

(Reprint No. 1)

SOUTH AUSTRALIA

POLICE ACT, 1952

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 November 1991.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 1 August 1989.

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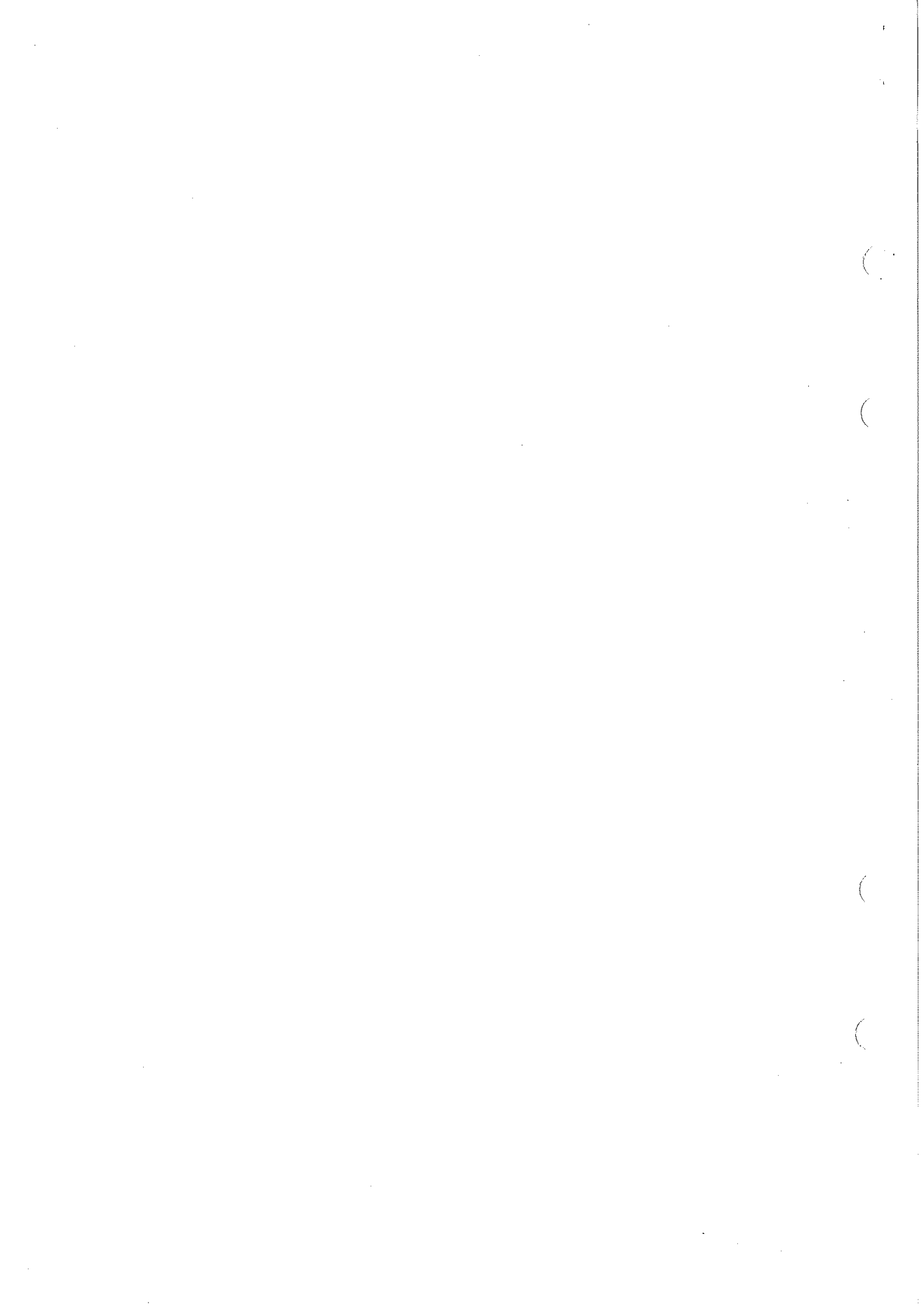
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POLICE ACT, 1952

