

South Australia

Protective Security Act 2007

An Act to make provision for the security of public buildings, places and officials and for the appointment, management and responsibilities of protective security officers; to make related amendments to various other Acts; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Protective Security Act 2007*.

3—Interpretation

In this Act, unless the contrary intention appears—

Code means the Code of Conduct established by regulation under this Act;

Commissioner means the Commissioner of Police;

dangerous object or substance means—

- (a) an explosive, explosive device or incendiary device; or
- (b) a dangerous article, offensive weapon or prohibited weapon, in each case within the meaning of section 21A of the *Summary Offences Act 1953*; or
- (ba) a firearm within the meaning of the *Firearms Act 2015*; or
- (c) a pathogen; or
- (d) any other object or substance that is reasonably capable of being used to jeopardise the security of persons or property;

Police Minister means the Minister administering the *Police Act 1998*;

protected person means a public official, or a public official of a class, determined under this Part to be in need of protective security;

protected place means a place, or a place of a class, determined under this Part to be in need of protective security;

protected vehicle means a vehicle, or a vehicle of a class, determined under this Part to be in need of protective security;

protective security functions means functions performed for protecting the security of protected persons, protected places or protected vehicles;

protective security officer means a person appointed under Part 3 to be a protective security officer (and see also section 15 where **protective security officer** is defined for the purposes of Part 4 to include a police officer);

public area means an area (for example, a public road, footpath or forecourt) to which members of the public ordinarily have free access;

public authority means—

- (a) the Crown; or
- (b) a Minister of the Crown; or
- (c) an agency or instrumentality of the Crown;

public building includes a public monument or structure;

public official includes an official or dignitary from a place other than this State;

Tribunal means the Protective Security Officers Disciplinary Tribunal established under Part 5A;

vehicle means anything designed to transport a person or goods by road, rail, air or water.

4—Determination of protected persons, places or vehicles

- (1) The Minister may, for the purposes of protecting the security of public officials, public buildings or public infrastructure, make any of the following determinations:
 - (a) determine that specified public officials, or public officials of a specified class, are in need of protective security;
 - (b) determine that specified places, or places of a specified class, (whether or not public buildings or public infrastructure) are in need of protective security;
 - (c) determine that specified vehicles, or vehicles of a specified class, are in need of protective security.
- (2) A determination under this section—
 - (a) must be made by instrument in writing; and
 - (b) takes effect from the date specified in the instrument and continues until the expiry date (if any) specified in the instrument or the making of a further determination under this section that revokes or replaces the determination.
- (3) If a determination under subsection (1)(b) relates (in whole or in part) to a public area, the Minister must cause the area to be enclosed by barriers or signposted as a protective security area (but a failure to comply with this subsection does not affect the operation of the determination).
- (4) A determination under subsection (1)(b) may not relate (in whole or in part) to a place that is owned by a person other than a public authority and is not a public area without the consent of that person.

Part 2—Commissioner's responsibilities

5—Commissioner responsible for control and management of protective security officers

Subject to this Act and any written directions of the Police Minister, the Commissioner is responsible for the control and management of protective security officers.

6—Exclusion of directions in relation to employment of particular persons

No Ministerial direction may be given to the Commissioner in relation to the appointment, conditions of appointment or continued employment of a particular person.

7—Directions to Commissioner to be gazetted and laid before Parliament

The Police Minister must cause a copy of any direction given to the Commissioner to be—

- (a) published in the Gazette within 8 days of the date of the direction; and
- (b) laid before each House of Parliament within 6 sitting days of the date of the direction if Parliament is then in session, or, if not, within 6 sitting days after the commencement of the next session of Parliament.

8—General management aims and standards

The Commissioner must ensure that the same practices are followed in relation to the management of protective security officers as are required to be followed in relation to SA Police under section 10 of the *Police Act 1998*.

9—Orders

- (1) The Commissioner may make or give general or special orders, not inconsistent with this Act, for the control and management of protective security officers.
- (2) The orders may make provision concerning—
 - (a) the various duties to be performed; and
 - (b) the manner in which and the time and place at which the various duties are to be performed and any other matters relating to their performance; and
 - (c) the requirements or qualifications for appointment or promotion; and
 - (d) other matters that the Commissioner considers relevant to the control and management of protective security officers.
- (3) The general or special orders of the Commissioner—
 - (a) may be varied or revoked by the Commissioner; and
 - (b) will not be taken to be a form of subordinate legislation to which the *Subordinate Legislation Act 1978* applies.
- (4) The power of the Commissioner to give binding orders or directions is not restricted by the provision for the making of general or special orders or the contents of any general or special orders.

Part 3—Appointment and general responsibilities of protective security officers

10—Appointment of protective security officers

The Commissioner may appoint as many protective security officers as the Commissioner thinks necessary for the purposes of the performance of protective security functions and any other purposes.

11—Commissioner may determine structure of ranks

The Commissioner may determine a structure of ranks that will apply to protective security officers.

