

South Australia

# Judicial Conduct Commissioner Act 2015

An Act to provide for the appointment of a Judicial Conduct Commissioner to examine complaints in relation to the conduct of judicial officers; to make related amendments to the *Constitution Act 1934*, the *Courts Administration Act 1993*, the *District Court Act 1991*, the *Equal Opportunity Act 1984*, the *Freedom of Information Act 1991*, the *Independent Commissioner Against Corruption Act 2012*, the *Judges' Pensions Act 1971*, the *Justices of the Peace Act 2005*, the *Magistrates Act 1983*, the *Ombudsman Act 1972* and the *Parliamentary Committees Act 1991*; and for other purposes.

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### **The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Judicial Conduct Commissioner Act 2015*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Objects**

- (1) The objects of this Act are to enhance public confidence in the judicial system and to protect the impartiality and integrity of the judicial system by—
  - (a) providing for the appointment of a Judicial Conduct Commissioner to receive and determine complaints regarding the conduct of judicial officers; and
  - (b) providing a fair process for dealing with such complaints that recognises and protects judicial independence; and
  - (c) enhancing the existing mechanisms for removal of judicial officers where they are unable or unwilling to appropriately discharge their duties.
- (2) No power or discretion vested in the Commissioner or any other person by this Act may be exercised so as to impugn the independence of the judiciary.

## 4—Interpretation

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

**Commissioner** means the Judicial Conduct Commissioner appointed under section 7, or the person from time to time acting as the Judicial Conduct Commissioner;

**complainant** means a person who makes a complaint under section 12(1);

**complaint** means a complaint under section 12 about the conduct of a judicial officer and includes a referral by the Attorney-General under section 12(6), a referral by a jurisdictional head under section 12(7) and a complaint initiated by the Commissioner under section 12(8);

**judicial conduct panel** means a judicial conduct panel appointed under Part 4;

**judicial office** means—

- (a) the office of Judge of the Supreme Court;
- (b) the office of Master of the Supreme Court, District Court Judge or any other Judge;
- (c) any other office involving the exercise of judicial functions that may only be occupied by a Judge or Master or by a person with other legal qualifications;
- (d) the office of Magistrate;
- (e) any other office involving the exercise of judicial functions that may only be occupied by a Magistrate or by a person with other legal qualifications;
- (f) the office of special justice;
- (g) any other office prescribed by the regulations,

(and the order of the above paragraphs indicates the level of seniority of the various offices, the inclusion of reference to more than 1 office in the same paragraph indicating the same level of seniority);

**judicial officer** means a person appointed to hold or act in a judicial office;

**jurisdictional head** has the same meaning as in Part 5A of the *Courts Administration Act 1993*;

**relevant jurisdictional head**, in relation to a judicial officer who is, or is to be, the subject of a complaint, means a jurisdictional head who has power to issue requirements to that judicial officer in accordance with Part 5A of the *Courts Administration Act 1993*.

- (2) A reference in this Act to **conduct of a judicial officer** includes any act or omission of such an officer—
- (a) whether occurring in the course of carrying out functions as a judicial officer or not; and
  - (b) whether resulting from an illness or incapacity or not.

## 5—Application of Act

This Act applies in addition to (and does not derogate from) any other Act or law relating to judicial conduct or to the removal of a judicial officer.

## Part 2—Judicial Conduct Commissioner

### 6—Functions and powers of Commissioner

- (1) The functions of the Commissioner are—
  - (a) to receive and deal with complaints made in accordance with this Act in relation to the conduct of judicial officers; and
  - (b) to perform any prescribed functions; and
  - (c) to perform other functions conferred on the Commissioner by this or any other Act.
- (2) The Commissioner is not subject to the direction of any person in relation to any matter, including—
  - (a) the manner in which functions are carried out or powers exercised under this or any other Act; and
  - (b) the priority that the Commissioner gives to a particular matter in carrying out functions under this or any other Act.
- (3) It is not a function of the Commissioner to challenge or call into question the legality or correctness of any instruction, direction, order, judgment, or other decision given or made by a judicial officer in relation to any legal proceedings.
- (4) The Commissioner has all the powers necessary for carrying out his or her functions.
- (5) Without limiting subsection (4), the Commissioner may, if the Commissioner thinks it is necessary for the purposes of exercising functions and powers under Part 3, do any of the following:
  - (a) obtain any relevant court documents (including, for example, the transcript of a hearing);
  - (b) require a person who may be in a position to furnish information relevant to the complaint—
    - (i) to take reasonable steps to provide that information to the Commissioner; or
    - (ii) to answer a question to the best of that person's knowledge, information and belief;
  - (c) require a person to produce—
    - (i) any books, documents or records in his or her possession or control; or
    - (ii) any information stored by computer, microfilm or by any other process,  
(insofar as the books, documents, records or information may be relevant to the complaint);
  - (d) examine, copy and take extracts from any books, documents, records or information produced under paragraph (c) or require a person to provide a copy of any such book, document, record or information;

- (e) take possession of any books, documents, records or information produced under paragraph (c).

