disciplinary or criminal proceedings against the member of staff for serious corrupt conduct.

(4) The Commission is authorised to include in a report under section 95 a recommendation that consideration be given to the appointment of a person to administer the planning authority functions of a council because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of those functions.

(5) The Commission is not to make a recommendation under this section unless the Commission is of the opinion that prompt action is required in the public interest.

(6) This section does not limit any other recommendation that the Commission is authorised to include in a report under section 95 in relation to a local government authority, councillor or member of staff.

(7) This section extends to a report in relation to a matter that has been the subject of an investigation conducted before the commencement of this section.

## **99 Special reports**

The Commission may, at any time, make a special report to the Presiding Officer of each House of Parliament on any administrative or general policy matter relating to the functions of the Commission.

## **100 Annual reports**

(1) The Commission shall, within the period of 4 months after each 30 June, prepare a report of its operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

(2) A report by the Commission under this section in relation to a year shall include the following:

(a) a description of the matters that were referred to the Commission,

(b) a description of the matters investigated by the Commission,

(c) the following details with respect to matters investigated by the Commission:

(i) the time interval between the lodging of each complaint and the Commission deciding to investigate the complaint,

(ii) the number of complaints commenced to be investigated but not finally dealt with during the year,

(iii) the average time taken to deal with complaints and the actual time taken to investigate any matter in respect of which a report is made,

(iv) the total number of compulsory examinations and public inquiries conducted during the year,

(v) the number of days spent during the year in conducting public inquiries,

(vi) the time interval between the completion of each public inquiry conducted during the year and the furnishing of a report on the matter,

(d) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions,

(e) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency,

(f) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year,

(g) the number of search warrants issued by authorised officers and the Commissioner respectively under this Act in that year,

(h) a description of its activities during that year in relation to its educating and advising functions.

## **101 Reports relating to authorities**

(1) The Commission may furnish to the Presiding Officer of each House of Parliament a report setting out a recommendation referred to in section 66 which it is of the opinion should be adopted and the reasons for its opinion.

(2) Such a report shall not be furnished until after the period of 21 days referred to in section 66 (3) has passed.

### **Division 2 Reports by Inspector**

## **102 Special reports**

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:

(a) any matters affecting the Commission, including, for example, its operational effectiveness or needs, and

(b) any administrative or general policy matter relating to the functions of the Inspector.

### **103 Annual reports of Inspector**

The Inspector is required to prepare, within the period of 4 months after each 30 June, a report of the Inspector's operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

#### **Division 3 Tasmanian Integrity Commissioner**

### **104 Report by Tasmanian Integrity Commissioner**

(1) The Tasmanian Integrity Commissioner must, within the period of 4 months after each 30 June, prepare a report of the Tasmanian Integrity Commissioner's operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

(2) The report must be in general terms and must not contain information likely to identify individuals who sought the Tasmanian Integrity Commissioner's advice about a conflict of interest issue.

#### **Division 4 General**

### **105 Provisions relating to reports**

(1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part shall be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.

(2) The Inspector may include in a report a recommendation that the report be made public forthwith.

(3) The Commission may include in a report a recommendation that the report be made public forthwith.

(4) If a report includes a recommendation by the Commission or the Inspector that the report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

(5) If such a report is made public by the Presiding Officer of a House of Parliament before it is laid before

that House, it attracts the same privileges and immunities as if it had been laid before that House.

(6) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

## **106 References to Presiding Officers**

(1) References in this Part to a Presiding Officer are references to the President of the Legislative Council or the Speaker of the House of Assembly.

(2) If there is a vacancy in the office of President, the reference to the President shall be taken to be a reference to the Clerk of the Legislative Council.

(3) If there is a vacancy in the office of Speaker, the reference to the Speaker shall be taken to be a reference to the Clerk of the House of Assembly.



## **Part 10 Integrity Commissioner**

### **Division 1 General**

#### **107 Purpose of the Part**

The purpose of this part is to help Ministers and others to avoid conflicts of interest and in so doing to encourage confidence in public authorities.

#### **108 Appointment and related matters**

(1) **Appointment**

The Governor may appoint a Tasmanian Integrity Commissioner.

(2) **Qualifications**

A person is qualified for appointment as the Tasmanian Integrity Commissioner if the person has knowledge, experience, personal qualities and standing within the community suitable to the office.

(3) **Schedule of provisions relating to Tasmanian Integrity Commissioner**

Schedule 3 has effect.

#### **109 Principal functions of Integrity Commissioner**

(1) The principal functions of the Tasmanian Integrity Commissioner are:

- (a) to give advice to designated persons about conflict of interest issues as provided under Division 2;
- (b) to give advice to the Premier, if the Premier asks, on issues concerning ethics and integrity, including standard-setting for issues concerning ethics and integrity, and
- (c) to contribute to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the Tasmanian Integrity Commissioner's functions.

(2) For subsection (1)(b), advice on an issue about a person may only be given if the person is or has been a designated person.

#### **110 Designated persons**

(1) In this Part, each of the following is a designated person:

- (a) the Premier;
- (b) a Minister;
- (c) a Head of Agency;
- (d) a senior executive;
- (e) a person employed in the office of a Minister, or engaged, to give advice to the Minister;
- (f) without limiting paragraph (e), a person, or a person within a class of person, nominated by a Minister.

(2) A nomination under subsection (1)(f) must be by signed notice given to the Tasmanian Integrity Commissioner.

(3) In this Part,

*conflict of interest issue*, involving a person, means a issue about a conflict between the person's personal interests and the person's official duties.

*Head of Agency* has the same meaning as in the *State Service Act 2000*.

*senior executive* has the same meaning as in the *State Service Act 2000*.

## **Division 2 Advice**

### **111 Request for advice by designated persons**

(1) The Tasmanian Integrity Commissioner may give advice about a conflict of interest issue only if;

(a) the person seeking the advice is a designated person;  
and

(b) the person makes a written request for the advice and, if the person is a senior executive, the request is accompanied by a signed authority to seek the advice from the Head of Agency in which the person is employed.