12—Oath or affirmation by protective security officers

A person's appointment as a protective security officer is rendered void if the person does not on appointment make an oath or affirmation in the form prescribed by regulation.

13—Conditions of appointment

- (1) The conditions of appointment of a protective security officer may be determined by the Commissioner.

- (2) A determination by the Commissioner must provide for the payment of remuneration, allowances and expenses in accordance with a specified scale.
- (3) A determination under this section may relate to protective security officers generally, a class of protective security officers or a particular protective security officer.

14—Duties and limitations on powers

- (1) A protective security officer has any duties imposed by the Commissioner.
- (2) The Commissioner—
 - (a) may impose a limitation on the duties or powers of a protective security officer by—
 - (i) the instrument of appointment of the officer; or
 - (ii) notice in writing to the officer; and
 - (b) may vary or revoke such a limitation by notice in writing to the officer.
- (3) A limitation under this section may entirely exclude the exercise by a protective security officer of powers under Part 4.
- (4) Limitations imposed under this section may vary from 1 protective security officer to another.

Part 4—Powers of protective security officers

Division 1—Interpretation

15—Interpretation

- (1) For the purposes of this Part—
 - (a) a reference to a *protective security officer* includes a reference to a police officer; and
 - (b) a reference to a person's *possessions* includes a reference to anything that is, or has been, in the possession of the person, and any vehicle that is being, or has been, driven by the person or is, or has been, apparently in the person's charge; and
 - (c) a power to remove or detain a person or hand a person over into the custody of a police officer extends to the person's possessions.
- (2) For the purposes of this Part, if a protective security officer observes (whether directly or by means of a surveillance device), or receives a report of, a person apparently abandoning in, or within the precincts or vicinity of, a protected place, protected person or protected vehicle a dangerous object or substance, or anything that appears to be or might contain a dangerous object or substance, the protective security officer will be taken to have reasonable grounds to suspect that the person has committed, is committing, or is about to commit, an offence.
- (3) This Part does not limit or derogate from the powers of a police officer under any other Act or law.
- (4) Subsection (2) does not limit the circumstances in which a protective security officer will have reasonable grounds for a suspicion referred to in that subsection.

Division 2—Power to give directions etc

16—Powers relating to security of protected person

- (1) A protective security officer may give a person within the vicinity of a protected person reasonable directions for the purposes of maintaining or restoring the security of the protected person.
- (2) If—
 - (a) a person refuses or fails to comply with a direction given by a protective security officer under subsection (1); or
 - (b) a protective security officer suspects on reasonable grounds that a person has committed, is committing, or is about to commit, an offence within the vicinity of a protected person,the officer may do 1 or more of the following:
 - (c) direct the person to provide—
 - (i) the person's name and address; and
 - (ii) evidence of his or her identity;
 - (d) cause the person to be removed to some place away from the protected person;
 - (e) cause the person to be detained and handed over into the custody of a police officer as soon as reasonably practicable.
- (3) Reasonable force may be used for the purpose of taking action under subsection (2)(d) or (e).

17—Powers relating to security of protected place

- (1) A protective security officer may give a person in or within the precincts of a protected place reasonable directions for the purposes of maintaining or restoring security or orderly conduct at the place or securing the safety of any person arriving at, in, or departing from, the place.
- (2) Without limiting subsection (1), a protective security officer may, for purposes referred to in that subsection, direct a person in or about to enter a protected place—
 - (a) to provide—
 - (i) the person's name and address; and
 - (ii) evidence of his or her identity; and
 - (iii) the reason for the person's being in or about to enter the place; and
 - (b) —
 - (i) if there are reasonable grounds for suspecting that a dangerous object or substance is in the possession of the person—
 - (A) to produce the object or substance for inspection; and

- (B) to submit to a physical search of the person and his or her possessions for the presence of any dangerous object or substance; and
 - (C) to do anything reasonably necessary for the purposes of the search under this subsection; or
 - (ii) in any other case—
 - (A) to submit to a search of the person and his or her possessions for the presence of any dangerous object or substance by means of a scanning device; and
 - (B) to allow the person's possessions to be searched for the presence of any dangerous object or substance by a physical search; and
 - (C) to do anything reasonably necessary for the purposes of a search under this subsection.
- (3) The following provisions apply to a search of a person by means of a scanning device carried out under subsection (2):
 - (a) the search must be conducted by use of an electronic or mechanical scanning device designed to be used without coming into contact with the body of the person the subject of the search;
 - (b) without limiting the directions that may be given as reasonably necessary for the purposes of the search, the person may be directed—
 - (i) to remove all objects and substances from the person's pockets or clothing; or
 - (ii) to remove a belt, footwear, headwear, jewellery or other similar item that might trigger the warning signal of the scanning device; or
 - (iii) to adopt certain postures;
 - (c) the person cannot be directed to remove other clothing or to open his or her mouth and nothing may be introduced into an orifice of the person's body;
 - (d) the search must be carried out expeditiously and in a manner that avoids undue humiliation of the person and, as far as reasonably practicable, avoids offending cultural values or religious beliefs genuinely held by the person.
- (4) The following provisions apply to a search of possessions by means of a scanning device, or by a physical search, carried out under subsection (2):
 - (a) without limiting the directions that may be given as reasonably necessary for the purposes of the search, the person may be directed—
 - (i) to hand over his or her possessions or control of them to the protective security officer; or
 - (ii) to open them or any part of them or to allow them or any part of them to be opened;
 - (b) the search must be carried out expeditiously.