being

Police Regulation Act, 1952, No. 54 of 1952 [Assented to 4 December 1952]¹

as amended by

Statutes Amendment (Public Salaries) Act, 1955, No. 3 of 1955 [Assented to 23 June 1955]²
Police Regulation Act Amendment Act, 1955, No. 36 of 1955 [Assented to 8 December 1955]³
Statutes Amendment (Public Salaries) Act, 1957, No. 3 of 1957 [Assented to 21 February 1957]
Statutes Amendment (Public Salaries) Act, 1959, No. 10 of 1959 [Assented to 5 November 1959]
Statutes Amendment (Public Salaries) Act (No. 2), 1960, No. 22 of 1960 [Assented to 15 September 1960]
Police Regulation Act Amendment Act, 1963, No. 20 of 1963 [Assented to 7 November 1963]
Statutes Amendment (Public Salaries) Act, 1963, No. 51 of 1963 [Assented to 28 November 1963]
Statutes Amendment (Public Salaries) Act, 1964, No. 44 of 1964 [Assented to 22 October 1964]
Statutes Amendment (Public Salaries) Act, 1965, No. 29 of 1965 [Assented to 25 November 1965]
Police Regulation Act Amendment Act, 1966, No. 56 of 1966 [Assented to 10 November 1966]
Statutes Amendment (Public Salaries) Act, 1967, No. 38 of 1967 [Assented to 14 September 1967]
Statutes Amendment (Public Salaries) Act, 1969, No. 83 of 1969 [Assented to 11 December 1969]
Statutes Amendment (Public Salaries) Act, 1970, No. 8 of 1970 [Assented to 27 August 1970]
Statutes Amendment (Public Salaries) Act, 1971, No. 61 of 1971 [Assented to 14 October 1971]
Police Regulation Act Amendment Act, 1972, No. 37 of 1972 [Assented to 13 April 1972]⁴
Statutes Amendment (Public Salaries) Act, 1972, No. 76 of 1972 [Assented to 28 September 1972]
Police Regulation Act Amendment Act (No. 2), 1972, No. 77 of 1972 [Assented to 5 October 1972]⁵
Police Regulation Act Amendment Act, 1973, No. 6 of 1973 [Assented to 30 August 1973]⁶
Statutes Amendment (Public Salaries) Act, 1973, No. 28 of 1973 [Assented to 20 September 1973]
Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6 December 1973]
Statutes Amendment (Public Salaries) Act, 1975, No. 19 of 1975 [Assented to 27 March 1975]⁷
Statute Law Revision Act, 1975, No. 24 of 1975 [Assented to 27 March 1975]
Police Regulation Act Amendment Act, 1978, No. 103 of 1978 [Assented to 7 December 1978]
Police Regulation Act Amendment Act, 1981, No. 11 of 1981 [Assented to 19 March 1981]⁸
Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]⁹
Police Regulation Act Amendment Act, 1985, No. 2 of 1985 [Assented to 28 February 1985]¹⁰
Police Regulation Act Amendment Act (No. 2), 1985, No. 23 of 1985 [Assented to 28 March 1985]¹¹
Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]¹²
Police Regulation Act Amendment Act, 1989, No. 36 of 1989 [Assented to 4 May 1989]¹³
Statutes Repeal and Amendment (Remuneration) Act, 1990, No. 18 of 1990 [Assented to 19 April 1990]¹⁴
Police Superannuation Act, 1990, No. 39 of 1990 [Assented to 10 May 1990]¹⁵

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

¹ Came into operation 13 April 1953: *Gaz.* 2 April 1953, p. 634.

² Came into operation 20 December 1954: s. 15(3).

³ Came into operation 26 January 1956: *Gaz.* 26 January 1956, p. 127.

⁴ Came into operation 11 May 1972: *Gaz.* 11 May 1972, p. 1758.

⁵ Came into operation 12 October 1972: *Gaz.* 12 October 1972, p. 1872.

⁶ Came into operation 6 December 1973: *Gaz.* 6 December 1973, p. 3166.

⁷ Came into operation 28 August 1975: *Gaz.* 28 August 1975, p. 1126.

⁸ Came into operation 1 January 1982: *Gaz.* 23 December 1981, p. 2462.

⁹ Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.

¹⁰ Came into operation 21 November 1985: *Gaz.* 21 November 1985, p. 1542.

¹¹ Came into operation 1 September 1985, being the day on which the Police (Complaints and Disciplinary Proceedings) Act, 1985, came into operation: *Gaz.* 29 August 1985, p. 604: s. 2.

¹² Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

¹³ Came into operation 1 August 1989: *Gaz.* 27 July 1989, p. 181.

¹⁴ Came into operation 19 April 1990: *Gaz.* 19 April 1990, p. 1136.

¹⁵ Came into operation 1 June 1990: *Gaz.* 31 May 1990, p. 1478.

An Act to consolidate and amend certain enactments relating to the management of the police force, and other incidental matters.

The Parliament of South Australia enacts as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Police Act, 1952*.

* * * * *
* * * * *

Interpretation

4. In this Act, unless the contrary intention appears—

“commissioned officer” means any person appointed under section 10 to be an assistant commissioner, superintendent, inspector or other officer of police:

“the Commissioner” means the Commissioner of Police appointed under this Act:

“the Deputy Commissioner” means the Deputy Commissioner of Police appointed under this Act:

“member of the police force” means the Commissioner, the Deputy Commissioner, any commissioned officer or any other member of the police force, but does not include a police cadet or police medical officer:

“the Police Appeal Board” means the Board of that name constituted under the schedule:

“police cadet” means a person appointed under this Act to be a police cadet:

“the police force” or “the force” means the body comprised of the Commissioner, the Deputy Commissioner, the commissioned officers and other members of the police force:

“the Promotion Appeal Board” means the Board of that name constituted under the schedule.

Note: For definition of divisional penalties see Appendix 2.

* * * * *

PART II

APPOINTMENTS, RESIGNATIONS AND RETIREMENTS

Appointment of Commissioner of Police

6. The Governor may appoint a fit and proper person to be the Commissioner of Police.

Retiring age of Commissioner

7. (1) The Commissioner must retire on the thirtieth day of June next after attaining the age of 65 years.

* * * * *

Salary of Commissioner

8. (1) The Commissioner of Police is entitled to such salary and allowances as the Governor may from time to time determine.

* * * * *

(3) The salary and allowances referred to in subsection (1) are a charge on the General Revenue of the State which is appropriated to the necessary extent.

Deputy Commissioner

9. (1) The Governor may from time to time appoint a Deputy Commissioner of Police to assist the Commissioner generally in the superintendence of the police force.

(2) The Deputy Commissioner must exercise and perform such of the powers, authorities, duties and functions of the Commissioner as the Commissioner may direct (either generally or in a special case).

(3) When the Commissioner is absent from duty because of illness or for any other reason, or during any vacancy in the office of the Commissioner, the Deputy Commissioner may exercise and perform all the powers, authorities, duties, and functions conferred or imposed upon the Commissioner by this or any other Act, or by the common law.

(4) The Deputy Commissioner is entitled to such salary and allowances as the Governor may from time to time determine.

Retirement of Deputy Commissioner and contribution to Police Pensions Fund

9a. (1) The Deputy Commissioner must retire on the thirtieth day of June next after attaining the age of 65 years.

* * * * *

Removal from office

9b. (1) The Governor may remove the Commissioner or the Deputy Commissioner from office for—

- (a) incompetence;
- (b) neglect of duty;
- (c) misbehaviour or misconduct;
- or
- (d) mental or physical incapacity.