(2) In this Part;

*senior officer* includes a senior executive equivalent.

## **112 Designated persons about whom advice can be sought**

- (1) A designated person may seek advice about a conflict of interest issue involving the person.
- (2) The Premier may seek advice about a conflict of interest issue involving any designated person.
- (3) A Minister may seek advice about a conflict of interest issue involving a designated person who is:
  - (a) a Head of Agency; or
  - (b) a senior executive of a Department administered by the Minister; or
  - (c) mentioned in section 110(1)(e); or
  - (d) nominated by the Minister under section 110(1)(f).
- (4) The Head of Agency may seek advice about a conflict of interest issue involving a designated person employed in the Department.
- (5) To remove any doubt, it is declared that advice must not be sought by or about a person who has been, but is not presently, a designated person.

## **113 Process for seeking advice**

- (1) A request for advice under section 112 must disclose all relevant information about the conflict of interest issue for which the advice is sought.
- (2) The Tasmanian Integrity Commissioner may ask the designated person for further information for the purpose of giving the advice.
- (3) The Tasmanian Integrity Commissioner may refuse to give the advice if Tasmanian Integrity Commissioner reasonably believes that:
  - (a) he or she does not have enough information about the conflict of interest issue to give the advice; or
  - (b) the advice is asked for in circumstances where the giving of the advice would not be in keeping with the purpose of this Part.

(4) Advice given under this division must be in writing.

(5) If the Tasmanian Integrity Commissioner refuses to give advice under subsection (3), the Tasmanian Integrity Commissioner must record in writing the reasons for refusing to give the advice.

#### **114 Issues to be considered when giving advice**

The Tasmanian Integrity Commissioner when giving advice about a conflict of interest issue to a designated person:

(a) must have regard to the following:

(i) approved codes of conduct;

(ii) ethical standards or codes of conduct adopted by the House of Assembly or Legislative Council by resolution;

(iii) ethical standards or codes of conduct approved by the Premier for Ministers; and

(b) may have regard to other ethical standards the Tasmanian Integrity Commissioner considers appropriate.

#### **Division 3 Confidentiality and protection**

#### **115 Freedom of Information Act does not apply**

(1) If advice is sought on an issue about a person under section 109(1)(b), the *Freedom of Information Act 1991* does not apply to a document received or brought into existence by the Tasmanian Integrity Commissioner in relation to the advice.

(2) If advice about a conflict of interest issue is sought under section 112, the *Freedom of Information Act 1991* does not apply to a document received or brought into existence by the Tasmanian Integrity Commissioner in relation to the conflict of interest issue.

#### **116 Authorisation of particular disclosures – ethics or integrity issue**

(1) A relevant document about an ethics or integrity issue may be disclosed under subsections (2) and (3).

(2) A person who is or has been a designated person to whom a relevant document relates may disclose the document.

(3) The Tasmanian Integrity Commissioner may disclose a relevant document to the person who is or has been the designated person to whom the relevant document relates.

(4) In this section:

*designated person to whom a relevant document relates* means the designated person involved in an ethics or integrity issue and to whom the relevant document relates.

*relevant document*, for an ethics or integrity issue, means a document received or brought into existence by the Tasmanian Integrity Commissioner in relation to advice sought under section 109(1)(b).

### **117 Authorisation of particular disclosures – conflict of interest issue**

(1) A relevant document about a conflict of interest issue may be disclosed under subsections (2) to (6).

(2) A person who is or has been a designated person to whom a relevant document relates may disclose the document.

(3) The Tasmanian Integrity Commissioner may disclose a relevant document to the person who is or has been the designated person to whom the relevant document relates.

(4) The Tasmanian Integrity Commissioner must give a copy of a relevant document relating to a particular designated person, other than a senior executive or senior executive equivalent:

(a) to the Premier, if:

- (i) the Premier asks for a copy of the document;
- or
- (ii) the Tasmanian Integrity Commissioner reasonably believes that the person has an actual and significant conflict of interest; or

(b) to a Minister, if the Minister asks for a copy of the document and the person is a person about whom the Minister may seek advice under section 112(3).

(5) The Tasmanian Integrity Commissioner may give a copy of a relevant document to the Premier under subsection (4)(a)(ii) only if:

- (a) the Tasmanian Integrity Commissioner advises the designated person in writing that the Tasmanian Integrity Commissioner has the belief mentioned in the provision and is therefore required under subsection (4)(a) to give a copy of the document to the Premier; and
- (b) the designated person fails to resolve the conflict to the Tasmanian Integrity Commissioner's satisfaction within 7 days after being given the advice mentioned in paragraph (a).

(6) The Tasmanian Integrity Commissioner must give a copy of a relevant document relating to a particular designated person to the Head of Agency of a Department if the Head of Agency asks for a copy of the document.

(7) To remove any doubt, it is declared that the Tasmanian Integrity Commissioner must not disclose a relevant document relating to a person who has been, but is not presently, a designated person, other than under subsection (3).

(8) In this section:

*designated person to whom a relevant document relates* means the designated person involved in a conflict of interest issue and to whom the relevant document relates.

*relevant document*, for a conflict of interest issue, means each of the following documents:

- (a) the request for advice;
- (b) any further information requested by the integrity commissioner under section 113(2) and given to the Tasmanian Integrity Commissioner;
- (c) the advice given by the Tasmanian Integrity Commissioner about the issue;
- (d) the record, under section 113(5), of the Tasmanian Integrity Commissioner's refusal to give the advice.

## **118 Limited protection for designated persons**

(1) This section applies if a designated person:

(a) asks under this part for the Tasmanian Integrity Commissioner's advice about a conflict of interest issue involving the designated person; and

(b) discloses all relevant information about the issue to the Tasmanian Integrity Commissioner when seeking the advice; and

(c) does an act to resolve the conflict substantially in accordance with the Tasmanian Integrity Commissioner's advice on the issue.

(2) The designated person is not liable in a civil proceeding or under an administrative process for the act taken by the person to resolve the conflict.

(3) To remove any doubt, it is declared that subsection (2) does not affect the designated person's liability for an act or omission done or made in connection with the conflict of interest issue before the person receives Tasmanian Integrity Commissioner's advice.