- (5) The following provisions apply to a physical search of a person carried out under subsection (2):
- (a) without limiting the directions that may be given as reasonably necessary for the purposes of the search, the person may be directed—
 - (i) to remove all objects and substances from the person's pockets or clothing; or
 - (ii) to open his or her mouth; or
 - (iii) to adopt certain postures; or
 - (iv) to remove outer clothing including footwear and headwear; or
 - (v) to submit to being frisked;
 - (b) except in circumstances where it is not practicable—
 - (i) at least 2 persons (apart from the person being searched) must be present at all times during the search; and
 - (ii) the search of the person must be carried out by a protective security officer of the same sex as the person;
 - (c) the person cannot be directed to remove inner clothing or underwear and nothing may be introduced into an orifice (including the mouth) of the person's body;
 - (d) the search must be carried out expeditiously and in a manner that avoids undue humiliation of the person and, as far as reasonably practicable, avoids offending cultural values or religious beliefs genuinely held by the person.
- (6) If—
- (a) a person refuses or fails to comply with a direction given by a protective security officer under this section; or
 - (b) a protective security officer suspects on reasonable grounds that a person has committed, is committing, or is about to commit, an offence in or within the precincts of a protected place,
- the officer may do 1 or more of the following:
- (c) refuse the person entry to the protected place;
 - (d) cause the person to be removed from the protected place;
 - (e) direct the person not to return to the protected place within a specified period (which may not be longer than 24 hours after being given such a direction);
 - (f) cause the person to be detained and handed over into the custody of a police officer as soon as reasonably practicable.
- (7) Subsection (6) does not limit the circumstances in which a protective security officer may refuse entry to a protected place.
- (8) Reasonable force may be used for the purpose of taking action under subsection (6).
- (9) Refusal or failure of a person to comply with a direction given under subsection (2)(b)(ii) does not of itself constitute grounds for suspecting that there is a dangerous object or substance in the possession of the person.

18—Dealing with dangerous objects and substances etc

- (1) If a protective security officer finds in the possession of a person in or about to enter a protected place—
- (a) a dangerous object or substance; or
 - (b) an object or substance that the officer believes on reasonable grounds to be a dangerous object or substance; or
 - (c) an object or substance that the officer believes on reasonable grounds to be in the unlawful possession of the person,

the officer may do 1 or more of the following:

- (d) refuse the person entry to, or remove the person from, the protected place;
 - (e) direct the person to surrender the object or substance;
 - (f) if the person is in possession of an object or substance referred to in paragraph (c), or fails or refuses to comply with a direction under paragraph (e)—cause the person and the object or substance to be detained and handed over into the custody of a police officer as soon as reasonably practicable.
- (2) Reasonable force may be used for the purpose of taking action under subsection (1).

19—Powers relating to security of protected vehicle

- (1) A protective security officer may give a person within the vicinity of a protected vehicle reasonable directions for the purposes of maintaining or restoring security or orderly conduct at the vehicle or securing the safety of any person about to enter, in, or getting out of, the vehicle.

- (2) If—

- (a) a person refuses or fails to comply with a direction given by a protective security officer under subsection (1); or
- (b) a protective security officer suspects on reasonable grounds that a person has committed, is committing, or is about to commit, an offence in or within the vicinity of a protected vehicle,

the officer may do 1 or more of the following:

- (c) direct the person to provide—
 - (i) the person's name and address; and
 - (ii) evidence of his or her identity;
 - (d) cause the person to be removed to some place away from the protected vehicle;
 - (e) cause the person to be detained and handed over into the custody of a police officer as soon as reasonably practicable.
- (3) Reasonable force may be used for the purpose of taking action under subsection (2)(d) or (e).

20—Power to search persons detained by protective security officers

- (1) If a person is being detained by a protective security officer under this Part, the person and the person's possessions may, before being handed over into the custody of a police officer, be searched by a protective security officer in accordance with this section.
- (2) The following provisions apply to a search under this section:
 - (a) the protective security officer carrying out the search may—
 - (i) use reasonable force for the purpose; and
 - (ii) be assisted by another person;
 - (b) in searching the person (as opposed to the person's possessions)—
 - (i) all objects and substances may be removed from the person's pockets or clothing; and
 - (ii) the person's outer clothing, including footwear and headwear, may be removed; and
 - (iii) the person may be frisked; and
 - (iv) except in circumstances where it is not practicable, at least 2 persons (apart from the person being searched) must be present at all times and the person carrying out the search must be of the same sex as the person being searched; and
 - (v) nothing may be introduced into an orifice (including the mouth) of the person's body;
 - (c) any object or substance found as a result of the search may be removed from the person and detained and handed over into the custody of the police officer as soon as reasonably practicable.