## **7—Appointment of Commissioner**

- (1) There will be a Judicial Conduct Commissioner appointed by the Governor for a term not exceeding 7 years and on conditions determined by the Governor.
- (2) A person appointed to be the Commissioner is, at the end of a term of appointment, eligible for reappointment but cannot hold office for terms (including any term as Acting Commissioner) that exceed 10 years in total.
- (3) A person is only eligible for appointment as the Commissioner if the person—
  - (a) is a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; and
  - (b) is not a judicial officer or member of an Australian Parliament.
- (4) A person may only be appointed to be the Commissioner if, following referral by the Attorney-General of the proposed appointment to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*—
  - (a) the appointment has been approved by the Committee; or
  - (b) the Committee has not, within 7 days of the referral, or such longer period as is allowed by the Attorney-General, notified the Attorney-General in writing that it does not approve the appointment.
- (5) Despite the *Parliamentary Committees Act 1991*, the Statutory Officers Committee must not report on, or publish material in relation to, matters referred to the Committee under subsection (4) except to the extent allowed by the Attorney-General (but this subsection does not derogate from section 15I(2) of the *Parliamentary Committees Act 1991*).
- (6) If a person is a judicial officer immediately before being appointed to be the Commissioner, for the purposes of determining the person's entitlement to recreation leave, sick leave, long service leave or any other kind of leave under this or another Act, the appointment may, at the option of the person, be taken to be a continuation of his or her service as a judicial officer.
- (7) Subject to subsection (8), the Commissioner must not, without the consent of the Attorney-General, engage in any remunerated employment or activity apart from official duties.
- (8) Nothing prevents the person appointed as the Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012* being appointed as the Commissioner under this section.
- (9) The Governor may, on the address of both Houses of Parliament, remove the Commissioner from office.
- (10) The Governor may suspend the Commissioner from office (with, or without, pay) for—
  - (a) contravention of a condition of appointment; or

- (b) misconduct; or
  - (c) failure or incapacity to carry out official duties satisfactorily.
- (11) If the Governor suspends the Commissioner from office, a full statement of the reason for the suspension must be laid before both Houses of Parliament within 7 days after the suspension if Parliament is then in session or, if not, within 7 days after the commencement of the next session of Parliament.
- (12) If, at the end of 20 sitting days after the statement is laid before Parliament, neither House of Parliament has presented an address to the Governor requiring the Commissioner to be restored to office, the Commissioner is removed from office.
- (13) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the Commissioner to be restored to office, the Commissioner is restored to office.
- (14) The office of Commissioner becomes vacant if the holder—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Governor; or
  - (d) is appointed to judicial office; or
  - (e) is nominated for election as a member of an Australian Parliament; or
  - (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) is convicted of—
    - (i) an indictable offence against the law of this State; or
    - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
    - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
  - (h) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
  - (i) is removed from office by the Governor under this section.
- (15) Except as is provided by this section, the Commissioner may not be removed or suspended from office, nor will the office of the Commissioner become vacant.
- (16) The Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

## **8—Pension rights**

- (1) The Governor may, by instrument in writing made at the time a person is appointed to be the Commissioner, apply the *Judges' Pensions Act 1971* to or in relation to the Commissioner as if the Commissioner were a Judge as defined in that Act and service as the Commissioner were judicial service as defined in that Act.

- (2) The instrument may—
  - (a) impose conditions on the application of the *Judges' Pensions Act 1971* (including a condition that the Act will only apply if the person is made a Judge following his or her term of office as Commissioner); and
  - (b) apply the *Judges' Pensions Act 1971* subject to any modifications specified in the instrument.
- (3) Unless the Governor otherwise directs, no pension is to be payable under the *Judges' Pensions Act 1971* if the Commissioner vacates the office due to insolvency or conviction or sentencing for an offence or is removed from office.
- (4) If a person who is or has been the Commissioner is appointed as a Judge as defined in the *Judges' Pensions Act 1971* and was, immediately before being so appointed, in receipt of a pension under that Act, that pension ceases on the appointment.

## **9—Acting Commissioner**

- (1) The Governor may appoint a person (who must not be a Public Service employee) to act as the Commissioner during any period for which no person is for the time being appointed as the Commissioner or the Commissioner is absent from, or unable to discharge, official duties.
- (2) A person is only eligible for appointment to act as the Commissioner if the person—
  - (a) is a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; and
  - (b) is not a judicial officer or member of an Australian Parliament.
- (3) The terms and conditions of appointment are to be determined by the Governor, except that the person may not act as the Commissioner for more than 6 months in aggregate in any period of 12 months.
- (4) A person appointed to act as the Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

## **10—Staff**

- (1) The Commissioner may engage employees on terms and conditions determined by the Commissioner.
- (2) Employees engaged under subsection (1) are not Public Service employees but are to be taken to be public sector employees, employed by the Commissioner, for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* and section 74 of the *Public Sector Act 2009*.
- (3) The Commissioner may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.
- (4) The Commissioner may, under an arrangement established by the Independent Commissioner Against Corruption, make use of the services or staff of the Office for Public Integrity.



## 11—Delegation

- (1) The Commissioner may delegate to a person (including a person for the time being performing particular duties or holding or acting in a specified position) a function or power under this or any other Act (except a prescribed function or power).
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in a matter; and
  - (d) is revocable at will.