(2) The office of the Commissioner or the Deputy Commissioner becomes vacant if he or she—

(a) dies;

(b) retires or resigns;

or

(c) is removed from office by the Governor pursuant to subsection (1).

(3) Except as provided by this section, the Commissioner or the Deputy Commissioner cannot be removed from office, nor will the office of the Commissioner or the Deputy Commissioner become vacant.

Absence of Deputy Commissioner

9c. When the Deputy Commissioner is absent from duty because of illness or for any other reason, or during any vacancy in the office of the Deputy Commissioner, the senior assistant commissioner of police on duty at the time may exercise and perform all the powers, authorities, duties and functions conferred or imposed upon the Deputy Commissioner by or under this or any other Act.

Appointment of officers

10. (1) The Governor may appoint as many assistant commissioners, commanders, superintendents, inspectors and other officers of police as the Governor thinks necessary.

(2) Every officer appointed under subsection (1) will receive a commission signed by the Governor.

Appointment of sergeants and constables

11. (1) Subject to this Act, the Commissioner may appoint as many sergeants and constables of different grades or kinds as he or she thinks necessary for the preservation of peace and order throughout the State.

(2) The Minister may, from time to time, fix the maximum number of sergeants and constables of each grade or kind respectively who may be in the police force at any one time (and those numbers must not be exceeded).

(3) An appointment by the Commissioner of a member of the police force to a position with the rank of sergeant or senior sergeant requires the approval of the Minister.

Retiring age for members of the police force

11aa. All members of the police force, excluding the Commissioner and Deputy Commissioner, must retire on the thirtieth day of June next after attaining the age of 60 years.

Police cadets

11a. (1) The Commissioner may appoint as many police cadets as the Commissioner thinks necessary.

(2) Every police cadet holds office at the will of the Commissioner.

(3) A police cadet is not a member of the police force.

* * * * *

Police medical officers

12. (1) The Governor may appoint any legally qualified medical practitioner to be a police medical officer.

(2) Every such appointment will be on terms and conditions fixed by the Governor.

(3) A police medical officer is not a Public Service employee.

(4) A police medical officer must perform such duties as are arranged between the Commissioner and the officer.

(5) A police medical officer is not a member of the police force.

Probationary service

13. (1) Where a person who immediately before appointment was not a member of the police force is appointed to be a member of the police force (other than as the Commissioner or Deputy Commissioner), the appointment will in the first place be on probation for such period, not exceeding two years, as the Commissioner determines.

(2) The Commissioner may at any time during the period of probation of a member of the police force, having regard to his or her suitability for permanent appointment—

(a) confirm the appointment;

(b) extend or further extend the period of the probation for such period as the Commissioner determines, but so that the total period of probation does not exceed two years;

or

(c) terminate the appointment.

(3) The period of the probationary service of a member of the police force does not, unless the Commissioner decides to the contrary, include any period during which the member is absent from duty without pay.

(4) An appointment under this section will be taken to have been confirmed if, at the date of expiry of the period of probation, the appointment has not previously been confirmed or terminated.

* * * * *

False statements in applications for appointment as a police cadet or member of force

15. (1) A person must not make any false statement in connection with an application for appointment as a police cadet or a member of the police force.

Penalty: Division 7 fine or division 7 imprisonment.

(2) In a prosecution for an offence against this section it is not necessary for the prosecution to prove that the false statement was made wilfully or negligently; but it is a defence to prove that the defendant believed on reasonable grounds that the statement was true.

Police oath or affirmation

16. (1) A person appointed as a member of the police force (including a person appointed to be the Commissioner or the Deputy Commissioner) is not capable of acting as such a member until he or she has taken an oath or affirmation under this section.

(2) The oath or affirmation will be in the following form:

I, A.B. do swear [or I, A.B. do solemnly and truly declare and affirm] that I will well and truly serve Her Majesty Queen Elizabeth II and Her heirs and successors according to law, as a member of the police force of South Australia, without favour or affection, malice or ill-will; that to the best of my power I will cause Her Majesty's peace to be kept throughout the State and prevent the commission of offences against the peace or against the laws of the State; and that I will faithfully discharge all duties imposed on me as a member of the force—[So help me God!]

Taken at
this day }
of 19 }
Before me

..... Justice of the Peace.

Effect of taking oath

17. (1) Every person who takes the oath or affirmation under section 16 will be taken to have entered into an agreement to serve Her Majesty in each position, rank and office which the person may hold as a member of the police force, until he or she lawfully ceases to be a member of the police force.

(2) No such agreement is void for want of consideration.

Evidence of appointment

18. Common reputation that a person is a member of the police force, or holds a particular position, rank or office in the police force, is *prima facie* evidence of that fact.

Resigning without leave

19. (1) A member of the police force or police cadet must not resign or relinquish official duties unless he or she—

- (a) is expressly authorized in writing by the Commissioner to do so;
 - (b) has given the Commissioner 14 days notice of intention to do so;
- or
- (c) has reached the retiring age prescribed by law or is incapacitated by physical or mental disability or illness from performing official duties.

(2) A person who contravenes subsection (1) is guilty of an offence.

Penalty: Division 8 fine or division 8 imprisonment.

Termination due to physical or mental disability

19a. (1) Where the Commissioner is satisfied after due inquiry that the services of a member of the police force should be terminated because of the member's incapacity to perform duties as a member by reason of physical or mental disability or illness, the Commissioner may—

- (a) in the case of a commissioned officer, recommend to the Governor;
- or
- (b) in the case of a member of the police force other than a commissioned officer, recommend to the Minister,

that the services of the member be terminated.

(1a) The Commissioner must not make a recommendation under subsection (1) without first complying with the requirements of the *Police Superannuation Act, 1990*.

(2) The Governor or the Minister may, on the recommendation of the Commissioner made under subsection (1), terminate the services of a member of the police force.

