

SOUTH AUSTRALIA

POLICE REGULATIONS 1999

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REGULATIONS UNDER THE POLICE ACT 1998

Police Regulations 1999

being

No. 130 of 1999: *Gaz.* 30 June 1999, p. 3312¹

¹ Came into operation 1 July 1999: reg. 2.

2.

**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Police Regulations 1999*.

Commencement

2. These regulations will come into operation on the day on which the *Police Act 1998* comes into operation.

Interpretation

3. In these regulations—

"**approved**" means approved by the Commissioner by general or special order under section 11 of the Act;

"**the Act**" means the *Police Act 1998*;

"**employee**" means a member of S.A. Police or police cadet;

"**employee in the department**" means—

- (a) a member of S.A. Police; or
- (b) a police cadet, police medical officer or special constable; or
- (c) a person employed in or performing duties or functions in the department of the public service of which the Commissioner is Chief Executive, or in relation to which the Commissioner has the powers and functions of Chief Executive, under the *Public Sector Management Act 1995*;

"**the previous regulations**" means—

- (a) the *Police Regulations 1998*; or
- (b) the regulations revoked by the *Police Regulations 1998*; or
- (c) any other regulations previously made and revoked under the *Police Act 1952*;

"**service**" does not include leave without pay unless otherwise ordered by the Commissioner.

PART 2
COMMAND AND STRUCTURE OF S.A. POLICE

Ranks

4. The ranks of officers and other members of S.A. Police in order of seniority (starting with the highest rank) are as follows:

- (a) Commissioner;
- (b) Deputy Commissioner;
- (c) Assistant Commissioner;
- (d) Commander;
- (e) Chief Superintendent;
- (f) Superintendent;
- (g) Chief Inspector;
- (h) Inspector;
- (i) Senior Sergeant;
- (j) Sergeant;
- (k) Senior Constable;
- (l) Constable.

Relative seniority

5. Except as otherwise determined by the Commissioner under section 40 of the Act or as otherwise provided in these regulations, the relative seniority of members of S.A. Police will be determined as follows:

- (a) as between two members holding different ranks, the senior member is the member who holds the higher rank;
- (b) as between two members holding the same rank, the senior member is the member who has been holding the rank continuously for the longer period of time;
- (c) as between two members holding the same rank who have held the rank for the same period of time, the senior member is the member who, by general or special order of the Commissioner, is the senior member.

Responsibility when members are on duty together

6. (1) If two or more members of S.A. Police are engaged on duty together—

- (a) the senior member is responsible for the performance of the duty; and

4.

(b) the junior member, regardless of the part of S.A. Police in which the member is serving, must comply with the orders given by the senior member.

(2) For the purposes of subregulation (1), where a community constable is engaged on duty with a member of S.A. Police who is not a community constable, that other member is the senior and the community constable is the junior.

(3) Despite subregulation (1)—

(a) if the Commissioner by general or special order, or any officer by order, directs that a specified member of S.A. Police is responsible for the performance of a particular duty, the other members of S.A. Police engaged on the duty, whether senior to the specified member or not, must comply with orders given by the member for the performance of the duty; and

(b) if a member of S.A. Police is, in accordance with these regulations, transferred to a position of a lower rank without loss of rank or seniority, the member must comply with the orders of such other members, whether junior to the member or not, as the Commissioner may direct for the performance of the duties of the position.

(4) A direction by an officer under subregulation (3)(a) may only be given in relation to, and is only binding on, a member of S.A. Police who is under the officer's direction and superintendence.

Responsibility of members on duty with other employees in the department

7. If the Commissioner by general or special order directs that a specified employee in the department who is not a member of S.A. Police is responsible for the performance of a particular duty, all members of S.A. Police engaged on that duty must (subject to any general or special order of the Commissioner) comply with the orders given by that person for the performance of that duty.

5.

PART 3
INITIAL APPOINTMENTS

Selection processes for initial appointment

8. (1) An application for initial appointment as an employee or police medical officer must be made in a manner approved by the Commissioner.

(2) Applications for initial appointment as an employee or police medical officer will be assessed, and selections for appointment made, in such manner as may be approved by the Commissioner.

(3) The Commissioner may appoint a selection panel to advise the Commissioner on the suitability, or relative suitability, of applicants.

(4) An applicant must, if required, attend for an interview before such a selection panel.

(5) This regulation does not apply to an appointment to a position in S.A. Police of or above the rank of senior constable.

Appointment to certain ranks for specified term under s. 23

9. Pursuant to section 23(2)(b) of the Act, a person who is not a member of S.A. Police may be appointed under section 23 to a position in S.A. Police of or above the rank of senior constable for a term specified under that section if applications for the position have been called for and an advisory committee formed to consider those applications has determined that there are no suitable applicants.

6.

**PART 4
DUTIES**

Duties of all members of S.A. Police

10. Every member of S.A. Police must use all lawful means in his or her power—

- (a) to uphold the law, preserve the peace, prevent crime and carry out the other functions of S.A. Police; and
- (b) to ensure that all employees under his or her command perform their duties efficiently and in a proper manner.

**PART 5
CODE OF CONDUCT**

Code of conduct

11. (1) For the purposes of section 37 of the Act, the provisions of this Part constitute a Code of Conduct for the maintenance of professional standards by employees.