## **119 Protection for Tasmanian Integrity Commissioner**

(1) The Tasmanian Integrity Commissioner is not liable in a civil proceeding or under an administrative process for an act or omission done or made by the Tasmanian Integrity Commissioner acting in good faith, and without negligence, for the purposes of this part.

(2) If subsection (1) prevents a civil liability attaching to the Tasmanian Integrity Commissioner, the liability attaches instead to the State.

## Part 10 Certain offences

### 120 Obstruction of Commission, Inspector and others

A person shall not:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten:
  - (i) the Commission or an officer of the Commission in the exercise of functions under this Act, or
  - (ii) the Inspector or an officer of the Inspector in the exercise of functions under this Act, or
  - (iii) an Australian legal practitioner appointed by the Commission to assist the Commission as counsel in the exercise of functions as such counsel, or
  - (iv) an Australian legal practitioner or other person authorised to appear before the Commission in relation to that appearance, or
- (b) without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, under this Act, or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, in the exercise of functions under this Act, or
- (d) disrupt a compulsory examination or public inquiry before the Commission.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.



## **121 Complaints about possible corrupt conduct**

A person shall not, in making a complaint under this Act, wilfully make any false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

## **122 Offences relating to obtaining information**

A person shall not:

(a) without reasonable excuse, fail to comply with a notice served on the person under section 25, or

(b) in purported compliance with a notice served on the person or some other person under that section, knowingly furnish information that is false or misleading in a material particular.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

## **123 Offences relating to obtaining documents etc**

A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under section 26.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

## **124 Obstruction of person executing search warrant**

A person shall not, without reasonable excuse, obstruct or hinder a person executing a search warrant.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

## **125 Compulsory examinations and public inquiries**

A person who is present at a compulsory examination or public inquiry in contravention of section 36 is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

## **126 Failure to attend etc**

(1) A person summoned to attend or appearing before the Commission at a compulsory examination or public inquiry shall not, without reasonable excuse, fail:

- (a) to attend before the Commission in accordance with the summons, or
- (b) to be sworn or to make an affirmation, or
- (c) to answer any question relevant to an investigation put to the person by the Commissioner or other person presiding at the compulsory examination or public inquiry, or
- (d) to produce any document or other thing in the person's custody or control which the person is required by the summons or by the person presiding to produce.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

(2) It is a defence to a prosecution for failing without reasonable excuse to produce a document or other thing if the defendant establishes that the document or other thing was not relevant to an investigation.

(3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 42 (6) or 142 is subject, is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

## **127 False and misleading evidence**

A person who, at a compulsory examination or public inquiry conducted by the Commission, gives evidence that is false or misleading in a material particular knowing it to be false or misleading, or not believing it to be true, is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

## 128 Offences relating to documents or other things

(1) A person who, knowing that any document or other thing is or may be required in connection with an investigation, wilfully destroys it or renders it incapable of identification or, in the case of a document, renders it illegible, indecipherable or unusable, with intent to prevent it from being used in connection with the investigation, is guilty of an indictable offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation:

(a) destroys or alters any document or other thing relating to the subject-matter of the investigation, or

(b) sends or attempts to send, or conspires with any other person to send, out of Tasmania any such document or other thing, or any property of any description belonging to or in the disposition of or under the control of any person whose affairs are the subject-matter of the investigation,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(3) A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation, or with intent to mislead the Commission, fabricates any document or other thing is guilty of an indictable offence, if the document or other thing is produced in evidence to the Commission or is produced in purported compliance with a requirement under section 25 or 26.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(4) If in any prosecution for an offence against subsection (2) it is proved that the person charged with the offence has destroyed or altered any document or other thing, or has sent or attempted to send, or conspired to send, out of Tasmania any such document

or other thing, the onus of proving that in so doing the person had not acted in contravention of this section is on the person.

### **129 Procuring false testimony by witness**

A person who procures or causes or attempts or conspires to procure or cause:

(a) the giving of false testimony at a compulsory examination or public inquiry before the Commission, or

(b) in purported compliance with a notice served on any person under section 25, the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

### **130 Bribery of witness**

A person who:

(a) gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony, or

(b) attempts by any means to induce a person called or to be called before the Commission to give false testimony, or to withhold true testimony, or

(c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or herself, or for any other person, on any agreement or understanding that any person will as a witness before the Commission give false testimony or withhold true testimony,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

### **131 Fraud on witness**

A person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to, any person:

- (a) called or to be called as a witness before the Commission with intent to affect the testimony of that person as a witness, or
- (b) required to comply with a notice under section 25 or 26 with intent to affect that person's compliance with the notice,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

### **132 Preventing witness from attending**

- (1) A person who wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commission from attending as a witness or from producing anything in evidence pursuant to a summons to attend is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) A person who wilfully prevents or wilfully endeavours to prevent any person from complying with a requirement under section 25 or 26 is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (3) A reference in subsection (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 42 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

### **133 Injury to witness or person assisting Commission**

(1) A person who uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure, any violence, punishment, damage, loss or disadvantage to any person for or on account of:

(a) his or her assisting the Commission,  
or

(b) any evidence given by him or her  
before the Commission,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(2) In this section, a reference to a person assisting the Commission is a reference to a person who:

(a) has appeared, is appearing or is to appear as a witness before the Commission, or

(b) has complied with or proposes to comply with a requirement under section 25 or 26, or

(c) has assisted, is assisting or is to assist the Commission in some other manner.

### **134 Dismissal of witness, or person assisting Commission, by employer**

(1) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commission is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(2) In this section, a reference to a person assisting the Commission is a reference to a person who:

(a) has appeared, is appearing or is to appear as a witness before the Commission, or

(b) has complied with or proposes to comply with a requirement under section 25 or 26, or

(c) has assisted, is assisting or is to assist the Commission in some other manner.

(3) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

### **135 Impersonation of officer of Commission**

(1) A person shall not directly or indirectly represent that he or she is an officer of the Commission (whether generally or of a particular class of officer), unless the person is such an officer (or of that class).