Divestment or suspension of powers

19b. (1) Where a person ceases for any reason to be a member of the police force, all powers and authorities vested in that person by or under this Act or any other Act or law as a member of the police force or constable are divested from that person.

(2) Where a person is suspended from office as a member of the police force, all powers and authorities vested in that person by or under this Act or any other Act or law as a member of the police force or constable are suspended for the period of the suspension.

(3) Unless the Commissioner otherwise authorizes by instrument in writing, where a person who is a member of the police force is seconded to a position outside the police force, all powers and authorities vested in that person by or under this Act or any other Act or law as a member of the police force or constable are suspended for the period of secondment.

Duty to deliver up equipment, etc., on ceasing to be member of police force or police cadet

20. (1) A person who for any reason ceases to be a member of the police force or police cadet must forthwith deliver up to the Commissioner, or to a person appointed by the Commissioner to receive property under this section, all property which belongs to the Crown and was supplied to that person for official purposes.

Penalty: Division 8 fine.

(2) A justice may issue a warrant authorizing the persons named or indicated in the warrant to search any place and seize any property which has not been delivered up as required by this section.

PART III

REGULATION, DUTIES AND DISCIPLINE OF THE POLICE FORCE

Control and management of police force

21. (1) Subject to this Act and the directions of the Governor, the Commissioner has the control and management of the police force.

(2) The Minister must cause a copy of every direction under subsection (1) to be laid before each House of Parliament within six sitting days of the date of the direction if Parliament is then in session, or if not, within six sitting days after the commencement of the next session of Parliament.

(3) The Minister must cause a copy of any direction under subsection (1) to be included in an edition of the *Gazette* published not more than eight days after the date of the direction.

Regulations

22. The Governor may make regulations prescribing any matters necessary or convenient for the administration of this Act and for the regulation, control and management of the police force and in particular and without limiting the general powers under this section, regulations with respect to all or any of the following matters:

(a) the ranks of members of the police force;

* * * * *

(b) the examinations and other requirements for, and conditions of, appointment to and promotion in the police force;

(c) the duties and functions of members of the police force;

(d) the maintenance of good order, good conduct, discipline, and efficiency in the police force;

(e) empowering the Commissioner to institute proceedings for breaches of the regulations by laying charges against members of the police force;

(f) the procedures for laying such charges against members of the police force and for requiring members so charged to make an admission or denial of guilt to the Commissioner;

(g) empowering the Commissioner to suspend with or without pay any member of the police force or police cadet charged with any offence against this or any other Act or with any breach of the regulations;

(h) empowering the Commissioner to make an order punishing a member of the police force guilty of a breach of the regulations (whether guilt is established by an admission made to the Commissioner or by a finding of the Police Disciplinary Tribunal)—

(i) by dismissal with, in the case of a commissioned officer, the approval of the Governor or, in the case of any other member of the police force, the approval of the Minister;

(ii) by suspension without pay;

(iii) by transfer to a position that attracts a lower rank, or by reduction in seniority (or both);

(iv) by temporary reduction in pay, but so that the total amount forfeited does not exceed \$150;

or

(v) by reprimand;

- (i) the uniforms, badges, and insignia of rank to be worn by members of the police force and the equipment to be supplied to them;
- (j) transfers of members of the police force from one part of the State to another, from one station to another, or to different duties;
- (k) the records to be kept respecting members of the police force;
- (l) subject to the provisions of any applicable industrial award or agreement, the leave, other than long service leave, which may be granted to members of the police force;
- (m) the custody, disposal, and sale of property in the possession or custody of members of the police force;
- (n) the treatment and maintenance of prisoners or other persons who are in the custody of any member of the police force;
- (o) the enlistment, uniform and training of police cadets;
- (p) the maintenance, government, duties, discipline and control of police cadets;
- (q) empowering the Commissioner or any commissioned officer authorized by the Commissioner to punish any police cadet for misconduct—
 - (i) by suspension without pay;
 - (ii) by temporary reduction in pay, but so that the total amount forfeited does not exceed \$50;or
 - (iii) by temporary withdrawal of rights or privileges.

Orders

23. (1) The Commissioner may make or give general or special orders, not inconsistent with this Act or the regulations made under this Act—

- (a) prescribing and allocating the duties to be performed by the respective members of the police force, or police cadets or police medical officers;
- (b) directing the manner in which and the time and place at which any such duties are to be performed;
- (c) prescribing or directing any other matters relating to the performance of the duties of members of the police force or police cadets or police medical officers.

(2) Such orders will not be taken to be a form of subordinate legislation.

(3) This section does not restrict the power of the Commissioner to give any order or direction, not inconsistent with this Act, for the purpose of the control and management of the police force.

Members subject to duty in or outside the State

24. (1) A member of the police force is, if so ordered by the Commissioner or by any superior officer, liable to perform police duties in any place within or outside the State.

(2) A member of the police force must, while performing duties outside the State, obey the lawful orders of superior officers and is liable for any violation or neglect of duty committed outside the State to the same extent as if the violation or neglect had occurred within the State.

Review of certain action by Police Disciplinary Tribunal**24a. (1) If—**

(a) a member of the police force is transferred, or is to be transferred, to another position in the police force;

and

(b) the member of the police force believes that he or she is being punished for particular conduct, although he or she has not been charged with a breach of discipline under this Act,

the member of the police force may within the prescribed period apply to the Police Disciplinary Tribunal for a review of the transfer.

(2) The Police Disciplinary Tribunal may in an appropriate case extend the period for an application under this section.

(3) Where the Police Disciplinary Tribunal is satisfied on the balance of probabilities that the applicant is being punished for particular conduct, the Tribunal may, as it thinks fit—

(a) quash the transfer;

(b) remit the matter to the Commissioner for reconsideration;

(c) make recommendations for settlement of the matter.