## Part 3—Complaints

### Division 1—Making a complaint

#### 12—Making of complaints

- (1) Subject to subsection (2), a person may make a complaint to the Commissioner about any conduct of a judicial officer.
- (2) A person who is subject to an order under section 39 of the *Supreme Court Act 1935* prohibiting him or her from instituting proceedings (or proceedings of a particular class) may not make a complaint under this Act.
- (3) Subject to subsection (4), the Commissioner must give notice to the judicial officer and the relevant jurisdictional head of a complaint under subsection (1).
- (4) If section 15 applies to a complaint, the Commissioner must not give any notices under subsection (3) on receipt of the complaint but may give such notices if consideration of the complaint under this Act is resumed following the referral under section 15.
- (5) A complaint under subsection (1) must—
  - (a) be in writing; and
  - (b) identify the judicial officer who is the subject of the complaint; and
  - (c) identify the complainant; and
  - (d) set out the matters to which the complaint relates; and
  - (e) include any other material, and be verified in any manner, required by the Commissioner.
- (6) The Attorney-General may, by notice in writing, refer to the Commissioner any matters regarding the conduct of a judicial officer.
- (7) A jurisdictional head may, by notice in writing, refer to the Commissioner any matters regarding the conduct of a judicial officer in relation to whom he or she would be the relevant jurisdictional head (in accordance with the definition in section 4).

- (8) The Commissioner may, on his or her own initiative, treat as a complaint any matters concerning the conduct of a judicial officer.

## **Division 2—Preliminary examination of complaint**

### **13—Preliminary examination of complaints**

- (1) The Commissioner must conduct a preliminary examination of each complaint received to determine whether—
- (a) the complaint is one that should be referred to the Office for Public Integrity in accordance with section 15; or
  - (b) there are grounds for exercising his or her power under section 16 to take no further action in respect of the complaint; or
  - (c) there are grounds for dismissing the complaint under section 17.
- (2) The Commissioner may conduct a preliminary examination in any manner the Commissioner thinks fit (but the Commissioner must act in accordance with the principles of procedural fairness).
- (3) In conducting a preliminary examination, the Commissioner may make such inquiries into the complaint as he or she thinks appropriate and may—
- (a) require further information from the complainant (and may require that such further information be verified in any manner required by the Commissioner); and
  - (b) consult the relevant jurisdictional head.
- (4) The Commissioner may determine to deal with a series of complaints relating to a particular judicial officer as if they were a single complaint (and may do so even if the Commissioner has previously dealt with any of those complaints or is in the course of dealing with any of those complaints).
- (5) Subject to sections 14 and 15, the Commissioner must conduct a preliminary examination as efficiently and expeditiously as is practicable.

### **14—Request to postpone consideration of complaint**

If a complaint under section 12(1) relating to a judicial officer is made during the course of a hearing conducted by the judicial officer (whether alone or with others)—

- (a) the judicial officer may, by notice in writing to the Commissioner, request that consideration of the complaint under this Act be postponed until the hearing has been completed; and
- (b) the Commissioner must, if satisfied that consideration of the complaint could in any way disrupt or influence the conduct of the hearing, postpone consideration of the complaint in accordance with the request.

## 15—Referral of complaint to OPI

- (1) If the Commissioner reasonably suspects that a complaint relates to conduct that involves corruption in public administration within the meaning of the *Independent Commissioner Against Corruption Act 2012*—
  - (a) the Commissioner must refer the complaint to the Office for Public Integrity to be dealt with under that Act; and
  - (b) consideration of the complaint under this Act is postponed until the Independent Commissioner Against Corruption notifies the Commissioner that he or she considers it appropriate that consideration of the complaint under this Act continue.
- (2) The Independent Commissioner Against Corruption must give the Commissioner the notification referred to in subsection (1)(b) as soon as practicable after conducting the assessment required under section 23 of the *Independent Commissioner Against Corruption Act 2012* unless the matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution.
- (3) However, if the person appointed as the Independent Commissioner Against Corruption is also appointed as the Commissioner under this Act—
  - (a) the notification referred to in subsection (1)(b) is not required; and
  - (b) following a referral of a complaint under this section, the Independent Commissioner Against Corruption will determine the extent to which it is appropriate that the complaint be dealt with under this Act or the *Independent Commissioner Against Corruption Act 2012*.

## 16—Power to take no further action

- (1) The Commissioner may take no further action in respect of a complaint if satisfied that further consideration of the complaint would, in all the circumstances, be unjustified.
- (2) Without limiting the operation of subsection (1), reasons why further consideration of a complaint would, in all the circumstances, be unjustified, may be, or include, all or any of the following that apply to the complaint:
  - (a) that the complaint has been resolved to the complainant's satisfaction following an explanation from the judicial officer who is the subject of the complaint;
  - (b) that the complaint is genuine and made in good faith, but is based on a misunderstanding;
  - (c) that the Commissioner, having started the preliminary examination required by section 13, has concluded that there is no reasonable prospect of there being available to him or her information that would enable the complaint to be substantiated;
  - (d) that the Commissioner has requested further information from the complainant and the complainant has refused to provide such information or has failed to provide such information within a reasonable time.

- (3) The fact that a complaint has been resolved to the complainant's satisfaction because of an apology by the judicial officer who is the subject of the complaint is not, by itself, a reason why further consideration of a complaint would, in all the circumstances, be unjustified.
- (4) If the Commissioner exercises his or her power under this section to take no further action in respect of a complaint, he or she must give any complainant, the judicial officer who is the subject of the complaint and the relevant jurisdictional head written notification stating—
  - (a) that the Commissioner has exercised that power; and
  - (b) the grounds on which he or she is satisfied that further consideration of the complaint would, in all the circumstances, be unjustified.