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) For the purposes of subsection (1), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

### **136 Bribery of officer of Commission**

(1) An officer of the Commission shall not corruptly ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit of any kind for himself or herself, or for another person:

(a) to forgo or neglect his or her duty, or influence him or her, in the exercise of his or her functions as an officer of the Commission, or

(b) on account of anything already done or omitted to be done, or to be afterwards

done or omitted to be done, by him or her in the exercise of those functions, or

(c) to use, or take advantage of, his or her position as an officer of the Commission in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, another person.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.

(2) A person shall not corruptly give to, confer upon, or procure for, or promise or offer to give to, confer upon, or procure for, or attempt to procure for, an officer of the Commission, or for any other person, any money, property or benefit of any kind:

(a) for the person who has those functions to forgo or neglect his or her duty, or to influence him or her in the exercise of his or her functions as an officer of the Commission, or

(b) on account of anything already done, or omitted to be done, by him or her in the exercise of those functions, or

(c) for the officer of the Commission to use or take advantage of his or her position as such an officer in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, the person first referred to in this subsection.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.

(3) An offence under this section is an indictable offence.

### **136 Misuse of information**

(1) A person must not record, use or disclose information about a relevant issue about another person that came to the person's knowledge because of the person's involvement in the administration of Part 10.



Maximum penalty—85 penalty units or imprisonment for 1 year.

(2) Subsection (1) does not apply to a person's recording, use or disclosure of information if the recording, use or disclosure is:

(a) in the performance of his or her functions under Part 10; or

(b) authorised under this or another Act.

(3) A person who is or has been involved in the administration of Part 10 is not, in any proceeding, compellable to disclose information about a relevant issue about another person that came to the person's knowledge because of the person's involvement in the administration of Part 10.

(4) In this section:

*relevant issue* means:

(a) an ethics or integrity issue; or

(b) a conflict of interest issue.

## Part 12 Contempt of Commission

### 138 Definition

In this Part:

*offender* means a person guilty or alleged to be guilty of contempt of the Commission.

### 139 Contempt in the face or hearing of the Commission

A person who:

- (a) having been served with a summons to attend before the Commission as a witness, fails to attend in obedience to the summons, or
- (b) having been released under section 42 (6) on condition (under section 43 (1) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or
- (c) having been served with a summons to attend before the Commission, fails to produce any document or other thing in the person's custody or control that the person is required by the summons to produce, or
- (d) being called or examined as a witness before the Commission, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question put to the person by the Commissioner or Assistant Commissioner, or
- (e) wilfully threatens or insults:
  - (i) the Commissioner, an Assistant Commissioner or an officer of the Commission, or
  - (ii) an Australian legal practitioner appointed to assist the Commission as counsel, or
  - (iii) any witness or person summoned to attend before the Commission, or

(iv) an Australian legal practitioner or other person authorised to appear before the Commission,

in proceedings before the Commission, or

(f) misbehaves himself or herself before the Commission, or

(g) interrupts or obstructs any proceedings before the Commission,

is guilty of contempt of the Commission.

#### **140 Punishment of contempt**

(1) Any contempt of the Commission under section 139 may be punished in accordance with this section.

(2) The Commissioner may present to the Supreme Court a certificate (in this Part called a *contempt of the Commission certificate*) in which the Commissioner sets out the facts that constitute the alleged contempt.

(3) If the Commissioner presents a contempt of the Commission certificate to the Supreme Court:

(a) the Supreme Court shall thereupon inquire into the alleged contempt, and

(b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in like manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court.

(4) Such a certificate is prima facie evidence of the matters certified.

(5) Neither liability to be punished nor punishment under this section for contempt referred to in section 139 (a) or (b) excuses the offender from attending before the Commission in obedience to the summons,

and the Commissioner may enforce attendance by warrant.

(6) A person is not liable to be punished under this section where the person establishes that there was a reasonable excuse for the act or omission concerned.

#### **141 General provisions regarding contempt**

(1) In the case of any alleged contempt of the Commission, the Commissioner may summon the offender to appear before the Commission at a time and place named in the summons to show cause why the offender should not be dealt with under section 140 for the contempt.

(2) The summons is to set out the details of the alleged contempt.

(3) If the offender fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the Commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the Commissioner to show cause why the offender should not be dealt with under section 140 for the contempt.

(4) No summons need be issued against an offender committing a contempt in the face or hearing of the Commission, but the offender may, after being advised of the details of the alleged contempt, be taken into custody in a prison or elsewhere then and there by a member of the Police Force and called upon to show cause why the offender should not be dealt with under section 140 for the contempt.

(5) The Commissioner may issue a warrant to arrest the offender while the offender (whether or not already in custody under this section) is before the Commission and to bring the offender forthwith before the Supreme Court.

(6) The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the Supreme Court.

(7) The warrant is to be accompanied by the contempt of the Commission certificate in which the

Commissioner sets out the facts that constitute the alleged contempt.

(8) The Commissioner may revoke the warrant at any time before the offender is brought before the Supreme Court.

(9) When the offender is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the offender be kept in such custody as the Court may determine or direct that the offender be released.

#### **142 Conditional release of offender**

(1) The Commissioner may by order release an offender detained under section 141 at any time before the offender is brought before the Supreme Court.

(2) The release must be subject to the condition that the offender appear before the Supreme Court.

(3) The release may (but need not) be made subject to:

(a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and

(b) any other conditions.

(4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

#### **143 Review by Supreme Court**

(1) An offender who has not been released by the Commissioner under section 142 or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions.

(2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the

offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender.

(3) Such an order is taken to be an order of the Commissioner.

#### **144 Act or omission that is both an offence and contempt**

(1) An act or omission may be punished as a contempt of the Commission even though it could be punished as an offence.

(2) An act or omission may be punished as an offence even though it could be punished as a contempt of the Commission.

(3) If an act or omission constitutes both an offence and a contempt of the Commission, the offender is not liable to be punished twice.

## Part 13 Special powers

### 145 Definitions

In this Part:

*Commission investigator* means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued by the Commissioner with means of identification as such an investigator.