Execution of process

25. (1) A member of the police force must execute every process directed to the member for levying the amount of—

(a) any recognizance forfeited to Her Majesty;

(b) any fine imposed on any person by any court or other body or person authorized by law to impose fines.

(2) Any process, order, warrant or command of any court or justice directed, delivered or given to any member of the police force may be executed and enforced by any other member of that force or the member's assistants.

Every such other member or assistant has all the rights, powers and authorities for and in the execution of that process, order, warrant or command as if named in the warrant as the person to whom it is directed.

Allowances

26. Every member of the force and police cadet is entitled to receive allowances in respect of such matters and at such rates as are approved from time to time by the Minister.

Impersonating police and unlawful possession of police property

27. (1) Any person who, without lawful excuse—

(a) wears the uniform of a member of a police force or a police cadet;

or

(b) represents himself or herself by word or conduct to be a member of a police force or a police cadet,

is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

(2) Any person who, without lawful excuse, has possession of—

(a) the uniform of a member of a police force or a police cadet;

or

(b) any property supplied, or intended for supply, to a member of a police force or a police cadet for official purposes,

is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

(2a) In subsections (1) and (2)—

“member of a police force” means a member of the police force of this State or any other State, or any other police force in Australia or any other country.

(3) Subsection (1) does not prevent a person taking part in a stage play, ball or other entertainment from wearing any such uniform in the course of, and for the purpose of, that play, ball or other entertainment.

* * * * *

Taking bribes and other offences

29. Any member of the police force or police cadet who—

(a) solicits or directly or indirectly takes any bribe, pecuniary or otherwise, to forego his or her duty;

(b) gives, offers, or promises to give any bribe to, or makes any collusive agreement with, any member of the police force or police cadet to induce the member or cadet to neglect a duty, or to conceal or connive at any act by which any regulation or order made or given under this Act may be evaded;

(c) in any manner aids or connives at the escape, or attempt or preparation to escape, of any prisoner in lawful custody;

(d) deserts his or her post;

or

(e) assaults any superior officer,

is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

PART IV
SPECIAL CONSTABLES

Appointment of special constables

30. (1) The Commissioner may by written minute appoint any person to be a special constable either for the whole State or for any part of the State indicated in the minute of appointment.

(2) The Commissioner must, as soon as practicable after appointing a special constable, give written notice to the Minister of the name and address of the person appointed.

Oath or affirmation for special constables

31. (1) A special constable is not capable of acting as such until he or she has taken an oath or affirmation under this section.

(2) The oath or affirmation will be in the following form:

I, A.B. do swear [*or* I, A.B. do solemnly and truly declare and affirm] that I will well and truly serve Her Majesty Queen Elizabeth II and Her heirs and successors according to law in the office of special constable for the State of South Australia [*or, as the case may be, the following part of the State of South Australia, namely*] without favour or affection, malice or ill-will; and that I will faithfully discharge all duties imposed on me as a special constable—[So help me God!]

Taken at
this day }
of 19 }
Before me

..... Justice of the Peace.

Duties and powers of special constables

32. (1) A special constable—

(a) has such duties as are imposed by the Commissioner or as may be prescribed;
and

(b) has, in relation to the performance of those duties, subject to any limitations specified in the minute of appointment or imposed after appointment by the Commissioner by notice in writing given to the special constable, the same powers, responsibilities and immunities as a member of the police force.

(2) The Commissioner may, by notice in writing given to a special constable, vary or revoke a limitation referred to in subsection (1)(b).

Suspension or dismissal of special constables

33. (1) The Commissioner may, at his or her discretion—

(a) suspend or determine the appointment of any special constable appointed under this Act;

(b) remove any special constable from office for misconduct, neglect of duty, or inability to perform duty.

(2) Forthwith after any such suspension, determination or removal, the Commissioner must send notice of it to the Minister.

Duty to deliver up weapons

34. (1) A person who for any reason ceases to be a special constable must forthwith deliver up to the Commissioner, or to such person as the Commissioner nominates, all property which belongs to the Crown and was supplied to that person for official purposes.

Penalty: Division 8 fine.

(2) Any justice may issue a warrant authorizing the persons named or indicated in the warrant to search any place and seize any property which has not been delivered up as required by this section.

Allowances and equipment for special constables

35. The Minister may, on the recommendation of the Commissioner—

- (a) pay such reasonable remuneration and allowances as the Minister thinks proper to any special constables or persons who have been special constables;
- (b) provide such clothing, arms, and equipment for special constables as the Minister thinks necessary.

Regulations

36. (1) The Governor may make regulations prescribing any matters necessary or convenient to prescribe for giving effect to this Part and, without limiting the general powers under this section, regulations in respect to all or any of the following matters:

- (a) the supervision and control of special constables;
- (b) the training of special constables for the performance of their duty;
- (c) the duties and functions of special constables;
- (d) the maintenance of good order, good conduct, discipline, and efficiency on the part of special constables.

(2) Regulations made under this Part may be of a general or limited application and may vary according to the classes of special constables to which they are expressed to apply.

PART V
APPEALS

DIVISION I—APPEALS AGAINST TERMINATION OF SERVICES

Right of appeal

37. (1) A right of appeal lies to the Police Appeal Board against—

- (a) a termination of the services of a member of the police force during a period of probation;
- (b) a termination of the services of a member of the police force by reason of physical or mental disability or illness;
- (c) any decision or finding on which any such termination may be based.

(2) An appeal under subsection (1) may be made by the member or former member of the police force affected by the termination, decision or finding.

(3) An appeal is instituted by lodging a notice of appeal under the regulations with the Secretary to the Board within the prescribed period.

(4) The Board may in an appropriate case extend the period for the institution of an appeal under this section.