(2) An employee who contravenes or fails to comply with a provision of this Part (or attempts, aids, abets, counsels or procures such a contravention or failure) is guilty of a breach of the Code.

Honesty and integrity

12. An employee must at all times act with honesty and integrity, whether in the course of his or her employment or otherwise.

Conduct prejudicial to S.A. Police

13. An employee must not, in the course of his or her employment or otherwise, behave in a manner that—

- (a) reflects or is likely to reflect adversely on S.A. Police; or
- (b) is prejudicial to good order and discipline in S.A. Police.

Performance of orders and duties

14. An employee must not, without good and sufficient cause, disobey a lawful order or fail to carry out a lawful order or a duty promptly and diligently.

Negligence

15. An employee must not be negligent in carrying out a lawful order or a duty.

Proper exercise of authority

16. An employee must—

- (a) use only such force as is reasonably necessary in the execution of his or her duties; and
- (b) exercise his or her powers of arrest and search, and any other power or authority conferred on the employee by virtue of his or her employment, reasonably and for a proper purpose.

Conduct towards public, employees in the department

17. An employee, in dealing with members of the public in the course of his or her employment, or in dealing at any time with employees in the department—

- (a) must not unlawfully discriminate against any person; and
- (b) must not behave in an oppressive, offensive, abusive or insulting manner; and
- (c) must be impartial and respectful.

Conflict of interest

18. An employee—

- (a) must not knowingly place himself or herself in a position that creates or is likely to create a conflict of interest with his or her position as an employee; and
- (b) must immediately report any such conflict (or likelihood of conflict) that arises to an officer senior to the employee.

Improperly obtaining benefit or advantage

19. An employee must not improperly obtain or seek to obtain a benefit or advantage for himself or herself or another person from his or her position as an employee.

Confidentiality of information

20. An employee must treat information obtained by S.A. Police (or by the employee by virtue of his or her employment) as confidential and only obtain access to, use or disclose the information in the proper execution of his or her duties.

Responsibility for property

21. An employee must not lose, damage, waste or misuse S.A. Police property or property in the custody of S.A. Police and must do everything within his or her authority to prevent, and report in accordance with general or special orders, the loss, damage, waste or misuse of such property.

Improper complaint

22. An employee must not make a false or frivolous complaint against an employee in the department.

Foreign law

23. An employee must not be found guilty of an offence under foreign law in respect of conduct that would have constituted an offence if it had occurred in this State.

Interpretation of Code

24. In this Code—

"**behave**" includes any form of behaviour, whether by word, conduct or omission;

"**duty**", in relation to an employee, means a duty of the employee under the Act, these regulations or any other Act or law;

"**order**", in relation to an employee, means—

- (a) a general or special order made or given by the Commissioner; or
- (b) an order given by a person with authority under the Act or these regulations to give such an order to the employee.

**PART 6
DISCIPLINE**

Charge for breach of Code

25. (1) A charge against an employee for a breach of the Code must be—

- (a) reduced to writing and signed by the Commissioner;
- (b) forwarded to the registrar of the Police Disciplinary Tribunal.

(2) The registrar of the Police Disciplinary Tribunal must cause a copy of the charge to be served on the alleged offender together with a notice in the form prescribed in schedule 2.

Procedure where breach admitted

26. (1) If the employee charged admits the charge in writing and forwards the admission so as to reach the registrar of the Police Disciplinary Tribunal within 21 days after service of the written charge, the registrar must forward the admission, any written statement or request made by the employee and all other relevant papers to the Commissioner.

(2) On receipt of the admission, the Commissioner must consider any submissions in mitigation made by the employee—

- (a) by written statement attached to the admission;
- (b) if the employee indicated in the admission a desire to appear before the Commissioner, by personal representation to the Commissioner,

before making a decision as to any action to be taken to impose a punishment on the employee.

Procedure where breach not admitted

27. If the employee charged denies the charge or does not admit it in accordance with these regulations within 21 days after service of the written charge, the Police Disciplinary Tribunal must fix a time and place for hearing the charge.

Maximum reduction in remuneration, maximum fines

28. (1) For the purposes of section 40(1)(f) and (i) of the Act—

- (a) if the remuneration of an employee is to be reduced for an offence or breach of the Code, the total amount forfeited by the employee must not exceed the sum of \$1 250;
- (b) if a fine is to be imposed for an offence or breach of the Code, the fine must not exceed the sum of \$1 250.

(2) The Commissioner may, on imposing a fine for an offence or breach of the Code—

- (a) grant time for the payment of the fine or permit it to be paid in instalments;
- (b) deduct the fine from the employee's pay or from any money due to the employee.

**PART 7
TRANSFERS**

Transfer to position of higher rank

29. (1) The Commissioner may, under section 47 of the Act, transfer a member of S.A. Police to a position of a higher rank—

- (a) on such conditions as may be approved by the Commissioner; and
- (b) for a period not exceeding—
 - (i) two years; or
 - (ii) in circumstances of a kind specified or approved by the Minister, three years.

(2) If a member has been transferred to a position of a higher rank as authorised under this regulation, the Commissioner may, under section 47 of the Act, transfer the member to a position of a lower rank in order to return the member to a position of a rank the same as that of his or her original position.