21—Withdrawal of directions

Nothing prevents a protective security officer from withdrawing a direction given to a person under this Part (whether by that protective security officer or some other protective security officer).

Division 3—Offences

22—Offences

- (1) A person who refuses or fails to comply with a direction of a protective security officer given under this Part is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) A person who hinders, obstructs or resists a protective security officer in the performance or exercise of powers conferred by this or any other Act is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.

- (3) A person who, in response to a direction under this Part, provides false information or false evidence of identity to a protective security officer is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (4) If a person commits an offence under subsection (2) or (3), a protective security officer may cause the person to be detained and handed over into the custody of a police officer as soon as reasonably practicable.
- (5) Reasonable force may be used for the purpose of taking action under subsection (4).

Part 5—Misconduct and discipline of protective security officers

23—Code of conduct

- (1) The Governor may, by regulation, establish a Code of Conduct for the maintenance of professional standards by protective security officers.
- (2) The Code may make provision concerning—
 - (a) the performance of duties; and
 - (b) corrupt, improper or discreditable behaviour (including criminal conduct under foreign law); and
 - (c) conduct towards police officers and other protective security officers; and
 - (d) standards of personal behaviour or dress; and
 - (e) relations with the public or particular groups or organisations; and
 - (f) the use of official information or resources; and
 - (g) public comment; and
 - (h) other matters that the Governor considers relevant to the maintenance of professional standards.

24—Report and investigation of breach of Code

- (1) A protective security officer or police officer who becomes aware of circumstances in which it is reasonable to suspect the commission of a breach of the Code must report the matter to the Commissioner or as directed by the Commissioner.
- (2) If the Commissioner suspects that a protective security officer has committed a breach of the Code, the Commissioner may cause the matter to be investigated.

25—Charge for breach of Code

- (1) The Commissioner may, in accordance with the procedures prescribed by regulation, charge a protective security officer with a breach of the Code.
- (2) A person charged may, within the period and in the manner prescribed by regulation, admit or deny the charge.
- (3) If a charge is not admitted, the charge must be heard and determined by the Tribunal in accordance with this Act.

26—Punishment for offence or breach of Code

If a protective security officer—

- (a) is found guilty of an offence under a law of this State, the Commonwealth or another State or a Territory of the Commonwealth; or
 - (b) admits in accordance with this Act a breach of the Code with which he or she has been charged; or
 - (c) is found guilty of a breach of the Code in proceedings before the Tribunal,
- the Commissioner may take action, or order the taking of action, of 1 or more of the following kinds in relation to the officer:
- (d) termination of the officer's appointment;
 - (e) suspension of the officer's appointment for a specified period;
 - (f) reduction of the officer's remuneration by a specified amount for a specified period (but not so that the total amount forfeited exceeds the amount prescribed by regulation);
 - (g) transfer of the officer to another position (whether with or without a reduction in rank, seniority or remuneration);
 - (h) reduction in the officer's seniority;
 - (i) imposition of a fine not exceeding the amount prescribed by regulation;
 - (j) a reprimand;
 - (k) an unrecorded reprimand;
 - (l) counselling;
 - (m) education or training;
 - (n) action of any other kind prescribed by regulation.

27—Suspension where protective security officer charged

- (1) If a protective security officer is charged with an offence (whether under the law of this State, the Commonwealth or another State or a Territory of the Commonwealth) or a breach of the Code, the Commissioner may suspend the officer's appointment.
- (2) The Commissioner may, if the Commissioner considers it appropriate to do so in the circumstances, suspend the protective security officer's appointment after deciding that the officer be charged but before the charge is actually laid.
- (3) A suspension under subsection (2) is to be taken to have been revoked by the Commissioner if the charge is not laid within 24 hours (excluding a Saturday, Sunday or a public holiday falling on a Monday or Friday).
- (4) A suspension under this section must be revoked by the Commissioner if—
 - (a) the protective security officer is found not guilty of the offence or breach charged or the charge is dismissed, lapses or is withdrawn; and
 - (b) the protective security officer does not stand charged of any other offence or breach.

- (5) If the suspension under this section of a protective security officer's appointment is revoked by the Commissioner, the officer is entitled to any remuneration or accrual of rights withheld in consequence of the suspension and the period of the suspension will count as service.