Determination of appeal

38. (1) On an appeal, the Police Appeal Board may do one or more of the following as it thinks just:

- (a) dismiss the appeal and recommend that the termination, decision or finding appealed against be confirmed;
- (b) recommend that the termination, decision or finding appealed against be rescinded;
- (c) recommend that any decision or finding be substituted for the decision or finding appealed against;
- (d) recommend any other course of action in connection with the subject matter of the appeal.

(2) A decision in which any two members of the Board concur is a decision of the Board.

(3) A member may give a dissenting report.

Transmission of decision

39. (1) At the conclusion of an appeal, the presiding member of the Police Appeal Board must forward to the Commissioner a certified copy of—

- (a) the evidence taken during the proceedings on the appeal;
- and

(b) the decision of the Board, including any dissenting report.

(2) The Commissioner must transmit the evidence and decision (with any dissenting report), together with any comments and recommendations that the Commissioner desires to make, to the Minister.

(3) After considering the material transmitted under subsection (2), the Minister must decide the matter in issue in the appeal, but cannot make a decision less favourable to the appellant than that recommended by the Board.

No further appeal

40. No further appeal lies against a decision of the Police Appeal Board, and no appeal lies against a decision of the Minister after giving consideration to a decision of the Board.

DIVISION II—PROMOTION APPEALS

Promotion appeals—non-commissioned officers

41. (1) Where a member of the police force has been selected for appointment to a position in the police force that attracts a rank above the rank of constable and below the rank of inspector, the Commissioner must, by notice published in the *Police Gazette* in accordance with the regulations, give notice of the proposed appointment.

(2) Where such a notice is given—

(a) if applications were called for in relation to the position—any unsuccessful applicant (being a member of the police force) who is eligible for appointment to the position may appeal to the Promotion Appeal Board against the proposed appointment;

and

(b) if applications were not called for in relation to the position—any aggrieved person (being a member of the police force) who is eligible for appointment to the position may appeal to the Promotion Appeal Board against the proposed appointment.

(3) An appeal is instituted by lodging a notice of appeal under the regulations with the Secretary to the Board within the prescribed period.

(4) The Board may in an appropriate case extend the period for the institution of an appeal under this section.

(5) Where on an appeal the Board is satisfied that the appellant should have been selected for appointment to the relevant position in preference to the member of the police force who was selected, the Board may make a declaration to that effect and quash the selection.

(6) Where on an appeal the Board is satisfied that there has been some irregularity in the selection processes leading to the appointment, the Board may—

(a) quash the selection;

and

(b) order that the selection processes be recommenced from the beginning or at some later stage as specified by the Board.

(7) For the purposes of this section—

(a) a person is not eligible for appointment to a position if the person does not have qualifications determined by the Commissioner to be essential in respect of the position;

and

(b) a determination by the Commissioner that specific qualifications, experience or other attributes are essential or desirable for appointment to a position is binding on the Board.

(8) Where no one is entitled to appeal under this section against a proposed appointment, or no one has been successful with an appeal before the Board, the selected member of the police force may be appointed to the relevant position.

(9) Where the Board has made a declaration under subsection (5), the successful appellant will be appointed to the relevant position.

(10) For the purposes of this section, a decision in which any two members of the Board concur is a decision of the Board.

Promotion appeals—rank of inspector

42. (1) Where a member of the police force has been selected by the Commissioner for nomination for appointment to the rank of inspector, the Commissioner must, by notice published in the *Police Gazette* in accordance with the regulations, give notice of the proposed nomination.

(2) Where such a notice is given, any aggrieved person (being a member of the police force) who is eligible for appointment to the rank of inspector may appeal to the Promotion Appeal Board against the proposed nomination.

(3) An appeal is instituted by lodging a notice of appeal under the regulations with the Secretary to the Board within the prescribed period.

(4) The Board may in an appropriate case extend the period for the institution of an appeal under this section.

(5) Where on an appeal the Board is satisfied that the appellant should have been selected for nomination in preference to the member of the police force who was selected, the Board may make a declaration to that effect and quash the selection.

(6) For the purposes of this section—

(a) a person is not eligible for appointment to the rank of inspector if the person does not have qualifications determined by the Commissioner to be essential in respect of the rank;

and

(b) a determination of the Commissioner that specific qualifications, experience or other attributes are essential or desirable for appointment to the rank of inspector is binding on the Board.

(7) Where no one is entitled to appeal under this section against a proposed nomination, or no one has been successful with an appeal before the Board, the selected member of the police force may be nominated for appointment to the rank of inspector.

(8) Where the Board has made a declaration under subsection (5), the successful appellant will be nominated for appointment to the rank of inspector.

(9) For the purposes of this section, a decision in which any two members of the Board concur is a decision of the Board.

PART VI
MISCELLANEOUS PROVISIONS

Protection from liability for members of the police force

51a. (1) A member of the police force does not incur any civil liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of any powers, functions, duties or responsibilities conferred or imposed by any provision of this or any other Act (whenever enacted) or by law.

(2) A liability that would, but for subsection (1), lie against a member of the police force lies against the Crown.

Summary offences

52. An offence against this Act is a summary offence.

Delegation

53. (1) The Commissioner may, by instrument in writing, delegate any of the powers or functions conferred on, or assigned to, the Commissioner by or under this or any other Act—

(a) to a particular person;

or

(b) to the person for the time being occupying a particular position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be sub-delegated.

(3) A delegation or sub-delegation under this section—

(a) may be absolute or conditional;

(b) does not derogate from the power of the delegator to act personally in any matter;

and

(c) is revocable at will by the delegator.

(4) A copy of every instrument of delegation issued by the Commissioner under this section must be retained as part of the records of the police force.

* * * * *

SCHEDULE

THE POLICE APPEAL BOARD AND THE PROMOTION APPEAL BOARD

Interpretation

1. In this schedule—

“the Police Association” means the Police Association of South Australia.