Transfer to position of lower rank arising from restructuring

30. (1) Subject to this regulation, the Commissioner may, under section 47 of the Act, transfer a member of S.A. Police to a position of lower rank if—

- (a) the transfer is in the opinion of the Commissioner necessary for the purposes of the restructuring of a part of S.A. Police; and
- (b) the transfer is made on condition that the member retains his or her existing rank and seniority while occupying the position of a lower rank.

(2) A member transferred as authorised under subregulation (1) may be further transferred to positions of a rank lower than that of his or her original position.

(3) The period or aggregate of the periods for which a transfer or transfers authorised under subregulation (1) or (2) may continue must not exceed two years or such longer period as the Minister may approve in a particular case.

(4) If a member has been transferred to a position of a lower rank as authorised under this regulation, the Commissioner may, under section 47 of the Act, transfer the member to a position of a higher rank in order to return the member to a position of a rank the same as that of his or her original position.

(5) On transferring a member to a position of a lower rank as authorised under this regulation, the Commissioner must give orders as to the performance by the member of the duties of the position and the members whose orders will be binding on the member while in the position.

PART 8
APPOINTMENT TO PROMOTIONAL POSITIONS IN S.A. POLICE

Application of Part

31. Nothing in this Part applies in relation to a transfer under the Act or these regulations from one position in S.A. Police to another.

Notice of requirements or qualifications for appointment

32. Where the Commissioner by general or special order makes provision concerning the requirements or qualifications for appointment to a position of or above the rank of senior constable, he or she must cause notice of the order to be given in the *Police Gazette* as soon as practicable after it is made.

Selection processes

33. (1) This regulation applies to an appointment to a position in S.A. Police of or above the rank of senior constable and of or below the rank of Assistant Commissioner.

(2) The Commissioner must cause the position to be advertised—

(a) by notice in the *Police Gazette* calling for applicants (except in the case of an appointment under section 23 of the Act); and

(b) in such other manner as may be approved by the Commissioner.

(3) The Commissioner may appoint an advisory committee of at least three persons, one of whom may be the Commissioner, to assist in determining the suitability of applicants to fill the position.

(4) If the Commissioner is a member of the committee, the Commissioner will determine, with the advice and assistance of the other members of the committee, which applicant is the most suitable on merit (or, if appropriate, that there is no suitable applicant).

(5) If the Commissioner is not a member of the committee, the committee must determine which applicant is, in the opinion of the committee, the most suitable on merit (or that there is no suitable applicant) and advise the Commissioner in writing accordingly.

(6) An applicant may be required to take part in or submit to an interview, test, medical or psychological assessment, training course or other assessment procedure.

(7) A member of S.A. Police must, at the request of an advisory committee, appear before or produce to the committee any record, document or other information to which the member has access and that the committee needs in connection with its determination.

Period of appointment

34. (1) The Commissioner may, in seeking applicants for a position of or above the rank of senior constable and of or below the rank of Assistant Commissioner, stipulate that an appointment to the position is to be for a specified period or a specified minimum period.

(2) A specified period may be varied at the discretion of the Commissioner.

(3) A specified minimum period may be reduced at the discretion of the Commissioner.

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(4) If a minimum period of appointment is specified in respect of a position, a person appointed to the position is not, except at the discretion of the Commissioner, eligible for appointment to another position in S.A. Police of the same or a lower rank until the minimum period has expired.

**PART 9
GRIEVANCE PROCESS AND REVIEW**

Application for review of informal inquiry

35. (1) If an employee is found on informal inquiry to have committed a breach of the Code, an application by the employee for review under section 43 of the Act must be made to the first officer in the same line of command as the employee, determined in ascending order from the next rank above the employee's rank—

- (a) who was not involved in the informal inquiry or investigations leading up to the informal inquiry; and
- (b) who is on duty during the three weekdays following the day on which the application is delivered to the Commissioner's office in accordance with subregulation (2).

(2) An application for review under section 43 of the Act—

- (a) must be addressed to the "Informal Inquiry Review Officer" and delivered to the Commissioner's office for forwarding to the member determined under subregulation (1); and
- (b) must be in writing in a form approved by the Commissioner; and
- (c) must identify the informal inquiry in respect of which the review is sought; and
- (d) must state the grounds on which the review is sought; and
- (e) must be delivered to the Commissioner's office within seven days after the day on which the particulars of the finding or determination on the inquiry are furnished to the employee.

(3) In this regulation—

"**weekday**" means a day other than a Saturday or a Sunday or other public holiday.

Unsatisfactory performance review panel

36. If it is proposed that action be taken under section 46 of the Act against a member of S.A. Police on the grounds of unsatisfactory performance, the panel of persons required under subsection (5)(c) of that section—

- (a) will consist of three persons appointed by the Commissioner, at least one of whom must be a member of S.A. Police currently employed in a human resource management or development area of S.A. Police; and
- (b) must be chaired by a person specified by the Commissioner; and
- (c) must make its decision by majority vote; and
- (d) must notify its decision to the Commissioner in writing as soon as practicable after the panel is appointed by the Commissioner; and

- (e) subject to this regulation, may determine its own procedures.

Grievance process for s. 47 transfer

37. (1) A member of S.A. Police who is transferred to another position under section 47 of the Act and is aggrieved by the transfer may apply to the Commissioner to have his or her grievance dealt with.

(2) An application under this regulation—

- (a) must be in writing in a form approved by the Commissioner; and
- (b) must identify the transfer giving rise to the grievance; and
- (c) must set out the grounds of the grievance; and
- (d) must be delivered to the Commissioner's office within 14 days after the member is notified in writing of his or her transfer under section 47.