28—Management resolution of minor breaches of Code

- (1) The Commissioner may determine that a suspected breach of the Code is to be dealt with under this section.
- (1a) However, the following kinds of breaches of the Code must not be dealt with under this section:
- (a) a breach that, if proved, would be likely to result in—
 - (i) termination of the officer's appointment; or
 - (ii) suspension of the officer's appointment for a specified period; or
 - (iii) reduction of the officer's rank, seniority or remuneration;
 - (b) any other breach of a kind prescribed by the regulations for the purposes of this paragraph.
- (1b) If the Commissioner makes a determination under subsection (1), he or she must refer the matter to a person determined in accordance with the orders and directions of the Commissioner (the *resolution officer*) for management resolution under this section.
- (2) The resolution officer—
- (a) must cause the matter to be inquired into (subject to this Act and any orders or directions of the Commissioner); and
 - (b) must determine, or cause a determination to be made, on the balance of probabilities, whether the subject matter of the inquiry involves a breach of the Code by the protective security officer concerned; and
 - (c) must ensure that the protective security officer concerned is afforded an opportunity—
 - (i) to admit any breach of the Code that he or she is alleged to have committed; and
 - (ii) if such a breach is not admitted, to make submissions either orally or in writing in relation to the alleged breach; and
 - (d) if the breach is admitted or is found to have been committed, may, subject to any order or directions of the Commissioner, determine that action be taken under subsection (3) in relation to the protective security officer concerned; and
 - (e) must ensure that a written report of the results of the inquiry and any action that it has been determined should be taken in relation to the protective security officer concerned is prepared and delivered to the Commissioner; and
 - (f) must ensure that particulars of the results of the inquiry and the action (if any) that it has been determined should be taken in relation to the protective security officer concerned are furnished to the officer.

- (2a) The resolution officer is to perform his or her functions under this section as expeditiously as possible and without undue formality.
- (3) Action of 1 or more of the following kinds may, subject to any orders or directions of the Commissioner, be taken in relation to a protective security officer for a breach of the Code that the officer has admitted, or been found to have committed, under this section:
 - (a) transfer of the officer for not more than 4 months to another position (not involving a reduction in rank or seniority or, without the officer's consent, relocation to a place beyond reasonable commuting distance from the officer's current place of employment);
 - (b) recorded or unrecorded advice;
 - (c) counselling;
 - (d) education or training.
- (4) No information obtained in relation to the subject matter of an inquiry under this section during the inquiry may be used in proceedings in respect of a breach of the Code before the Tribunal unless the proceedings are against a protective security officer who has allegedly provided false information with the intention of obstructing the inquiry.

29—Review of management resolution

- (1) If a protective security officer is found on an inquiry under section 28 to have committed a breach of the Code, the officer may apply for a review under this section on the ground that he or she did not commit the breach concerned or that there was a serious irregularity in the processes followed in the inquiry.
- (2) If a determination is made on an inquiry under section 28 that action should be taken in relation to the protective security officer concerned for a breach of the Code, the officer may apply for a review under this section on the ground that the action is not warranted by the nature of the breach or in the circumstances of the case.
- (3) An application for review under this section must be made to a person determined under the regulations within the period and in the manner prescribed by the regulations.
- (4) A person to whom an application is made under this section—
 - (a) must, as soon as practicable, conduct a review (subject to this Act and any order or direction of the Commissioner) of the processes followed in the inquiry under section 28, or the finding or determination made on the inquiry, as the case may require; and
 - (b) must afford the applicant an opportunity to make submissions either orally or in writing in support of his or her application; and
 - (c) may, according to the nature of the case—
 - (i) order that a new inquiry be conducted or that the processes involved in the inquiry be recommenced from some specified stage; or
 - (ii) affirm or quash any finding or determination reviewed; or

- (iii) make a determination that should have been made in the first instance; and
- (d) must ensure that a written report of the results of the review is prepared and delivered to the Commissioner; and
- (e) must ensure that particulars of the results of the review are furnished to the protective security officer concerned.

30—Commissioner to oversee inquiries

- (1) The Commissioner must cause all inquiries under section 28 and related findings and determinations to be monitored and reviewed with a view to maintaining proper and consistent practices.
- (2) The Commissioner may intervene in a particular case if the Commissioner considers it appropriate to do so (whether before or after review of the case under subsection (1) or a review on the application of the protective security officer concerned)—
 - (a) by ordering that a new inquiry be conducted or that the processes involved in the inquiry be recommenced from some specified stage; or
 - (b) by quashing a finding that the protective security officer has committed a breach of the Code; or
 - (c) by making a determination that no action or less severe action be taken in relation to the protective security officer for a breach of the Code.

31—Office for Public Integrity may direct Commissioner etc in relation to handling of breaches of Code

- (1) Without limiting any other power or function of the Office for Public Integrity, the Office for Public Integrity may, in relation to a suspected breach of the Code, give such directions to the Commissioner or a resolution officer as the Office for Public Integrity thinks fit.
- (2) A direction—
 - (a) must be by notice in writing; and
 - (b) may only be given after consultation with the officer in charge of the IIS.
- (3) The Office for Public Integrity may, by notice in writing, vary or revoke a direction.
- (4) The Commissioner must ensure that a direction of the Office for Public Integrity is complied with without undue delay.

Part 5A—Protective Security Officers Disciplinary Tribunal

31A—Constitution of Protective Security Officers Disciplinary Tribunal

- (1) There will be a *Protective Security Officers Disciplinary Tribunal*.
- (2) The Tribunal will be constituted of a magistrate appointed by the Governor.
- (3) The magistrate appointed to constitute the Tribunal will be appointed for such term of office, not exceeding 3 years, as the Governor may determine, and on the expiration of his or her term of office will not be eligible for reappointment.