Constitution of Boards

2. (1) There will be—

(a) a Police Appeal Board;

and

(b) a Promotion Appeal Board.

(2) The Police Appeal Board will for the purposes of particular proceedings consist of—

(a) a District Court Judge selected by the Senior Judge (who will preside at those proceedings);

(b) a person appointed by the Commissioner;

and

(c) a member of the police force selected from a panel of five nominated by the Police Association.

(3) The Promotion Appeal Board will for the purposes of particular proceedings consist of—

(a) a person appointed by the Minister (who will preside at those proceedings);

(b) a person appointed by the Commissioner;

and

(c) a member of the police force selected from a panel of five nominated by the Police Association.

(4) The Minister may from time to time invite the Police Association to nominate members of the police force to the panels referred to in subsections (2)(c) and (3)(c).

(5) If the Police Association fails to make nominations in response to an invitation under this section within a reasonable time allowed in the invitation, the Minister may choose members of the police force in lieu of nominees of the Police Association and any members so chosen will be taken to have been nominated to the relevant panel.

(6) The member of a panel who is to be on a Board for particular proceedings will be selected for the purposes of those proceedings—

(a) by the appellant;

or

(b) if there are two or more appellants and they do not agree on the selection of a particular person—by the person who is to preside at those proceedings.

Term of office, acting appointments, etc.

3. (1) A person appointed to a Board (either by the Minister or the Commissioner) holds office until the thirtieth day of June in the second year after his or her appointment (and on the expiration of a term of office is eligible for reappointment).

(2) A person nominated to a panel remains on that panel until the thirtieth day of June in the second year after his or her nomination (and on the expiration of a term of office is eligible for renomination).

(3) A member of a Board (including a member of a panel)—

(a) may resign by written notice addressed to the Minister;

(b) may be removed from office by the Governor on the ground of misconduct, neglect of duty, incompetence, or physical or mental incapacity to carry out official duties.

(4) In addition to subsection (3), a person ceases to be a member of a panel if that person ceases to be a member of the police force.

(5) If for any reason the member of the Promotion Appeal Board appointed by the Minister is unable to act, the Minister may appoint another person to be an acting member of the Board during the period of inability.

(6) If for any reason the member of a Board appointed by the Commissioner is unable to act, the Commissioner may appoint another person to be an acting member of the Board during the period of inability.

Members of the police force not subject to direction

4. A member of a Board who is a member of the police force is not subject to direction as a member of the police force in respect of the performance of duties as a member of the Board.

Secretary to the Boards

5. The Minister will appoint a Secretary to the Boards.

Proceedings before a Board

6. (1) A Board must in relation to any proceedings before the Board give the Commissioner and the appellant (the "parties" to the proceedings) reasonable notice of the time and place at which the proceedings are to be heard and must afford them a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.

(2) Subject to subsection (3), a party to proceedings before a Board is entitled to appear personally, or by representative, in those proceedings.

(3) A party is not entitled to be represented by a legal practitioner except in proceedings before the Police Appeal Board.

(4) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Board may proceed in the absence of that party.

(5) In its proceedings under this Act, a Board—

(a) will act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;

and

(b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(6) A Board must keep a record of any evidence taken during proceedings on an appeal.

(7) A Board may decline to hear or determine any proceedings that appear to be trivial, frivolous or vexatious.

Powers of a Board

7. (1) A Board may, for the purposes of its proceedings—

(a) by summons signed on behalf of the Board by a member of the Board, or the Secretary to the Board, require the attendance before the Board of any person;

(b) by summons signed on behalf of the Board by a member of the Board, or the Secretary to the Board, require the production of any document, object or material;

(c) require any person to make an oath or affirmation truly to answer all questions put by the Board, or any person appearing before the Board;

and

(d) require any person appearing before the Board to answer any relevant questions put by any member of the Board or by any other person appearing before the Board.

(2) Subject to subsection (3), if any person—

(a) who has been served with a summons to attend before the Board, fails without reasonable excuse to attend in obedience to the summons;

(b) who has been served with a summons to produce any document, object or material, fails without reasonable excuse to comply with the summons;

(c) misbehaves before the Board, wilfully insults the Board or any member of the Board, or interrupts the proceedings of the Board;

or

(d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

that person is guilty of an offence and liable to a penalty not exceeding a division 7 fine.

(3) A person is not obliged to answer a question under this section if the answer to that question would tend to incriminate that person of an offence, or to produce any document, object or material if it or its contents would tend to incriminate that person of an offence.

Regulations

8. The Governor may make regulations with respect to the manner in which an appeal to a Board is to be commenced and the practice and procedure of the Board on the appeal.

APPENDIX 1

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 8 of The Public General Acts of South Australia 1837-1975 at page 495.

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 August 1989. A schedule of these alterations was laid before Parliament on 3 August 1989.

The *Police Regulation Act Amendment Act, 1989*, provided for a transitional provision: see s. 20. This provision expired on 1 November 1990: see *Gaz.* 1 November 1990, p. 1338.