(3) The Commissioner must give written notice to the applicant of the Commissioner's decision on the grievance application.

Grievance process for selection decision

38. (1) A member of S.A. Police who is aggrieved by a selection decision notified in the *Police Gazette* under section 55 of the Act may apply to the Commissioner to have his or her grievance dealt with.

(2) An application under this regulation—

- (a) must be in writing in a form approved by the Commissioner; and
- (b) must identify the decision giving rise to the grievance; and
- (c) must set out the grounds of the grievance; and
- (d) must be delivered to the Commissioner's office within 14 days after the selection decision is notified in the *Police Gazette*.

(3) On an application under this regulation, the Commissioner may—

- (a) confirm the selection decision;
- (b) quash the selection decision;
- (c) order that the selection processes be recommenced from the beginning or some later stage specified by the Commissioner.

(4) The Commissioner must give written notice to the applicant of the Commissioner's decision on the grievance application.

Applications to Police Review Tribunal: time and procedures

39. (1) An application to the Police Review Tribunal under section 48 of the Act by a member (or former member) of S.A. Police for a review of a decision to terminate the member's appointment must be made within 28 days after the member or former member receives written notice of the relevant decision.

(2) An application to the Tribunal under section 52 of the Act by a member of S.A. Police for a review of a decision to transfer the member to another position must be made within 14 days after the member receives written notice of the decision.

(3) An application to the Tribunal under section 55 of the Act by a member of S.A. Police for a review of a selection decision must be made within seven days after the member receives written notice of the decision made on his or her grievance application in respect of the selection decision.

(4) An application to the Tribunal for a review—

(a) must be—

(i) in a form approved by the Secretary to the Tribunal; and

(ii) typewritten or printed; and

(iii) in triplicate; and

(b) must identify the decision to be reviewed; and

(c) must set out the grounds for review; and

(d) must specify the relief sought on review; and

(e) must state whether or not the applicant requires any person to be summoned to appear before the Tribunal, or to produce any document, object or material; and

(f) in the case of an application for review of a selection decision under section 55 of the Act, must be accompanied by a copy of the decision made on the member's grievance application under that section.

(5) An applicant to the Tribunal, or a member of S.A. Police summoned to appear before the Tribunal, must be granted the necessary leave of absence to allow him or her to appear before the Tribunal.

(6) The Tribunal must hear and determine an application for review of a selection decision under section 55 of the Act within 28 days after receipt by the Tribunal of the application.

PART 10
HISTORY OF EMPLOYEES

Duty to keep history

40. (1) The Commissioner must cause a history to be kept of the conduct and service of every employee.

(2) The history of each employee must include the following particulars:

- (a) full name, identification number, personal description, marital status and next of kin;
- (b) educational, trade or professional qualifications gained, and special training completed, before or after joining S.A. Police;
- (c) appointments, promotions and transfers;
- (d) war service, military distinctions and other distinctions;
- (e) entries, as directed by the Commissioner in each case, of meritorious conduct and other matters favourable to the employee;
- (f) punishments imposed by the Commissioner (unless the Commissioner directs the punishment is not to be recorded);
- (g) such particulars of any penalty imposed on the employee in a court of law as the Commissioner directs;
- (h) leave granted or taken;
- (i) any other particulars required by or under the Act or these regulations or directed from time to time by the Commissioner.

(3) The history of each employee must be maintained in the manner and place directed by the Commissioner.

Removal of entry relating to punishment or penalty

41. (1) If—

- (a) there is an entry recording a punishment or penalty in the history of an employee; and
- (b) not less than five years have elapsed since the entry was made; and
- (c) no further entry recording a punishment or penalty has since been made,

the employee may apply to the Commissioner in writing to have the entry, and any previous entry recording a punishment or penalty, removed from the employee's history.

(2) On receipt of such an application the Commissioner—

- (a) may, if he or she thinks fit, order that the entry or any previous such entry be removed; and

- (b) must in any event advise the employee of the Commissioner's response to the application.

Access of employee to history

42. An employee—

- (a) must be given access to his or her history in accordance with procedures approved by the Commissioner; and
- (b) must, on application, be supplied with a copy of the history.

Record of commendation of employee

43. (1) If an employee displays unusual moral or physical courage or shows exceptional tact, skill or ability, the officer in charge of the employee may, if it is considered that the conduct of the employee justifies a commendation being recorded, cause a report giving full particulars to be furnished to the Commissioner.

(2) The Commissioner must, if satisfied (on the basis of that report or such further inquiry as the Commissioner may require) that the conduct of the employee deserves commendation, cause a record to be made in the employee's history.

Certificate of service

44. (1) On ceasing to be employed under the Act an employee will, on application to the Commissioner, be granted a certificate of service showing the employee's rank (or position), period of service and such other information as may be approved by the Commissioner.

(2) A certificate showing the rank (or position) and period of service of a deceased employee will be supplied to the employee's next of kin on request.

(3) The Commissioner may, on application, issue a duplicate certificate of service if satisfied of the loss or destruction of the original certificate.

**PART 11
LEAVE OF ABSENCE**

Interpretation

45. A reference in this Part to an employee, an officer or a member of S.A. Police does not include—

- (a) the Commissioner or Deputy Commissioner; or
- (b) an Assistant Commissioner appointed after the commencement of the *Police (Contract Appointments) Amendment Act 1996* (19 December 1996); or
- (c) a person appointed under section 23 of the Act; or
- (d) a community constable.