- (4) The Governor may appoint another magistrate to be the deputy of the magistrate appointed to constitute the Tribunal and the Tribunal will, for any period for which the magistrate appointed to constitute the Tribunal is absent or unavailable, be constituted of that other magistrate.
- (5) The Governor may appoint 3 or more magistrates to a panel and, if at any time the magistrate appointed under subsection (4) is absent or unavailable, the Chief Magistrate may appoint a magistrate from the panel to act in his or her place.

31B—Registrar and deputy registrar

- (1) The registrar and deputy registrar of the Tribunal are to be Public Service employees.
- (2) The positions of registrar and deputy registrar of the Tribunal may be held in conjunction with any other position in the Public Service.
- (3) The registrar and deputy registrar of the Tribunal will have such duties and functions as are prescribed and such other duties and functions as may be directed by the Tribunal.

31C—Proceedings before Tribunal

- (1) The Tribunal must, in relation to any proceedings to be heard by the Tribunal—
 - (a) give the Commissioner and the protective security officer concerned 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 Tribunal; and
 - (b) give the Office for Public Integrity notice of the time and place at which the proceedings are to be heard.
- (2) If a person to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his or her absence.
- (3) The Commissioner may be represented at proceedings by counsel or a police officer.
- (4) A party to proceedings before the Tribunal (other than the Commissioner) is entitled to appear—
 - (a) personally or by counsel; or
 - (b) with the permission of the Tribunal—by some other representative.
- (5) Subject to subsection (6), the proceedings of the Tribunal are to be heard in private.
- (6) The Tribunal must permit a member of the staff of the Office for Public Integrity nominated by the Independent Commissioner Against Corruption to be present at proceedings of the Tribunal and may, in its discretion, permit any other person to be present.
- (7) The Tribunal must, unless of the opinion that to do so would prejudice the orderly conduct of the proceedings, permit a person nominated by the Office for Public Integrity or the Independent Commissioner Against Corruption to be present at proceedings of the Tribunal.

- (8) The Tribunal will in its proceedings—
- (a) be bound by the rules of evidence; and
 - (b) follow, to such extent as it considers appropriate, the practice and procedure of courts of summary jurisdiction hearing charges of summary offences.

31D—Powers of Tribunal

- (1) The Tribunal may—
- (a) by summons signed by the Tribunal or by the registrar or deputy registrar of the Tribunal, require the attendance before the Tribunal of any person; or
 - (b) by summons signed by the Tribunal or by the registrar or deputy registrar of the Tribunal, require the production of any books, documents or other things; or
 - (c) inspect any book, document or thing produced before the Tribunal and retain them for such reasonable period as the Tribunal thinks fit and make copies of any of them or any of their contents; or
 - (d) require any person to make an oath or affirmation that he or she will truly answer all questions put to him or her by the Tribunal, or by any person appearing before the Tribunal, relating to the matter being heard by the Tribunal; or
 - (e) require any person appearing before the Tribunal to answer any relevant questions put to him or her by the Tribunal or by any person appearing before the Tribunal.
- (2) A person who—
- (a) having been served with a summons to attend before the Tribunal, fails without reasonable excuse (proof of which lies on him or her) to do so; or
 - (b) having been served with a summons to produce books, documents or things, fails without reasonable excuse (proof of which lies on him or her) to do so; or
 - (c) misbehaves himself or herself before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,

is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (3) However, a person is not required to produce any books, documents or things, or to answer a question, if to do so might tend to incriminate him or her or, in the case of a protective security officer, to prove that he or she has been guilty of a breach of discipline.
- (4) The Tribunal may, on being satisfied that a person has failed to appear before the Tribunal in obedience to a summons served on him or her under this section, issue a warrant authorising a police officer to arrest the person and bring him or her before the Tribunal.
- (5) In the course of any proceedings, the Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact that it considers proper; or

- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court or tribunal that may be relevant to the proceedings.

31E—Protection of Tribunal, counsel and witnesses

- (1) The person constituting the Tribunal has in that capacity the same protection and immunity as a judge of the Supreme Court.
- (2) Counsel or any other person appearing for a party in proceedings before the Tribunal has the same protection and immunity as counsel appearing for a party in proceedings in the Supreme Court.
- (3) A person appearing before the Tribunal as a witness has the same protection and immunity as a witness in proceedings in the Supreme Court.

31F—Reference of question of law

The Tribunal may refer a question of law for the opinion of the Supreme Court.

31G—Costs

- (1) The Tribunal may make such orders for costs as the Tribunal thinks just and reasonable.
- (2) Where the Tribunal has ordered the payment of costs, the costs are to be recoverable summarily.

31H—Reasons for decision

The Tribunal must, at the request of a party, the Office for Public Integrity or the Independent Commissioner Against Corruption made within 7 days after the Tribunal has made a decision in proceedings, give reasons in writing for the decision.