*Commission surveillance officer* means an officer of the Commission who is designated by the Commissioner as a surveillance officer and who is issued by the Commissioner with means of identification as such an officer.

*seconded police officer* means:

- (a) a member of the Australian Federal Police, or
- (b) a member of the Police Force of another State or Territory, or
- (c) a member of the Police Force of any country prescribed by the regulations for the purposes of this Part,

who is seconded or otherwise engaged to assist the Commission.

### 146 Commission investigator who is seconded police officer to have all powers of Tasmanian police officer

(1) A Commission investigator who is a seconded police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Service Act 2003* has and may exercise under any law of the State (including the common law and this Act).

(2) Those functions extend to functions conferred after the commencement of this Part.

(3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.

(4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission.

(5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under the *Police Service Act 2003*, but may be made to the Inspector.



## **Part 14 Miscellaneous**

### **147 Act binds Crown**

This Act binds the Crown.

### **148 Provisions relating to Commissioner and Assistant Commissioners**

Schedule 1 has effect.

### **149 Appointment of staff**

- (1) The Commissioner may appoint, as members of staff of the Commission, such persons as may be necessary to enable the Commission to exercise its functions.
- (2) Those persons are taken to be employed by the Government of Tasmania in the service of the Crown, except as provided by subsection (8).
- (3) Each person who is appointed as a member of staff of the Commission under this section:
  - (a) continues, subject to the provisions of this section and the terms of the person's appointment, to be employed as a member of staff at the discretion of the Commissioner, and
  - (b) is, in the person's capacity as such a member, subject to the control and direction of the Commissioner.
- (4) The *State Service Act 2000* does not apply to the appointment or employment of a person under this section as a member of staff of the Commission.
- (5) The Commissioner may fix the salaries, wages, allowances and conditions of employment of the staff employed under this section in so far as they are not fixed by or under another Act or law.
- (6) The Commissioner may enter into an agreement with any association or organisation representing a group or class of staff employed under this section with respect to industrial matters. Any such agreement binds all persons in the class or group affected by the

agreement, and no such person (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.

(7) An agreement under subsection (6) is not an enterprise agreement within the meaning of the *Industrial Relations Act 1984*. However, the Commissioner may enter into such an enterprise agreement as the employer of the members of staff concerned.

(8) The Commissioner is, for the purposes of any proceedings relating to staff employed under this section held before a competent tribunal having jurisdiction to deal with such matters, taken to be the employer of the staff.

(9) An appeal does not lie to the Tasmanian Industrial Commission or the State Service Commissioner concerning a promotional or disciplinary matter affecting any staff employed under this section.

(10) None of the following matters, and no matter, question or dispute relating to any of the following matters, is an industrial matter for the purposes of the *Industrial Relations Act 1984*:

- (a) the appointment of, or failure to appoint, a person to any position as a member of staff of the Commission,
- (b) the removal, retirement, termination of employment or other cessation of office of a person in any such position,
- (c) any disciplinary proceedings or disciplinary action taken against a person employed under this section.

(11) Schedule 4 has effect with respect to the rights of staff employed under this section.

## **150 Arrangements for use of services of other staff**

- (1) The Commission may:
  - (a) with the approval of the Minister responsible for the department or authority concerned, and

(b) on such terms and conditions as may be approved by the Minister administering this Act,

arrange for the use (by secondment or otherwise) of the services of any staff or facilities of a government department or public authority.

(2) The Commission may:

(a) with the approval of the Minister for Police after that Minister has consulted the Commissioner of Police, and

(b) on such terms and conditions as may be approved by the Minister administering this Act,

arrange for one or more police officers to be made available (by way of secondment or otherwise) to perform services for the Commission.

(3) The *State Service Act 2000* does not apply in relation to any such members of staff of the Commission and such a member of staff is not subject to that Act.

(4) Members of the staff of the Commission referred to in this section are under the control and direction of the Commissioner in their capacity as such members.

(5) The Commission may terminate an arrangement under subsection (1) or (2) at any time, and no appeal or other proceedings may be brought, in respect of the termination, by or on behalf of the person concerned.

(6) After the termination of such an arrangement respecting a former member of the staff of the Commission:

(a) disciplinary proceedings or disciplinary action may, in accordance with the procedures applicable to his or her principal employment, be taken against the former member in connection with any act or omission committed while a member of that staff, and

(b) any such act or omission shall, for the purposes of paragraph (a), be taken to

have been committed by the former member in the course of or during his or her principal employment, and

(c) no court or tribunal may make an order reinstating or having the effect of reinstating the former member as a member of the staff of the Commission.

### **151 Commission may engage consultants**

The Commission may engage any suitably qualified person to provide the Commission with services, information or advice.

### **152 Powers of seconded police**

While a member of the Police Force is a member of the staff of the Commission, the member may continue to act as a constable.

### **153 Counsel assisting Commission**

The Commissioner may appoint an Australian legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter or matters.

### **154 Delegation**

(1) The Commission may delegate to an Assistant Commissioner or an officer of the Commission any of its functions.

(2) The Commissioner may delegate to an Assistant Commissioner or an officer of the Commission any of his or her functions.

(3) An Assistant Commissioner or officer of the Commission may delegate to an officer of the Commission any of the functions delegated to the Assistant Commissioner or officer, subject to any conditions to which the delegation is subject.

(4) The following functions may not be delegated:

(a) a power of delegation conferred by this section,

(b) a function of making a report under this Act,

(c) the power of the Commissioner to issue a warrant for the arrest of a person under section 42 or 141,

(d) the power of the Commissioner to issue search warrants under section 48,

(e) the power of the Commissioner to certify as referred to in section 158 (4)

(c).

(5) The following functions may be delegated only to an Assistant Commissioner:

(a) the power to require a public authority or public official to produce a statement of information under section 25,

(b) the power to require a person to attend and produce a document or other thing under section 26,

(c) the power to authorise an officer of the Commission to enter premises under section 27,

(d) the making of an application for an injunction under section 31,

(e) the powers of the Commission or the Commissioner under Division 3 of Part 4 at or in connection with a compulsory examination or public inquiry, except the power to issue a warrant for the arrest of a person under section 42,

(f) the powers of the Commissioner under Part 12 at or in connection with a hearing.