Recreation and sick leave for officers

46. An officer is entitled to the rest days and recreation and sick leave that other members of S.A. Police are entitled to under these regulations or the Police Officers' Award.

Special sick leave for war service disabilities

47. (1) The Commissioner may grant a member of S.A. Police who provides evidence that he or she is absent from duty because of a disability accepted by the Commonwealth Repatriation Commission as due to war service special sick leave with pay (not debited against sick leave credits) for a period not exceeding the special sick leave standing to the credit of that member under this regulation.

(2) The special sick leave standing to the credit of a member of S.A. Police absent due to a disability arising from war service is as follows:

- (a) a non-accumulative credit of 45 working days credited on 1 July 1955 or on appointment as a member of S.A. Police (whichever is the later);

plus

- (b) a cumulative credit of 15 working days credited on 1 July 1964, or on appointment as a member of S.A. Police (whichever is the later) and on the anniversary of that date in each succeeding year to a maximum accumulation of 45 working days at any one time under this paragraph,

less the number of working days of leave that have been taken by the officer under this regulation or a corresponding provision of the previous regulations, debited in accordance with subregulation (3).

(3) The special sick leave standing to the credit of a member of S.A. Police under subregulation (2)(b)—

- (a) may only be taken after the special sick leave standing to the member's credit under subregulation (2)(a) has been exhausted; and

- (b) re-accumulates in accordance with subregulation (2)(b) if taken, but not so as to exceed the specified maximum accumulation.

(4) Special sick leave granted under this regulation is in addition to any other leave to which a member of S.A. Police may be entitled.

Compassionate leave

48. (1) The Commissioner may grant leave to an employee on the death within Australia of a person closely related to the employee.

(2) Leave granted under subregulation (1)—

- (a) may only be granted for a period between notification of the death by the employee and the end of the day of the funeral of the person who has died; and
- (b) must be without reduction in pay where the leave granted does not exceed the number of hours ordinarily worked by the employee in three working days.

(3) An employee must, for the purposes of this regulation, provide proof to the satisfaction of the Commissioner of the death of the related person.

(4) For the purposes of this regulation—

"person closely related to the employee" means a person determined by the Commissioner to be closely related (whether by blood, marriage or otherwise) to the employee.

Other special leave

49. (1) The Commissioner may grant special leave to an employee if in the opinion of the Commissioner the grant of the leave is justified by special circumstances.

(2) Special leave under this regulation may be granted—

- (a) on full pay, reduced pay or without pay; and
- (b) on such other conditions,

as the Commissioner thinks fit.

(3) The Commissioner may approve a maximum period for which special leave on full pay may be granted in any financial year and, if such a maximum has been approved, no special leave on full pay may be granted to an employee in a financial year in excess of that maximum.

(4) Despite subregulation (3), the Commissioner may—

- (a) grant special leave on reduced pay for a proportionately longer period than that approved under subregulation (3); or
- (b) grant special leave on full or reduced pay to an employee for a longer period than that approved under subregulation (3) to enable the employee to undertake a training course or an attachment to another organisation.

(5) Where special leave is granted without pay, the Commissioner may order that the whole or any part of the leave be counted as service.

Leave for service in armed forces

50. (1) The Commissioner may grant leave to an employee who serves in the armed forces of the Commonwealth to enable the employee to undertake the training or duties required by that service.

(2) Leave will be granted for the periods and on the terms and conditions as to pay or otherwise as are approved by the Commissioner.

Leave bank

51. The Commissioner may make and carry out an arrangement with employees under which employees forego part of their annual recreation leave in return for the grant of additional sick leave.

PART 12
PROPERTY IN CUSTODY OF S.A. POLICE

Application of Part

52. This Part applies subject to any other Act or regulation.

Interpretation

53. In this Part, unless the contrary intention appears—

"**found property**" means any personal property that has been lost and whose owner is unknown at the time at which it is found;

"**legal proceedings**" includes a coronial inquiry;

"**money**" includes a negotiable instrument;

"**owner**", in relation to property, means the person who is entitled to possession of the property;

"**prescribed account**" means an ADI (authorised deposit-taking institution) account maintained for the purpose of holding money that is in the custody of S.A. Police or the proceeds of the sale of other property that is in the custody of S.A. Police;

"**property**" means—

- (a) found property; and
- (b) the personal effects of deceased persons; and
- (c) property that is seized or otherwise taken into the custody of a member of S.A. Police for investigatory or evidentiary purposes;

"**unclaimed property**" means property that has been in the custody of S.A. Police for the period of at least two months and in relation to which—

- (a) there is no person who appears, to the satisfaction of the Commissioner, to be the owner of the property; or
- (b) there is such a person but that person has not been located after reasonable inquiry; or
- (c) there is such a person but that person has not exercised his or her right to recover the property,

but does not include found property unless, in addition—

- (d) the finder has not exercised his or her right to claim the property within 42 days from the time at which he or she delivered the property to S.A. Police; or
- (e) the finder has relinquished his or her claim to the property.

Custody of property

54. (1) The Commissioner must ensure the safety and security of property in the custody of S.A. Police.