### **17—Dismissal of complaint**

- (1) The Commissioner must dismiss the complaint if he or she is of the opinion that—
  - (a) the complaint is not within the Commissioner's jurisdiction; or
  - (b) the complaint has no bearing on judicial functions or judicial duties; or
  - (c) the complaint—
    - (i) has been made for an improper purpose (including an attempt to harass or intimidate a judicial officer in the appropriate exercise of his or her duties); or
    - (ii) is otherwise frivolous, vexatious, or not in good faith; or
  - (d) the subject matter of the complaint is trivial; or
  - (e) the complaint is about a judicial decision, or other judicial function, that is or was subject to a right of appeal or right to apply for judicial review or dealing with the complaint would otherwise require the Commissioner to exercise functions referred to in section 6(3); or
  - (f) the person who is the subject of the complaint is no longer a judicial officer; or
  - (g) the Commissioner has considered or previously considered the subject matter of the complaint and—
    - (i) has exercised his or her power under section 16 to take no further action in respect of the complaint; or
    - (ii) has determined that the subject matter of the complaint could not, if substantiated, warrant the taking of any action under this Act.
- (2) The Commissioner may dismiss the complaint if he or she is of the opinion that the complaint has not been made in accordance with this Act.
- (3) If the Commissioner dismisses a complaint under this section, he or she must give any complainant, the judicial officer who is the subject of the complaint and the relevant jurisdictional head written notification stating—
  - (a) that the complaint has been dismissed; and
  - (b) the grounds on which that decision was made.

## **Division 3—Action after preliminary examination**

### **18—Referral of complaint to relevant jurisdictional head**

- (1) Having conducted the preliminary examination of a complaint, the Commissioner must refer the complaint to the relevant jurisdictional head unless—
  - (a) the complaint consists of a referral by the relevant jurisdictional head under section 12(7); or
  - (b) the Commissioner has exercised the power to take no further action in respect of the complaint under section 16 or has dismissed the complaint under section 17.
- (2) The Commissioner may, on referring a complaint—
  - (a) recommend that the relevant jurisdictional head take specified action in relation to the complaint so referred; or
  - (b) advise the relevant jurisdictional head that—
    - (i) in the opinion of the Commissioner, the complaint is not able to be satisfactorily dealt with by the taking of any action by the relevant jurisdictional head; and
    - (ii) the Commissioner intends to make a report on the complaint to the Parliament in accordance with section 19 or make a recommendation to the Attorney-General under section 20.
- (3) The relevant jurisdictional head must, within 28 days after referral of the complaint (or such other period as may be agreed between the Commissioner and the relevant jurisdictional head), give the Commissioner written notification of the action taken by the relevant jurisdictional head in relation to the complaint.
- (4) The Commissioner may, if he or she thinks fit, make a report to the Attorney-General in relation to any action taken under, or in connection with, this section.
- (5) The Commissioner must—
  - (a) give any complainant written notification of any action taken by the Commissioner under this section or of any action of which the Commissioner has been notified under subsection (3); and
  - (b) give the judicial officer who is the subject of the complaint written notification of any action taken by the Commissioner under this section.

### **19—Immediate report to Parliament**

- (1) The Commissioner may make a report on a complaint to the Parliament if—
  - (a) the complaint—
    - (i) consists of a referral by the relevant jurisdictional head under section 12(7); or
    - (ii) has been referred to the relevant jurisdictional head under section 18 but is not, in the Commissioner's opinion, able to be satisfactorily dealt with by the taking of any action by the relevant jurisdictional head; and

- (b) the judicial officer who is the subject of the complaint is a Judge who is liable to be removed from office, pursuant to the *Constitution Act 1934* or any other Act or law, on an address from both Houses of Parliament; and
- (c) the Commissioner is of the opinion that—
  - (i) there should be immediate consideration by the Parliament of such removal; and
  - (ii) it is unlikely that an inquiry by a judicial conduct panel would provide additional information that should be available to the Parliament in considering such removal.
- (2) A copy of the report must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.
- (3) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.
- (4) The Commissioner must also give a copy of the report to any complainant, to the judicial officer who is the subject of the complaint, to the relevant jurisdictional head and to the Attorney-General.

## **20—Recommendation to appoint judicial conduct panel**

- (1) The Commissioner may recommend to the Attorney-General that he or she appoint a judicial conduct panel to inquire into, and report on, any matters concerning the conduct of a judicial officer if—
  - (a) the complaint—
    - (i) consists of a referral by the relevant jurisdictional head under section 12(7); or
    - (ii) has been referred to the relevant jurisdictional head under section 18 but—
      - (A) has not, in the Commissioner's opinion, been satisfactorily dealt with by the relevant jurisdictional head within the period referred to in section 18(3); or
      - (B) is not, in the Commissioner's opinion, able to be satisfactorily dealt with by the taking of any action by the relevant jurisdictional head; and
  - (b) the Commissioner is of the opinion that—
    - (i) an inquiry into the conduct is necessary or justified; and
    - (ii) if established, the conduct may warrant consideration of removal of the judicial officer (under this or any other Act).
- (2) The Commissioner must give reasons with his or her recommendation under this section.
- (3) The Commissioner must give written notification of any action taken under this section to any complainant, to the judicial officer who is the subject of the complaint and to the relevant jurisdictional head.