(6) The functions referred to in subsection (4) may however be delegated to an Assistant Commissioner (and to an Assistant Commissioner only) if the Commissioner is of the opinion that there would or might be a conflict of interest or that it would be in the interests of justice to do so.

(7) No person shall be concerned to inquire whether circumstances exist warranting a delegation under

subsection (6), and a statement in the instrument of delegation of the Commissioner's opinion referred to in that subsection is sufficient.

## **155 Service of documents**

For the purposes of this Act, service of a document on a person may be effected:

(a) on a natural person:

(i) by delivering it to the person personally, or

(ii) by leaving it at, or by sending it by pre-paid post to, the residential or business address of the person last known to the person serving the document, or

(b) on a body corporate—by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate,

or in any other way in which service could have been effected had this section not been enacted.

## **156 Protection from liability**

(1) No matter or thing done by the Commission, the Commissioner, the Inspector or any person acting under the direction of the Commission, the Commissioner or the Inspector shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Commissioner, the Inspector or a person so acting personally to any action, liability, claim or demand.

(2) An Australian legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a barrister (within the meaning of the *Legal Profession Act 1993*) has in appearing for a party in proceedings in the Supreme Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness, or producing a document or other thing to the Commission, has the same protection as a witness in proceedings in the Supreme Court.

(4) No criminal or civil liability (apart from this Act) attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act.

(5) In particular, if a person gives any statement of information or produces any document or other thing under section 25 or 26, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

## **157 Disclosure of pecuniary interests and other matters**

The regulations may make provision for or with respect to:

(a) the disclosure by officers of the Commission of all or any of the following pecuniary interests or other matters:

- (i) real or personal property,
- (ii) income,
- (iii) gifts,
- (iv) financial or other contributions to any travel,
- (v) shareholdings or other beneficial interests in corporations,
- (vi) partnerships,
- (vii) trusts,
- (viii) positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations,
- (ix) occupations, trades, professions or vocations,
- (x) debts,
- (xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, officers of the Commission,

(xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations, and

(b) prescribing the manner in which, and the times at which, pecuniary interests or other matters shall be disclosed and providing for the verification by statutory declaration or otherwise of any such disclosure, and

(c) the compilation and maintenance of registers of pecuniary interests or other matters by officers of the Commission and the inspection and publication of any such register.

## 158 Secrecy

(1) This section applies to:

(a) a person who is or was an officer of the Commission, and

(b) a person who is or was an Australian legal practitioner appointed to assist the Commission or who is or was a person who assists, or performs services for or on behalf of, such an Australian legal practitioner in the exercise of the Australian legal practitioner's functions as counsel to the Commission, and

(c) a person or body referred to in section 17 (3), 19 (4) or 64 (6), and

(d) a person who is or was an officer of the Inspector.

(2) A person to whom this section applies shall not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act:

(a) make a record of any information, or

(b) divulge or communicate to any person any information,

being information acquired by the person by reason of, or in the course of, the exercise of the person's functions under this Act.



Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(3) A person to whom this section applies shall not be required:

(a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or

(b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act,

except for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commission in the exercise of its functions.

(4) Despite this section, a person to whom this section applies may divulge any such information:

(a) for the purposes of and in accordance with this Act, or

(b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commission in the exercise of its functions, or

(c) in accordance with a direction of the Commissioner or Inspector, if the Commissioner or Inspector certifies that it is necessary to do so in the public interest, or

(d) to any prescribed authority or person.

(5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) as if he or she were a person to

whom this section applies and had acquired the information in the exercise of functions under this Act.

(6) In this section:

*court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

*produce* includes permit access to.

## **159 Privacy and Personal Information Protection Act 2004**

The *Personal Information Protection Act 2004* does not apply to the Commission.

## **160 Relationship with Ombudsman regarding conduct of Commission and Inspector**

Conduct of the Commissioner or an officer or former officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1978*, except in relation to matters referred to the Ombudsman by the Inspector.

## **161 Restriction on publication of evidence**

(1) The Commission may direct that:

- (a) any evidence given before it, or
- (b) the contents of any document, or a description of any thing, produced to the Commission or seized under a search warrant issued under this Act, or
- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or
- (d) the fact that any person has given or may be about to give evidence at a compulsory examination or public inquiry,

shall not be published or shall not be published except in such manner, and to such persons, as the Commission specifies.

(2) The Commission is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

(3) A person shall not make a publication in contravention of a direction given under this section.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

## **162 Evidence in criminal proceedings**

(1) If:

(a) a person has been charged with an offence before a court of the State, and

(b) the court considers that it is desirable in the interests of justice that particular evidence given before the Commission, being evidence in relation to which the Commission has given a direction under section 161, be made available to the person or to an Australian legal practitioner representing the person or to the prosecutor,

the court may give to the Commission a certificate to that effect.

(2) The Commissioner may appear before the court for the purpose of making representations concerning the giving of such a certificate.

(3) On such a certificate being given, the Commission shall make the evidence or information available to the court.

(4) The court may make the evidence or information available to the person charged with the offence concerned, to an Australian legal practitioner representing the person charged or to the prosecutor, if the court has examined the evidence or information and is satisfied that the interests of justice so require.

(5) Nothing in section 158 prevents a person to whom that section applies from producing any document or other thing, or divulging or communicating any matter or thing, to the extent necessary to give effect to this section.

(6) Nothing in section 161 prevents the evidence or information being made available under this section.

### **163 Disclosures prejudicing investigations**

(1) A person who is required:

(a) by a notice under section 25 or 26 to produce a statement of information or to attend and produce a document or other thing, or

(b) by a summons under section 41 to give evidence or to produce a document or other thing,

shall not disclose any information about the notice or summons that is likely to prejudice the investigation to which it relates.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) Subsection (1) does not apply to a notice or summons unless it specifies that information about the notice or summons must not be disclosed.