(2) If a member of S.A. Police receives, seizes or otherwise takes custody of property, the member (or where two or more members are performing duty together, the senior member) must cause—

- (a) a record of the property to be made in the manner approved by the Commissioner; and
- (b) subject to this Part, the property to be kept in the manner and place approved by the Commissioner; and
- (c) a receipt from the appropriate police property book to be issued as soon as is reasonably practicable to the person from whom the property was received, seized or otherwise obtained.

(3) A member of S.A. Police must not use property that is in the custody of S.A. Police for purposes other than—

- (a) those for which it was received, seized or otherwise taken; or
- (b) purposes authorised under these regulations.

Money

55. (1) Money that is in the custody of S.A. Police must, unless it is required *in specie* for evidentiary purposes in legal proceedings or to assist in the identification of its owner, be paid into a prescribed account in accordance with general or special orders.

(2) If the money is not in Australian currency, it must be converted to Australian currency for retention in the account.

(3) On payment of money into a prescribed account—

- (a) the amount in Australian currency paid into the account; and
- (b) except where found money is later returned to the finder or a court otherwise orders, any interest earned on the amount,

is to be taken to constitute the relevant money for the purposes of the disposal of property in accordance with these regulations.

Investigation of ownership

56. The Commissioner must cause all reasonable efforts to be made to determine and locate the owner of property that is in the custody of S.A. Police.

Disposal of property

57. (1) Subject to any order of a court, property that is in the custody of S.A. Police for investigatory or evidentiary purposes must not be released or disposed of by S.A. Police except—

- (a) for scientific analysis, use as an exhibit or other use in connection with legal proceedings or official investigations; or
- (b) in accordance with subregulation (2), when the property is no longer required for use in connection with any legal proceedings or official investigations and one month has elapsed since the end of any relevant legal proceedings.

(2) Subject to subregulation (1) property that is in the custody of S.A. Police must be disposed of as follows:

- (a) if a court makes an order for the disposal of the property, the property must be disposed of in accordance with that order;
- (b) if proceedings to determine the ownership of the property have commenced, the property must be retained by S.A. Police until those proceedings have been completed or discontinued;
- (c) subject to paragraphs (a) and (b)—
 - (i) if there is a person who appears, to the satisfaction of the Commissioner, to be the owner, the property must be returned to that person unless he or she—
 - (A) cannot be located after reasonable inquiry; or
 - (B) does not exercise his or her right to recover the property;
 - (ii) if there is no person who appears to be the owner (or if subparagraph (i)(A) or (B) applies) and the property is found property claimed by the finder within the period required by these regulations and retained by S.A. Police for the period required by these regulations, the property must be returned to the finder in accordance with these regulations;
 - (iii) if the property is unclaimed property, it must be disposed of as unclaimed property in accordance with these regulations.

Perishable, unsafe, unlawful etc., property

58. Despite these regulations—

- (a) if property in the custody of S.A. Police is of such a nature that no person is lawfully entitled to it, the Commissioner must, if the property is not required by S.A. Police for use in connection with any legal proceedings or official investigations or for training or educational purposes, cause the property to be destroyed; and
- (b) subject to paragraph (a), if it appears to the Commissioner that property in the custody of S.A. Police whose owner is not known, cannot be located or does not exercise his or her right to recover the property—
 - (i) is perishable or may rapidly depreciate in value; or

- (ii) is of such a nature or in such condition that it would be dangerous, not reasonably practicable or unduly costly for S.A. Police to retain the property,

the Commissioner may cause the property to be sold, destroyed, returned to the finder (if there is a finder and he or she claims the property) or otherwise disposed of at such time and in such manner as the Commissioner thinks fit.

Property subject to court order

59. If property is in the custody of S.A. Police under an order of a court that requires the property to be retained until further notice, the property may be disposed of in accordance with these regulations as unclaimed property if no person becomes entitled to the property by order of a court in proceedings commenced within three years after the making of the earlier order.

Found property

60. (1) Found property in the custody of S.A. Police—

- (a) may be claimed by the finder no later than 42 days from the day on which he or she delivered the property to S.A. Police; and
- (b) must not be returned to the finder until it has been in the custody of S.A. Police for a period of at least two months.

(2) If found property is returned to the finder, the finder—

- (a) does not obtain title to the property as against the owner or the person who lost the property until the end of five years from the day on which the property was returned to the finder by S.A. Police; and
- (b) will be taken to have agreed to—
 - (i) return the property (or, if the finder no longer has the property, pay an amount equal to its value at that time) to a person who claims the property, and proves that claim to the satisfaction of the Commissioner, within five years after the day on which it was returned to the finder by S.A. Police; and
 - (ii) indemnify the Commissioner and any employee in the department in respect of any order or claim made or cost, loss, damage or expense incurred by any of them as a result of the return of the property to the finder; and
- (c) is not entitled to interest on found money.

(3) Found property must not be returned to the finder unless he or she is first given notice in writing, in a form approved by the Commissioner, as to the operation of this regulation in relation to the finder's title to the property.

(4) An agreement under subregulation (2) is not void for want of consideration or for failure to comply with subregulation (3).

(5) An employee in the department who comes into possession of property in the course of his or her duties does not have the rights of a finder in relation to that property.

Unclaimed property

61. (1) The Commissioner may cause the whole or any part of unclaimed property, other than unclaimed money, that is in the custody of S.A. Police to be retained for use by S.A. Police, or sold, destroyed or otherwise disposed of at such time and in such manner as the Commissioner thinks fit.