- (4) If the Commissioner recommends that a judicial conduct panel be appointed, the Commissioner must, at the request of the Attorney-General, make any relevant files kept by the Commissioner available to the Attorney-General.

## **Part 4—Judicial conduct panels**

### **21—Appointment of judicial conduct panels**

- (1) The Attorney-General may, at any time, appoint a judicial conduct panel to inquire into, and report on, any matters concerning the conduct of a judicial officer that have been the subject of a recommendation by the Commissioner under section 20.
- (2) Before appointing a panel, the Attorney-General must consult the Chief Justice of the Supreme Court about the proposed membership of the Panel (or, if the matters to be inquired into and reported on concern the conduct of the Chief Justice, the next most senior available Judge of the Supreme Court).
- (3) A judicial conduct panel consists of the following persons appointed by the Attorney-General:
- (a) 2 members who are eligible judicial officers, 1 of whom should be an eligible judicial officer who is, or has been, of equal or higher seniority than the judicial officer the subject of the complaint (if such a judicial officer is reasonably available for appointment to the panel and would not have a conflict of interest or otherwise be unsuitable for appointment);
  - (b) a lay member (not being an eligible judicial officer or a legal practitioner).
- (4) The presiding member of a judicial conduct panel will be a member appointed under subsection (3)(a) designated by the Attorney-General in the instrument of appointment as the presiding member of the panel.
- (5) The appointment of a judicial officer as a member of a judicial conduct panel does not affect his or her tenure of judicial office, rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a judicial officer (including matters relating to superannuation), and, for all purposes, service by a judicial officer as a member of a panel must be taken to be service as a judicial officer.
- (6) In this section—
- eligible judicial officer* means—
- (a) a current or former judicial officer of this State; or
  - (b) a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; or
  - (c) a current judge of the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth if the jurisdictional head of the relevant Court concurs.

## 22—Dissolution of panel if member unable to continue

If a member of a judicial conduct panel is for any reason unable to continue as a member—

- (a) the presiding member must dissolve the panel and notify the Attorney-General of the dissolution; and
- (b) the Attorney-General must appoint a new panel under this Part.

## 23—Functions and procedures of panel

- (1) A judicial conduct panel must inquire into, and report on, the matters concerning the conduct of a judicial officer referred to it by the Attorney-General on the recommendation of the Commissioner and may inquire into, and report on, any other matters concerning the conduct of the judicial officer that arise in the course of its dealing with the referral from the Attorney-General.
- (2) The procedure for the calling of meetings of a judicial conduct panel and for the conduct of business at those meetings is, subject to this Act, determined by the panel.
- (3) A judicial conduct panel must, however—
  - (a) act in accordance with the principles of procedural fairness; and
  - (b) hold all meetings of the panel in private; and
  - (c) call meetings and conduct business at those meetings in accordance with any guidelines approved by the Chief Justice of the Supreme Court.
- (4) All 3 members of a judicial conduct panel must be present at a meeting of the panel.
- (5) The presiding member presides at a meeting of a judicial conduct panel and has a deliberative vote only.
- (6) A decision supported by a majority of the votes cast at a meeting of a judicial conduct panel is the decision of the panel.
- (7) A judicial conduct panel must cause full and accurate minutes to be kept of the proceedings of each meeting of the panel.

## 24—Powers of panel

- (1) For the purposes of an inquiry under this Part, a judicial conduct panel has the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act applies as if—
  - (a) the judicial conduct panel were a commission as so defined; and
  - (b) the subject matter of the inquiry was set out in a commission of inquiry issued by the Governor under that Act.
- (2) Without limiting subsection (1), a judicial conduct panel may require the judicial officer to undergo 1 or more medical examinations for the purpose of assisting in determining whether proper cause exists for removing the judicial officer from office.

## 25—Report by panel

- (1) A judicial conduct panel must provide a report to the Attorney-General at the conclusion of its inquiry.



- (2) The report must set out—
  - (a) the panel's findings of fact; and
  - (b) the panel's opinion as to whether removal of the judicial officer is justified; and
  - (c) the reasons for the panel's conclusion.
- (3) A copy of the report must be provided to any complainant, to the judicial officer who is the subject of the report and to the relevant jurisdictional head.
- (4) The Attorney-General must cause a copy of the report to be laid before each House of Parliament.

## **26—Removal of judicial officer**

- (1) Subject to subsection (2), if a judicial conduct panel concludes that removal of a judicial officer is justified, the Governor may remove the judicial officer from office.
- (2) If the judicial officer is a judge who is liable to be removed from office, pursuant to the *Constitution Act 1934* or any other Act or law, on an address from both Houses of Parliament, subsection (1) does not apply (but the judge may be removed from office on such an address from both Houses of Parliament under the *Constitution Act 1934* or other Act or law).