(3) A person does not contravene this section if:

(a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter, or

(b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons, or

(c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

(4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to:

(a) a disclosure about the existence or nature of the notice or summons or of the investigation to which it relates, and

(b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the investigation to which it relates.

## **164 Penalties for offences committed by corporations**

The maximum penalty applicable to a corporation convicted of an offence against this Act or the regulations is (except in so far as other provision is made by section 165) double the pecuniary penalty otherwise applying to the offence.

## **165 Proceedings for offences**

(1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Magistrates Court.

(2) If an offence against this Act is an indictable offence, a Magistrates Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.

(3) If, in accordance with subsection (2), a Magistrates Court convicts a person of such an offence, the maximum penalty that the court may impose is:

(a) in the case of an individual—the smaller of:

(i) a fine of 50 penalty units or imprisonment for 2 years, or both, or

(ii) the maximum penalty otherwise applicable to the offence when committed by an individual, or

(b) in the case of a corporation—the smaller of:

(i) a fine of 100 penalty units, or

(ii) the maximum penalty otherwise applicable to the offence when committed by a corporation.

(4) Proceedings for an alleged offence under section 120 (c) or 121 may be commenced within 3 years after the commission of the alleged offence.

(5) Proceedings for an alleged offence under section 157 may be commenced within 2 years after the commission of the alleged offence.

## **166 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to:

(a) the appointment, conditions of employment, discipline, code of conduct and termination of employment of staff of the Commission, and

(b) security checks of officers of the Commission and applicants for appointment or engagement as officers of the Commission, and

(c) the service of a notice to an occupier whose premises are entered under a search warrant, and

(d) the issue of identity cards to officers of the Commission and their use, and

(e) forms to be used for the purposes of this Act, and

(f) the use and custody of the seal of the Commission.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

(4) Regulations may be made only on the recommendation of the Commissioner, except regulations made under section 157.

## **167 Parliament**

Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

## **168 Administration of Act**

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

(a) the administration of this Act is assigned to the Attorney-General; and

(b) the department responsible to the Attorney-General in respect of the administration of this Act is the Department of Justice.

## **Schedule 1 Provisions relating to Commissioner and Assistant Commissioners**

(Section 148)

### **1 Eligibility for appointment**

(1) A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices unless the person is:

(a) qualified to be appointed as a Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia, or

(b) a former judge of any court of the State or elsewhere in Australia or a former Justice of the High Court.

(2) A person is not eligible to be appointed as Commissioner or Assistant Commissioner if the person is:

(a) the holder of any judicial office, or

(b) a member of the Legislative Council or the House of Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

### **2 Acting Commissioner or Assistant Commissioner**

(1) The Governor may, from time to time, appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner, and the person, while so acting, has all the functions of the Commissioner or Assistant Commissioner and shall be taken to be the Commissioner or Assistant Commissioner.

(2) The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.



(3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine.

(4) For the purposes of this clause:

(a) a vacancy in the office of Commissioner or Assistant Commissioner shall be regarded as an absence from office of Commissioner or Assistant Commissioner, and

(b) an Assistant Commissioner shall be regarded as absent from office as an Assistant Commissioner during any period when the Assistant Commissioner acts in the office of the Commissioner pursuant to an appointment under this clause.

### **3 Basis of offices**

(1) The office of Commissioner is a full-time office.

(2) The office of Assistant Commissioner may be a full-time office or a part-time office, according to the terms of appointment.

(3) The holder of a full-time office referred to in subclause (1) or (2) is required to hold it on that basis, except to the extent permitted by the Governor.

### **4 Terms of office**

(1) Subject to this Schedule, the Commissioner or an Assistant Commissioner shall hold office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A person may not hold the office of Commissioner for terms totalling more than 5 years.

(3) A person may not hold the office of Assistant Commissioner for terms totalling more than 5 years.

## **5 Remuneration**

- (1) The Commissioner or an Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.
- (2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.
- (3) Remuneration is payable out of the Consolidated Fund, which is accordingly appropriated to the necessary extent.

## **6 Vacancy in office**

- (1) The office of Commissioner or Assistant Commissioner becomes vacant if the holder:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) holds office for longer than the relevant period mentioned in clause 4, or
  - (d) resigns the office by instrument in writing addressed to the Governor, or
  - (e) becomes the holder of a judicial office, or
  - (f) is nominated for election as a member of the Legislative Council or the House of Assembly or as a member of a House of Parliament of another State or of the Commonwealth, or
  - (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(h) becomes a patient, an involuntary treatment patient a forensic patient within the meaning of the *Mental Health Act 1996*, or

(i) is convicted in Tasmania of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Tasmania of an offence that, if committed in Tasmania, would be an offence so punishable, or

(j) is removed from office under subclause (2) or (3).

(2) The Commissioner may be removed from office by the Governor on the address of both Houses of Parliament.

(3) The Governor may remove an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

## **7 Filling of vacancy**

(1) If the office of Commissioner becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

(2) If the office of Assistant Commissioner becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

## **8 State Service Act 2000**

The *State Service Act 2000* does not apply to the appointment of the Commissioner or an Assistant Commissioner, and the holder of either office is not, as holder, subject to that Act.

## **9 Judicial office**

In this Schedule, *judicial office* means a judicial office of the State or elsewhere in Australia.

## **Schedule 2 Provisions relating to Inspector**

(Section 69 (2))

### **1 Eligibility for appointment**

A person is not eligible to be appointed as Inspector or to act in that office if the person is a member of the Legislative Council or of the House of Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

### **2 Acting Inspector**

(1) The Governor may, from time to time, appoint a person to act in the office of Inspector during the illness or absence of the Inspector. The person, while so acting, has all the functions of the Inspector and is taken to be the Inspector.

(2) The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.

(3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine.

(4) For the purposes of this clause, a vacancy in the office of Inspector is taken to be an absence from office of Inspector.

### **3 Basis of office**

(1) The office of Inspector may be a full-time or part-time office, according to the terms of appointment.

(2) The holder of a full-time office referred to in subclause (1) is required to hold it on that basis, except to the extent permitted by the Governor.