(2) Unclaimed money in the custody of S.A. Police is to be dealt with in accordance with regulation 55.

Effect, proceeds of sale

62. (1) A person who buys property sold by or on the authority of the Commissioner under this Part obtains good title to that property.

(2) The proceeds of a sale of property under this Part must be applied as follows:

- (a) firstly, in payment of the expenses occasioned by the sale;
- (b) secondly, in payment of storage or other expenses incurred by S.A. Police in relation to the property;
- (c) thirdly, by payment of the balance into a prescribed account in accordance with general or special orders.

Proceeds, unclaimed money to be paid into Consolidated Account

63. (1) Proceeds of sale and unclaimed money held in a prescribed account under this Part must be retained in the account for a period of six months, after which the principal and any interest must be paid into the Consolidated Account.

(2) If unclaimed money held in a prescribed account was not unclaimed money at the time it was paid into the account but subsequently became unclaimed, the six month period referred to in subregulation (1) commences at the time at which the money became unclaimed.

Return of unclaimed property, proceeds of sale

64. The Commissioner may, at his or her discretion—

- (a) if a person who appears, to the satisfaction of the Commissioner, to be the owner of property claims the property after it has become unclaimed property but while it remains in the custody of S.A. Police, authorise the property to be returned to the person;
- (b) if a person who appears, to the satisfaction of the Commissioner, to have been the owner of property before it was sold under this Part claims the balance of the proceeds of the sale while the money continues to be held in a prescribed account under this Part, authorise the payment of the balance (and any interest on the balance) to the person.

Commissioner may prepare instruments

65. The Commissioner may prepare and execute all instruments necessary for carrying into effect the sale, destruction or other disposal of property under this Part.

**PART 13
PRISONERS**

Interpretation

66. In this Part, unless the contrary intention appears—

"**Metropolitan Adelaide**" has the same meaning as in the *Development Act 1993*;

"**officer in charge**", in relation to a police station, means the member of S.A. Police who is for the time being in charge of the police station;

"**police station**" means offices and adjacent premises and land occupied for S.A. Police purposes;

"**prisoner**" means a person accepted into custody at a police station;

"**recognised hospital**" means a recognised hospital within the meaning of the *South Australian Health Commission Act 1976*.

Search of prisoners

67. (1) Immediately after a prisoner is accepted into custody at a police station on a charge of committing an offence, the officer in charge of the station must cause the prisoner to be searched in accordance with these regulations and general or special orders.

(2) A search of a prisoner must, wherever practicable, be made by a person of the same sex as the prisoner.

(3) The person searching a prisoner must remove from the prisoner everything that might—

- (a) assist the prisoner to escape; or
- (b) be used to cause injury or harm to the prisoner or any other person; or
- (c) be used to damage property.

(4) If a prisoner objects to the retention by S.A. Police of an article taken from the prisoner and the officer in charge of the station considers that there is no valid reason for its retention, the article may be returned to the prisoner.

Property taken from prisoners

68. (1) If money or other property is removed from a prisoner, the officer in charge of the police station must—

- (a) cause a written record to be made of, and a receipt issued for, the money or other property; and
- (b) request the prisoner to check and sign the written record.

(2) If a prisoner is unable or refuses to sign the record referred to in subregulation (1), the officer in charge of the police station must make a note on the record of that fact and the reason for that inability or refusal.

(3) Money or other property removed from a prisoner must be kept and stored in the manner directed by the Commissioner.

Illness or injury of prisoners

69. (1) If it is necessary to obtain medical assistance for a prisoner who is ill or injured, the officer in charge of a police station—

- (a) must, if practicable, cause the prisoner to be conveyed to a recognised hospital; or
- (b) if that is not practicable, must cause the prisoner to be attended by a police medical officer or other legally qualified medical practitioner.

(2) If a medical practitioner other than a police medical officer attends a prisoner under this regulation, any amount payable for that attendance that is not covered under a medical benefit scheme is payable by the South Australian Police Department if the prisoner does not agree to pay the amount.

Legal, medical and other assistance for prisoners

70. (1) The officer in charge of a police station must afford a prisoner every reasonable facility necessary—

- (a) to enable compliance with the requirements of the *Bail Act 1985*, the *Summary Offences Act 1953*, the *Young Offenders Act 1993* or any other Act or law concerning persons in the custody of S.A. Police; and
- (b) to obtain private legal or medical advice; and
- (c) in the case of a prisoner who is a national or a citizen of a foreign country—to meet a consular officer or other person acting as a representative of the government of that country.

(2) If a prisoner requests that he or she be examined by a specified medical practitioner and undertakes to pay for the examination—

- (a) the officer in charge of the police station at which the prisoner is held must take all reasonable steps to secure the attendance of the medical practitioner; and
- (b) the examination must take place at a police station; and
- (c) wherever practicable, the officer in charge of the police station at which the prisoner is held must ensure that there is present at the examination—
 - (i) a police medical officer (if the examination takes place within Metropolitan Adelaide); or
 - (ii) a member of S.A. Police of the same sex as the prisoner (if a police medical officer is unable to be present or the examination takes place outside Metropolitan Adelaide).

Interviews with prisoners

71. No person may interview a prisoner in custody at a police station without the consent of the officer in charge of that station.