## **Part 5—Miscellaneous**

### **27—Commissioner's annual report**

- (1) The Commissioner must, before 30 September in each year, prepare a report on the operation of this Act.
- (2) The report must—
  - (a) relate to the financial year preceding the making of the report; and
  - (b) describe—
    - (i) the number and general nature of complaints received by the Commissioner; and
    - (ii) the number and general nature of any complaints dealt with under section 16; and
    - (iii) the number and general nature of any complaints dismissed under section 17; and
    - (iv) the number and general nature of any complaints referred to a jurisdictional head under section 18; and
    - (v) the number and general nature of any complaints that resulted in a report to Parliament under section 19; and
    - (vi) the number and general nature of any complaints that resulted in a recommendation under section 20; and
  - (c) deal with any other matters prescribed by the regulations.
- (3) A copy of the report must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.

- (4) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.

### **28—Attorney-General may request information about complaints**

The Commissioner must, at the request of the Attorney-General, provide the Attorney-General with specified information or information of a specified kind about the exercise of the Commissioner's functions under this Act.

### **29—Judicial review**

- (1) Any application for judicial review of a decision under this Act must be made to the Full Court.
- (2) In this section—  
*Full Court* has the same meaning as in the *Supreme Court Act 1935*.

### **30—Immunity from liability**

- (1) No liability attaches to the Commissioner, any member of the Commissioner's staff or the members of a judicial conduct panel for any act or omission in good faith in the exercise or purported exercise of powers or functions under this or any other Act.
- (2) In this section—  
*member of the Commissioner's staff* includes any person to whom powers or functions have been delegated under section 11.

### **31—No obligation on persons to maintain secrecy**

No obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of a complaint under this Act, except an obligation or restriction designed to keep the identity of a confidential source of information relating to the enforcement or administration of the law secret.

### **32—Confidentiality, disclosure of information and publication of reports**

- (1) A person engaged or formerly engaged in the administration of this Act must not disclose information obtained in the course of the administration of this Act except—
- (a) for the purposes of the administration or enforcement of this Act; or
  - (b) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
  - (c) as authorised or required by the Commissioner; or
  - (d) as otherwise authorised or required by this Act or regulations under this Act or any other Act or law.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) The Commissioner is only to authorise or require information to be disclosed if of the opinion that the disclosure is in the public interest (but a person to whom an authorisation or requirement is directed need not inquire into the basis of the authorisation or requirement).

- (3) The Commissioner may, if of the opinion that it is in the public interest to do so, cause a report on a complaint, or a statement about a complaint, or a decision to take no further action in relation to a complaint or to dismiss a complaint, to be published in such manner as the Commissioner thinks fit.
- (4) Information that has been disclosed under this section for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **33—Publication of information and evidence**

- (1) A person must not, except as authorised by the Commissioner or a court, publish, or cause to be published information or evidence relating to a complaint if publication of the information or evidence is prohibited by the Commissioner.

Maximum penalty:

- (a) in the case of a body corporate—\$150 000;
  - (b) in the case of a natural person—\$30 000.
- (2) In this section—

*publish* means publish by—

  - (a) newspaper, radio or television; or
  - (b) Internet or other electronic means of creating and sharing content with the public or participating in social networking with the public; or
  - (c) any similar means of communication to the public.

### **34—Other offences**

- (1) A person must not—
  - (a) prevent another person from making a complaint under this Act; or
  - (b) hinder or obstruct another person in making such a complaint.Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) A person must not—
  - (a) hinder or obstruct the Commissioner or a judicial conduct panel in the exercise or performance of powers or functions conferred by or under this Act; or
  - (b) refuse or fail to comply with a lawful requirement of the Commissioner or a judicial conduct panel under this Act; or
  - (c) make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) to the Commissioner or a judicial conduct panel acting in the exercise of powers under this Act; or

- (d) make a complaint knowing that there are no grounds for the making of the complaint.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **35—Service**

Subject to the regulations, a notice, report or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

### **36—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) confer functions on the Commissioner relating to education and training of judicial officers or other members of the legal profession; and
  - (b) prescribe fees in respect of any matter under the regulations and provide for their payment, recovery or waiver.
- (3) The regulations may—
  - (a) be of general application or vary in their application according to prescribed factors; and
  - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Attorney-General or the Commissioner.
- (4) The regulations must not confer functions on the Commissioner in accordance with subsection (2)(a) unless the Attorney-General has consulted the Chief Justice of the Supreme Court in relation to the proposed conferral of functions and the Commissioner must, in the exercise of any functions so conferred, consult with the Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate.

## **Schedule 1—Related amendments**

### **Part 1—Amendment of *Constitution Act 1934***

#### **1—Amendment of section 74—Tenure of office of Judges**

- (1) Section 74—delete "during their good behaviour"
- (2) Section 74—after "law" insert:  
or their removal under section 75

#### **2—Insertion of section 75A**

After section 75 insert:

##### **75A—Operation of Part**

Nothing in this Part affects the operation of the *Judicial Conduct Commissioner Act 2015*.