### **4 Terms of office**

(1) Subject to this Schedule, the Inspector holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A person may not hold the office of Inspector for terms totalling more than 5 years.

## 5 Remuneration

(1) The Inspector is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.

(2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.

(3) The Inspector is not, if a Judge of a Tasmanian court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.

## 6 Provisions where Judge is holding office as Inspector

(1) The appointment of a person who is the holder of a judicial office as Inspector or service by a person who is the holder of a judicial office as Inspector does not affect:

(a) the person's tenure of that judicial office, or

(b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.

(2) The person's service as Inspector is, for all purposes, taken to be service as the holder of that judicial office.

(3) In this clause:

*judicial office* means an office of Judge of a court of Tasmania.

## 7 Vacancy in office

### (1) Vacancies

The office of Inspector becomes vacant if the holder:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) holds office for longer than the relevant term mentioned in clause 4, or

(d) resigns the office by instrument in writing addressed to the Governor, or

(e) is nominated for election as a member of the Legislative Council or of the House of Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in Tasmania of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Tasmania of an offence that, if committed in Tasmania, would be an offence so punishable, or

(i) is removed from office under subclause (2).

**(2) Removal from office**

The Inspector may be removed from office by the Governor on the address of both Houses of Parliament.

**8 Filling of vacancy**

If the office of Inspector becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## 9 Effect of certain other Acts

(1) The *State Service Act 2000* does not apply to the appointment of the Inspector, and the holder of that office is not, as holder, subject to that Act.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of Inspector or from accepting and retaining any remuneration payable to the person under this Act as Inspector.

## 10 Veto of proposed appointment of Inspector

(1) A person is not to be appointed as Inspector until:

(a) a proposal that the person be so appointed has been referred to the Joint Committee under section 78, and

(b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.

(2) A person may be proposed for appointment on more than one occasion.

(3) In this clause, *appointment* includes re-appointment.

## **Schedule 3 Provisions relating to Tasmanian Integrity Commissioner**

(Section 108 (3))

### **1 Eligibility for appointment**

A person is not eligible to be appointed as Inspector or to act in that office if the person is a member of the Legislative Council or of the House of Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

### **2 Tasmanian Integrity Commissioner**

(1) The Governor may, from time to time, appoint a person to act as the Tasmanian Integrity Commissioner during the illness or absence of the Tasmanian Integrity Commissioner. The person, while so acting, has all the functions of the Tasmanian Integrity Commissioner and is taken to be the Tasmanian Integrity Commissioner.

(2) The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.

(3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine.

(4) For the purposes of this clause, a vacancy in the Tasmanian Integrity Commissioner is taken to be an absence from being the Tasmanian Integrity Commissioner.

### **3 Basis of office**

(1) The office of Tasmanian Integrity Commissioner may be a full-time or part-time office, according to the terms of appointment.

(2) The holder of a full-time office referred to in subclause (1) is required to hold it on that basis, except to the extent permitted by the Governor.

### **4 Terms of office**

Subject to this Schedule, the Tasmanian Integrity Commissioner holds office for such term not exceeding



5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **5 Remuneration**

(1) The Tasmanian Integrity Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.

(2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.

## **6 Leave of absence**

The Minister may grant leave of absence to the Tasmanian Integrity Commissioner on the terms the Minister considers appropriate.

## **7 Vacancy in office**

### **(1) Vacancies**

The office of Tasmanian Integrity Commissioner becomes vacant if the holder:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) holds office for longer than the relevant term mentioned in clause 4, or
- (d) resigns the office by instrument in writing addressed to the Governor, or
- (e) is nominated for election as a member of the Legislative Council or of the House of Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or

makes an assignment of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in Tasmania of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Tasmania of an offence that, if committed in Tasmania, would be an offence so punishable, or

(i) is removed from office under subclause (2).

**(2) Removal from office**

The Inspector may be removed from office by the Governor on the address of both Houses of Parliament.

**8 Filling of vacancy**

If the office of Tasmanian Integrity Commissioner- becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## Schedule 4 Rights of certain staff of Commission

(Section 149 (11))

### 1 Definitions

In this Schedule:

*member of staff* means a member of staff of the Commission who is employed under section 149 otherwise than on a temporary basis.

*proclaimed body* means any body or organisation constituted or regulated by or under an Act that is declared by the Governor to be a body or organisation to which this Schedule applies.

*superannuation scheme* means a scheme, fund or arrangement, under which any superannuation or retirement benefits are provided and which is established by or under any Act.

### 2 Preservation of rights of staff previously public servants etc

(1) This clause applies where a member of staff was, immediately before being employed as a member of staff:

- (a) an officer of the Public Service, or
- (b) a member of the Police Service, or
- (c) a contributor to a superannuation scheme, or
- (d) an officer employed by a proclaimed body, or
- (e) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) The member of staff:

- (a) shall retain any rights accrued or accruing to him or her as such an officer, member, contributor or person, and

(b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being employed as a member of staff, and

(c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, member, contributor or person during his or her service as a member of staff.

(3) Service as a member of staff shall be regarded as service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred.

(4) The member of staff shall be regarded as an officer or employee, and the Commissioner shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If the member of staff would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:

(a) he or she is not so entitled on becoming (whether on being employed as a member of staff or at any later time while a member of staff) a contributor to any other superannuation scheme, and

(b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Commissioner in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to the member of staff (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A member of staff is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

### **3 Member of staff entitled to re-appointment to former employment in certain cases**

A person who:

(a) being a member of staff, ceases to be employed under section 149 (except through dismissal on the ground of misbehaviour), and

(b) was, immediately before being employed as a member of staff:

(i) an officer of the Public Service, or

(ii) an officer employed by a proclaimed body,

is entitled to be appointed to some position in the Public Service or the service of the proclaimed body, as the case may be, not lower in classification and salary than that which the person held immediately before being employed as a member of staff.

### **4 Rank etc of seconded police**

While a police officer is a member of the staff of the Commission by reason of performing services for the Commission, the member shall retain rank, seniority and remuneration as a police officer.