PART 14
MISCELLANEOUS

Form of oath or affirmation

72. (1) For the purposes of sections 25 and 60 of the Act, the form of the oath or affirmation to be made by a member of S.A. Police or a special constable on appointment is as set out in schedule 1.

(2) An oath or affirmation in the form specified in schedule 1 may be made before a Justice of the Peace of this State or of another State or a Territory of the Commonwealth.

Annual report

73. The Commissioner must, in his or her annual report to the Minister under section 75 of the Act, report on—

- (a) the current state of S.A. Police, including its numbers, components, distribution and operational efficiency; and
- (b) the operations of S.A. Police; and
- (c) the offences reported in the State since the previous annual report; and
- (d) the formation and closure of police stations and offices; and
- (e) any other matter relevant to S.A. Police and its operations on which the Commissioner wishes to report or on which the Minister requires a report.

Remuneration on suspension, revocation of suspension

74. (1) If a person's appointment is suspended by the Commissioner under the Act and remuneration is to be provided to the person while on suspension, the Commissioner must determine the manner in which the remuneration is to be calculated.

(2) Where the appointment of an employee is suspended under section 41 of the Act and the suspension is subsequently revoked—

- (a) if the employee has been found guilty of an offence or breach of the Code, the Commissioner must, unless the Commissioner believes that the special circumstances of the case require otherwise, determine that the employee is not entitled—
 - (i) to any remuneration or accrual of rights withheld in consequence of the suspension; or
 - (ii) to have the period of the suspension counted as service; and
- (b) in any case, the Commissioner may determine that income received (from whatever source) by the employee during his or her suspension is to be deducted from any withheld remuneration that is to be paid to the employee on revocation of the suspension.

Transport costs on transfer

75. (1) Subject to this regulation and any general or special order of the Commissioner, if a member of S.A. Police is transferred to another position in S.A. Police and is reasonably required to change his or her place of residence as a consequence of that transfer, the reasonable transportation costs of the member in connection with that change of residence (provided that the transportation is undertaken in a manner approved by the Commissioner) are payable by the South Australian Police Department.

(2) Subregulation (1) does not apply to a member's transportation costs if the transfer is effected—

- (a) at the member's request; or
- (b) in consequence of fault on the part of the member,

but the Commissioner may order that part or all of those costs be paid by the South Australian Police Department.

Liability for loss of equipment

76. An employee to whom equipment is issued is responsible for that equipment and is liable for any loss of or damage to the equipment incurred as a result of his or her negligence.

Offence for former employees in the department to use or disclose information

77. (1) A person who has been an employee in the department must not, after he or she ceases to be an employee in the department, use or disclose information gained by virtue of that employment if the use or disclosure of the information would constitute an offence or breach of the Code assuming that the person were still an employee in the department.

Penalty: \$1 250.

(2) It is a defence to a charge of an offence against subregulation (1) if the person charged proves that he or she had lawful authority or excuse to so use or disclose the information.

SCHEDULE 1
Form of oath or affirmation
(reg. 72)

1. Form of oath or affirmation for member of S.A. Police (other than a community constable):

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 South Australia Police, 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 South Australia Police—[So help me God!]

Taken at
this day)
of 19)

Before me

..... Justice of the Peace.

2. Form of oath or affirmation for community constable:

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 community constable, without favour or affection, malice or ill-will; and that I will faithfully discharge all duties imposed on me as a community constable—[So help me God!].

Taken at
this day)
of 19)

Before me

..... Justice of the Peace.

3. Form of oath or affirmation for special constable:

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, 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.

SCHEDULE 2
Forms

Police Act 1998

To

You have been charged with a breach of the Code of Conduct under the *Police Act 1998* as indicated in the charge/s attached hereto dated 19

If you admit the charge/s you may state any mitigating circumstances relating to it/them either in writing, or at a personal interview with the Commissioner.

If you deny the charge/s the matter will be heard and determined by the Police Disciplinary Tribunal.

You may detach the bottom portion of this form and, after striking out the clauses that do not apply, deliver it within 21 days after receipt of this notice to the registrar of the Police Disciplinary Tribunal.

If you do not admit the truth of the charge/s in writing (either on the bottom portion of this form or otherwise) delivered to the registrar of the Police Disciplinary Tribunal within 21 days after you receive this notice, you will be taken to have denied the truth of the charge.

Dated the day of19....

.....
Registrar, Police Disciplinary Tribunal

To the Registrar
Police Disciplinary Tribunal
Adelaide.

1. I admit the truth of the charge/s against me dated the day of 19 for a breach of the Code of Conduct.
2. I attach a statement of mitigating circumstances.
3. I desire to appear before the Commissioner to make a personal representation.
4. I do not admit the truth of the said charge/s.

(Strike out clauses that do not apply.)

Dated the day of19....

.....Signature

SCHEDULE 3

Revocation and transitional provisions

Revocation

1. All regulations made under the *Police Act 1952* are revoked.

Leave rights

2. Subject to these regulations, existing and accruing rights in respect of leave of employees remain in full force and effect.

Property currently in custody of S.A. Police

3. (1) Subject to subclause (2), Part 12 of these regulations applies to property received, seized or otherwise taken into the custody of S.A. Police before or after the commencement of these regulations.

(2) The *Police Regulations 1998* continue in force in relation to found property claimed by the finder in accordance with those regulations prior to the commencement of these regulations.