### **Part 2—Amendment of *Courts Administration Act 1993***

#### **3—Insertion of Part 5A**

After section 27 insert:

##### **Part 5A—Responsibilities of jurisdictional head**

###### **27A—Interpretation**

In this Part—

*court* includes a tribunal or other body the functions of which include the exercise of judicial powers;

*judicial office* means—

- (a) the office of Judge of the Supreme Court;
- (b) the office of Master of the Supreme Court, District Court Judge or any other Judge;
- (c) any other office involving the exercise of judicial functions that may only be occupied by a Judge or Master or by a person with other legal qualifications;
- (d) the office of Magistrate;
- (e) any other office involving the exercise of judicial functions that may only be occupied by a Magistrate or by a person with other legal qualifications;
- (f) the office of special justice;
- (g) any other office prescribed by the regulations;

*judicial officer* means a person appointed to hold or act in a judicial office;

*jurisdictional head* of a court means the judicial officer who has primary responsibility for the administration of the court.

### **27B—Application of Part**

- (1) This Part applies to a court of the State whether it is a participating court or not.
- (2) This Part applies in addition to, and without derogating from, any other Act or law.

### **27C—Responsibilities of jurisdictional head**

- (1) The jurisdictional head of a court is responsible for ensuring the effective, orderly and expeditious discharge of the business of that court.
- (2) Without limiting the generality of subsection (1)—
  - (a) the functions of the jurisdictional head include—
    - (i) participating as a judicial officer of the court; and
    - (ii) managing the business of the court, including by ensuring that the court operates efficiently and effectively and continually improves the way in which it carries out its functions; and
    - (iii) providing leadership and guidance to the court and engendering cohesiveness and collaboration amongst the judicial officers and staff of the court; and
    - (iv) developing and implementing performance standards and setting benchmarks for the court; and
    - (v) being responsible for promoting the training, education and professional development of judicial officers of the court; and
    - (vi) overseeing the proper use of the resources of the court; and
    - (vii) providing advice to the Council, the Attorney-General or other persons (as the jurisdictional head thinks fit) about—
      - (A) the judicial officers of the court; and
      - (B) the operations and activities of the court; and
  - (b) the jurisdictional head may do all or any of the following:
    - (i) make arrangements as to the judicial officer or judicial officers who is or are to constitute the court in particular matters (or classes of matters) or in particular places;

- (ii) without limiting the generality of subparagraph (i)—assign particular cases, caseloads, classes of cases or functions to particular judicial officers of the court;
  - (iii) require a judicial officer of the court to assist in the administration of the court;
  - (iv) temporarily restrict a judicial officer of the court to non-sitting duties;
  - (v) require a judicial officer of the court to keep particular records;
  - (vi) require a judicial officer of the court to undergo a medical examination or counselling and to provide the jurisdictional head with a report on the examination or counselling;
  - (vii) counsel a judicial officer of the court in relation to any conduct that has the potential to undermine public confidence in the court; and
- (c) the jurisdictional head must ensure that arrangements are in place to provide judicial officers with appropriate access to (or reimbursement for the cost of)—
- (i) annual health assessments; and
  - (ii) short-term counselling services; and
  - (iii) judicial education; and
- (d) the jurisdictional head may issue requirements to a judicial officer of the court in response to a complaint referred under section 18 of the *Judicial Conduct Commissioner Act 2015*; and
- (e) the jurisdictional head may take any measures that the jurisdictional head believes are reasonably necessary to maintain public confidence in the court (including, but not limited to, temporarily restricting another judicial officer to non-sitting duties).
- (3) If a judicial officer refuses or fails to comply with a requirement issued by the jurisdictional head in response to a complaint referred under section 18 of the *Judicial Conduct Commissioner Act 2015*, the jurisdictional head must, by notice in writing, report that refusal or failure to the Attorney-General and to the Judicial Conduct Commissioner (and the report to the Judicial Conduct Commissioner will be taken to be a referral of the matter in accordance with section 12(7) of that Act).

- (4) A jurisdictional head of a court must give notice to the Judicial Conduct Commissioner of any complaint made to the jurisdictional head in relation to the conduct of a judicial officer of the court (but the giving of such a notice does not, of itself, constitute a referral of the matter for the purposes of section 12(7) of the *Judicial Conduct Commissioner Act 2015*).

### **Part 3—Amendment of *District Court Act 1991***

#### **4—Amendment of section 15—Removal of Judges and Masters**

Section 15(2)—delete subsection (2) and substitute:

- (2) A Master—
- (a) may only be suspended from office on the recommendation or with the consent of the Chief Judge; and
  - (b) may only be removed from office—
    - (i) on the recommendation or with the consent of the Chief Judge; or
    - (ii) by the Governor in accordance with the *Judicial Conduct Commissioner Act 2015*.

### **Part 4—Amendment of *Equal Opportunity Act 1984***

#### **5—Amendment of section 87—Sexual harassment**

Section 87(6b)—after "judicial duties" insert:

(but conduct occurring in such circumstances may be the subject of a complaint under the *Judicial Conduct Commissioner Act 2015*)

### **Part 5—Amendment of *Freedom of Information Act 1991***

#### **6—Amendment of Schedule 2—Exempt agencies**

Schedule 2—after paragraph (k) insert:

- (ka) the Judicial Conduct Commissioner;
- (kb) a judicial conduct panel under the *Judicial Conduct Commissioner Act 2015*;

### **Part 6—Amendment of *Independent Commissioner Against Corruption Act 2012***

#### **7—Amendment of section 8—Commissioner**

- (1) Section 8(8)—delete "The" and substitute:

Subject to subsection (8a), the

- (2) Section 8—after subsection (8) insert:

- (8a) Nothing prevents the Commissioner being appointed as the Judicial Conduct Commissioner under the *Judicial Conduct Commissioner Act 2015*.