Part 6—Miscellaneous

32—Identification of protective security officers

- (1) A protective security officer must be issued with an identity card in a form approved by the Commissioner—
 - (a) containing a photograph of the person and the person's name or a unique identification code; and
 - (b) stating that the person is a protective security officer under this Act.
- (2) If a protective security officer is not in official uniform, the officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act or any other Act, produce his or her identity card for inspection by the person.
- (3) If a person in possession of an identity card issued to the person under this section ceases to be a protective security officer, the person must immediately return the identity card to the Commissioner.

Maximum penalty: \$1 250.

33—Duty in or outside State

- (1) A protective security officer is, if so ordered by the Commissioner or by another person with requisite authority, liable to perform duties in any place within or outside the State.
- (2) A protective security officer, while performing duties outside the State, is required to obey orders and is liable for breaches of the Code in the same way as if he or she were performing duties within the State.

34—Suspension or termination of appointment

- (1) The Commissioner may suspend or terminate a person's appointment as a protective security officer if the Commissioner is satisfied after due inquiry that there is proper cause to do so.
- (2) The power to suspend or terminate a person's appointment under this section does not apply in relation to a matter to which Part 5 applies.

35—Revocation of suspension

The Commissioner may at any time revoke the suspension under this Act of a person's appointment.

36—Suspension and determinations relating to remuneration etc

- (1) A power of the Commissioner under this Act to suspend a person's appointment, or to order such a suspension, includes power to determine—
 - (a) whether the person is entitled to remuneration for the period of suspension; and
 - (b) whether the person is entitled to the accrual of specified rights for the period of suspension; and
 - (c) whether the period of suspension counts as service.
- (2) If a person has received remuneration in respect of a period of suspension under this Act and the Commissioner has made a determination that the person is not entitled to remuneration for the period, the Commissioner may recover the remuneration from the person.

37—Suspension of powers

If a person's appointment as a protective security officer is suspended, all powers vested in the person under this Act are suspended for the period of the suspension.

38—Resignation and relinquishment of official duties

- (1) A protective security officer may resign by not less than 14 days notice in writing to the Commissioner (unless notice of a shorter period is accepted by the Commissioner).
- (2) A protective security officer must not relinquish official duties unless the officer—
 - (a) is expressly authorised in writing by the Commissioner to do so; or
 - (b) is incapacitated by physical or mental disability or illness from performing official duties.

Maximum penalty: \$1 250 or imprisonment for 3 months.

39—Duty to deliver up equipment etc

- (1) If a person's appointment as a protective security officer is terminated or suspended, the person must immediately deliver up to the Commissioner, or to a person appointed by the Commissioner to receive property under this section, all property that belongs to the Crown and was supplied to the person for official purposes.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (2) A justice may issue a warrant authorising 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 (and to use reasonable force for the purpose).

40—False statements in applications for appointment

- (1) A person must not make a false statement in connection with an application for appointment under this Act.

Maximum penalty: \$2 500 or 6 months imprisonment.

- (2) In a prosecution for an offence against subsection (1), 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.

- (3) If a person who has contravened subsection (1) is appointed as a protective security officer, the contravention will be taken to constitute a breach of the Code and may be dealt with as such—

- (a) despite the fact that the person was not a protective security officer at the time of the contravention; and
- (b) whether or not the person is prosecuted for an offence against subsection (1).

41—Impersonating officer and unlawful possession of property

- (1) A person who, without lawful excuse—
 - (a) wears what is or appears to be a protective security uniform; or
 - (b) represents himself or herself by word or conduct to be a protective security officer,

is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (2) A person who, without lawful excuse, has possession of a protective security uniform or protective security property is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (3) This section does not prevent a person engaged in a theatrical performance or social entertainment from wearing what appears to be a protective security uniform in the course of, and for the purpose of, the performance or entertainment.

- (4) In this section—

protective security property means property supplied, or to be supplied, to a protective security officer for official purposes;

protective security uniform means all or part of the official uniform of a protective security officer.

42—Evidence

- (1) An apparently genuine document purporting to be signed by the Minister certifying that—
 - (a) a specified person was, at a specified time, a protected person; or
 - (b) a specified place was, at a specified time, a protected place; or
 - (c) a specified vehicle was, at a specified time, a protected vehicle,will be accepted as proof, in the absence of proof to the contrary, of the matter so certified.
- (2) An apparently genuine document purporting to be signed by the Commissioner certifying that a specified person was, at a specified time, a protective security officer with specified powers under this Act will be accepted as proof, in the absence of proof to the contrary, of the matter so certified.

43—Annual reports by Commissioner

- (1) The Commissioner must, on or before 30 September in each year, deliver to the Minister a report on protective security officers and their operations during the period of 12 months that ended on the preceding 30 June.
- (2) The Commissioner must include in the report any information required under the regulations or by the Minister.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days after his or her receipt of the report.

44—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) A regulation—
 - (a) may be of general or limited application and may vary in operation according to factors stated in the regulation; and
 - (b) may leave a matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or the Commissioner, either generally or in a particular case or class of cases; and
 - (c) may impose a penalty not exceeding \$2 500 for contravention of, or non-compliance with, the regulation.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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.