Long title:	amended by 36, 1989, s. 21 (Sched.)
Section 1:	substituted by 36, 1989, s. 3
Section 2:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 4:	amended by 103, 1978, s. 2; substituted by 11, 1981, s. 3 definition of "the Police Appeal Board" inserted by 36, 1989, s. 4(a) definition of "the Promotion Appeal Board" inserted by 36, 1989, s. 4(b) repealed by 36, 1989, s. 21 (Sched.)
Section 5:	amended by 36, 1989, s. 21 (Sched.)
Section 7(1):	substituted by 36, 1989, s. 21 (Sched.); repealed by 39, 1990, Sched. 4
Section 7(2):	amended by 59, 1985, s. 16(a); 36, 1989, s. 21 (Sched.); 18, 1990, s. 18
Section 8(1):	repealed by 59, 1985, s. 16(b)
Section 8(2):	substituted by 36, 1989, s. 21 (Sched.)
Section 8(3):	amended by 36, 1989, s. 21 (Sched.)
Section 9(1) - (3):	inserted by 59, 1985, s. 16(c); amended by 36, 1989, s. 21 (Sched.); 18, 1990, s. 19
Section 9(4):	amended by 36, 1989, s. 21 (Sched.)
Section 9a(1):	substituted by 36, 1989, s. 21 (Sched.); repealed by 39, 1990, Sched. 4
Section 9a(2):	inserted by 103, 1978, s. 3
Section 9b:	amended by 36, 1989, s. 21 (Sched.)
Section 9b(2) and (3):	inserted by 11, 1981, s. 4; amended by 36, 1989, s. 21 (Sched.)
Section 9c:	substituted by 36, 1989, s. 5
Section 10:	substituted by 36, 1989, s. 6
Section 11:	inserted by 39, 1990, Sched. 4
Section 11aa:	inserted by 11, 1981, s. 5
Section 11a:	amended by 36, 1989, s. 21 (Sched.)
Section 11a(1) - (3):	repealed by 36, 1989, s. 21 (Sched.)
Section 11a(4):	substituted by 36, 1989, s. 21 (Sched.)
Section 12(2) and (3):	amended by 36, 1989, s. 21 (Sched.)
Section 12(4) and (5):	substituted by 11, 1981, s. 6
Section 13:	amended by 36, 1989, s. 21 (Sched.)
Section 13(1) and (2):	substituted by 36, 1989, s. 21 (Sched.)
Section 13(3):	amended by 36, 1989, s. 21 (Sched.)
Section 13(4):	repealed by 36, 1989, s. 21 (Sched.)
Section 13(5):	repealed by 36, 1989, s. 7
Section 14:	amended by 11, 1981, s. 7; 36, 1989, s. 21 (Sched.)
Section 15(1):	amended by 36, 1989, s. 21 (Sched.)
Section 15(2):	amended by 103, 1978, s. 4; substituted by 36, 1989, s. 8
Section 16:	substituted by 36, 1989, s. 9
Section 17(1):	amended by 36, 1989, s. 21 (Sched.)
Section 17(2):	substituted by 36, 1989, s. 10
Section 18:	amended by 11, 1981, s. 8(a), (b); 36, 1989, s. 11; substituted by 36, 1989, s. 21 (Sched.)
Section 19(1):	amended by 11, 1981, s. 8(c); substituted by 36, 1989, s. 21 (Sched.)
Section 19(2):	inserted by 11, 1981, s. 9
Section 19a:	amended by 36, 1989, ss. 12, 21 (Sched.)
Section 19a(1):	inserted by 39, 1990, Sched. 4
Section 19a(1a):	amended by 36, 1989, s. 21 (Sched.)
Section 19a(2):	inserted by 11, 1981, s. 9; substituted by 36, 1989, s. 13
Section 19b:	amended by 11, 1981, s. 10; 36, 1989, s. 21 (Sched.)
Section 20(1):	amended by 36, 1989, s. 21 (Sched.)
Section 20(2):	amended by 36, 1989, s. 21 (Sched.)
Section 21:	amended by 11, 1981, s. 11; 23, 1985, s. 3; 36, 1989, ss. 14, 21 (Sched.)
Section 22:	repealed by 11, 1981, s. 11(a)
Section 22 paras. (2) and (3):	amended by 11, 1981, s. 12
Section 23(1):	substituted by 36, 1989, s. 21 (Sched.)
Section 23(2):	amended by 36, 1989, s. 21 (Sched.)
Section 23(3):	amended by 36, 1989, s. 21 (Sched.)
Section 24:	inserted by 36, 1989, s. 15
Section 24a:	amended by 36, 1989, s. 21 (Sched.)
Section 25:	amended by 11, 1981, s. 13; 36, 1989, s. 21 (Sched.)
Section 26:	substituted by 11, 1981, s. 14; amended by 36, 1989, s. 21 (Sched.)
Section 27(1) and (2):	inserted by 11, 1981, s. 14
Section 27(2a):	amended by 36, 1989, s. 21 (Sched.)
Section 27(3):	repealed by 11, 1981, s. 15
Section 28:	amended by 11, 1981, s. 16; 36, 1989, s. 21 (Sched.)
Section 29:	amended by 2, 1985, s. 3(a)
Section 30(1):	substituted by 2, 1985, s. 3(b); amended by 36, 1989, s. 21 (Sched.)
Section 30(2):	amended by 2, 1985, s. 4; substituted by 36, 1989, s. 16
Section 31:	substituted by 2, 1985, s. 5
Section 32:	amended by 36, 1989, s. 21 (Sched.)
Section 32(1):	amended by 36, 1989, s. 21 (Sched.)
Sections 33 - 35:	amended by 36, 1989, s. 21 (Sched.)

Section 36:	redesignated as s. 36(1) by 2, 1985, s. 6; amended by 36, 1989, s. 21 (Sched.)
Section 36(2):	inserted by 2, 1985, s. 6
	Part V comprising ss. 37 - 51 and heading amended by 11, 1981, ss. 17-19; 34, 1981, ss. 69-71; 23, 1985, ss. 4, 5; repealed and ss. 37 - 42 and headings substituted by 36, 1989, s. 17
Section 51a:	inserted by 11, 1981, s. 19a; amended by 36, 1989, s. 21 (Sched.)
Section 52:	substituted by 36, 1989, s. 21 (Sched.)
Section 53:	repealed by 11, 1981, s. 20; inserted by 36, 1989, s. 18
Section 54:	amended by 103, 1978, s. 5; repealed by 11, 1981, s. 20
Schedule:	inserted by 36, 1989, s. 19

APPENDIX 2

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

Note: This appendix is provided for convenience of reference only.