## **Part 7—Amendment of *Judges' Pensions Act 1971***

### **8—Substitution of section 13**

Section 13—delete the section and substitute:

#### **13—Pension not payable on removal of Judge**

Unless the Governor otherwise directs, a pension under this Act is not payable to, or in relation to, a Judge who has been removed from office, whether pursuant to the *Constitution Act 1934* or otherwise under an Act or law.

## **Part 8—Amendment of *Justices of the Peace Act 2005***

### **9—Amendment of section 9—Tenure of office**

Section 9(a)(v)—after "this Act" insert:

or the *Judicial Conduct Commissioner Act 2015*

### **10—Insertion of section 10A**

After section 10 insert:

#### **10A—Suspension and removal of special justices**

- (1) The Governor may, by notice in writing given on the advice of the Chief Magistrate, suspend a special justice from office for a specified period or until the fulfilment of stipulated conditions or until further notice.
- (2) A special justice may not be suspended from office unless—
  - (a) subsection (4) applies; or
  - (b) action is being taken under the *Judicial Conduct Commissioner Act 2015* for the purpose of determining whether proper cause exists for removing the special justice from office.
- (3) A suspension under subsection (2)(b) may be revoked by further notice.
- (4) If a special justice is charged with an offence other than an expiable offence, the special justice is, by force of this subsection, suspended from office as a special justice until proceedings based on the charge have been completed.
- (5) However, the Attorney-General may, on application by the special justice, by notice in writing—
  - (a) cancel a suspension under subsection (4) if satisfied that the outstanding charge should, in the circumstances, be disregarded; and
  - (b) impose such conditions specifying or limiting the official powers that the special justice may exercise as the Attorney-General considers appropriate.

- (6) A purported exercise of power or authority by a special justice suspended from office under this section is not rendered invalid by reason only of the suspension.
- (7) If a special justice is found guilty or convicted by a court of an offence other than an expiable offence, the special justice is, by force of this subsection, removed from office as a special justice.
- (8) However, the Attorney-General may, on application by the special justice, by notice in writing—
  - (a) reinstate the special justice if satisfied that the finding of guilt or conviction should, in the circumstances, be disregarded; and
  - (b) impose such conditions specifying or limiting the official powers that the special justice may exercise as the Attorney-General considers appropriate.
- (9) A person who has been removed from office as a special justice may not apply for reappointment as a justice for a period of 5 years from the date of removal or such longer period as may be specified by the Governor in the notice of removal.
- (10) Nothing in this section affects the operation of the *Judicial Conduct Commissioner Act 2015*.

### **11—Amendment of section 11—Disciplinary action, suspension and removal of other justices**

- (1) Section 11—before subsection (1) insert:
  - (a1) This section applies to justices other than special justices.
- (2) Section 11(1)(a)—delete "(whether as a justice or special justice)"
- (3) Section 11(3)—delete "Subject to subsection (4a), if" and substitute:

If
- (4) Section 11(4a), (4b) and (4c)—delete subsections (4a), (4b) and (4c)
- (5) Section 11(5)—delete "Subject to subsection (5a), if" and substitute:

If
- (6) Section 11(5a) and (5b)—delete subsections (5a) and (5b)

### **Part 9—Amendment of *Magistrates Act 1983***

#### **12—Repeal of section 8**

Section 8—delete the section

#### **13—Amendment of section 9—Tenure of office**

Section 9(1)(e)—delete paragraph (e) and substitute:

- (e) the person is removed from office by the Governor in accordance with the *Judicial Conduct Commissioner Act 2015*.

**Note—**

The power of removal referred to in paragraph (e) is the only statutory power to remove a magistrate from office.

**14—Amendment of section 10—Suspension from office**

- (1) Section 10(3)(b)—delete paragraph (b) and substitute:
  - (b) action is being taken under the *Judicial Conduct Commissioner Act 2015* for the purpose of determining whether proper cause exists for removing the magistrate from office.
- (2) Section 10—after subsection (5) insert:
  - (6) Except as provided in this section, a magistrate may not be suspended from office.

**15—Repeal of sections 11 and 12**

Sections 11 and 12—delete the sections

**Part 10—Amendment of *Ombudsman Act 1972***

**16—Amendment of section 5—Non-application of Act**

Section 5—after subsection (2) insert:

- (3) This Act does not apply to or in relation to—
  - (a) any complaint to which the *Judicial Conduct Commissioner Act 2015* applies; or
  - (b) any matter to which that Act would apply if the matter were the subject of a complaint under that Act.

**Part 11—Amendment of *Parliamentary Committees Act 1991***

**17—Amendment of section 15H—Membership of Committee**

Section 15H—after subsection (1) insert:

- (1a) A Minister of the Crown is not eligible for appointment to the Committee.

**18—Amendment of section 21—Removal from and vacancies of office**

Section 21(2)(e)—delete "becomes" and substitute:

is

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2015	34	<i>Judicial Conduct Commissioner Act 2015</i>	5.11.2015	5.12.2016 ( <i>Gazette 29.11.2016 p4525</i> )
2016	54	<i>Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016</i>	24.11.2016	Sch 1 (cl 2)—uncommenced