Repeal of Act

The *Protective Security Act 2007* will be repealed by s 55 of the *Statutes Amendment and Repeal (Budget Measures) Act 2021*.

Legislation amended by principal Act

The *Protective Security Act 2007* amended the following:

Police (Complaints and Disciplinary Proceedings) Act 1985

Public Sector (Honesty and Accountability) Act 1995

Security and Investigation Agents Act 1995

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2007	25	<i>Protective Security Act 2007</i>	26.7.2007	28.4.2008 (<i>Gazette</i> 3.4.2008 p1183)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 122 (s 278)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320)
2012	20	<i>Summary Offences (Weapons) Amendment Act 2012</i>	24.5.2012	Sch 1 (cl 1)—15.12.2012 (<i>Gazette</i> 15.11.2012 p5009)
2012	52	<i>Independent Commissioner Against Corruption Act 2012</i>	6.12.2012	Sch 3 (cl 67)—20.12.2012 (<i>Gazette</i> 20.12.2012 p5742)
2015	46	<i>Firearms Act 2015</i>	17.12.2015	Sch 1 (cl 17)—1.7.2017 (<i>Gazette</i> 27.6.2017 p2619)
2016	60	<i>Police Complaints and Discipline Act 2016</i>	8.12.2016	Sch 1 (cll 25—32 & 54)—4.9.2017 (<i>Gazette</i> 29.8.2017 p3794)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.2.2010
s 3		
dangerous object or substance	amended by 20/2012 Sch 1 cl 1	15.12.2012
	amended by 46/2015 Sch 1 cl 17	1.7.2017
<i>minor misconduct</i>	<i>deleted by 60/2016 Sch 1 cl 25(1)</i>	4.9.2017
<i>Police Ombudsman</i>	<i>Police Complaints Authority amended to read Police Ombudsman by 52/2012 Sch 3 cl 67</i>	20.12.2012
	<i>deleted by 60/2016 Sch 1 cl 25(2)</i>	4.9.2017
Tribunal	amended by 60/2016 Sch 1 cl 25(3)	4.9.2017
Pt 5		
s 24		
s 24(2)	amended by 52/2012 Sch 3 cl 67	20.12.2012
	amended by 60/2016 Sch 1 cl 26	4.9.2017
s 25		
s 25(3)	amended by 60/2016 Sch 1 cl 27	4.9.2017
s 28		
s 28(1)	substituted by 60/2016 Sch 1 cl 28(1)	4.9.2017
s 28(1a) and (1b)	inserted by 60/2016 Sch 1 cl 28(1)	4.9.2017
s 28(2)	amended by 60/2016 Sch 1 cl 28(2)	4.9.2017
s 28(2a)	inserted by 60/2016 Sch 1 cl 28(3)	4.9.2017
s 29		
s 29(1)	amended by 60/2016 Sch 1 cl 29(1), (2)	4.9.2017
s 29(2)	amended by 60/2016 Sch 1 cl 29(3)	4.9.2017
s 29(4)	amended by 60/2016 Sch 1 cl 29(4)—(6)	4.9.2017
s 29(5)	<i>deleted by 60/2016 Sch 1 cl 29(7)</i>	4.9.2017
s 30		
s 30(1)	amended by 60/2016 Sch 1 cl 30(1)	4.9.2017
s 30(2)	amended by 60/2016 Sch 1 cl 30(2)	4.9.2017
s 31	inserted by 60/2016 Sch 1 cl 31	4.9.2017
Pt 5A	inserted by 60/2016 Sch 1 cl 32	4.9.2017
Pt 6		
s 31	<i>deleted by 84/2009 s 278</i>	1.2.2010
Sch 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.2.2010

Transitional etc provisions associated with Act or amendments

Police Complaints and Discipline Act 2016, Sch 1 Pt 16—Transitional Provisions

54—Complaints, reports and proceedings under *Police (Complaints and Disciplinary Proceedings) Act 1985*

- (1) A complaint or report made under the *Police (Complaints and Disciplinary Proceedings) Act 1985* before the commencement of this clause (being a complaint or report relating to the conduct of a police officer, police cadet or special constable that is not, immediately before the commencement of this clause, the subject of proceedings before the Police Disciplinary Tribunal) will be taken to be a complaint or report under this Act.
- (2) A complaint or report made under the *Police (Complaints and Disciplinary Proceedings) Act 1985* before the commencement of this clause (being a complaint or report relating to the conduct of a protective security officer that is not, immediately before the commencement of this clause, the subject of proceedings before the Protective Security Officers Disciplinary Tribunal) will be taken to be a complaint or report under the *Protective Security Act 2007* (as amended by this Act).
- (3) To avoid doubt, section 16 of the *Acts Interpretation Act 1915* applies in relation to proceedings before the Police Disciplinary Tribunal or the Protective Security Officers Disciplinary Tribunal commenced before the commencement of this clause.

Historical versions

1.2.2010

15.12.2012 (electronic only)

20.12.2012

1.7.2017