

Legislative Council—No 28A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 8 November 2018

South Australia

**Judicial Conduct Commissioner (Miscellaneous)
Amendment Bill 2018**

A BILL FOR

An Act to amend the *Judicial Conduct Commissioner Act 2015*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Judicial Conduct Commissioner (Miscellaneous) Amendment Act 2018*.

2—Commencement

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

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Judicial Conduct Commissioner Act 2015*

4—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *relevant jurisdictional head*—delete "and includes" and substitute:
 - 15 or

(2) Section 4(2)—delete subsection (2) and substitute:

(2) For the avoidance of doubt (and without limiting the types of conduct that may be the subject of a complaint under this Act) ***conduct of a judicial officer*** that may be the subject of a complaint under this Act includes—

(a) any act or omission of such an officer—

(i) whether occurring in the course of carrying out functions as a judicial officer or not; and

(ii) whether resulting from an illness or incapacity or not; and

(b) any acts of victimisation by a judicial officer.

(3) For the purposes of subsection (2), a judicial officer who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make a complaint under this Act or has provided, or intends to provide, information or other assistance to the Commissioner or a judicial conduct panel exercising functions under this Act commits an act of victimisation.

5—Amendment of section 5—Application of Act

Section 5—after its present contents (now to be designated as subsection (1)) insert:

(2) This Act applies in relation to conduct of a judicial officer whether occurring before or after the commencement of this Act.

6—Amendment of section 10—Staff

Section 10(4)—after "staff of" insert:

the Independent Commissioner Against Corruption or

7—Amendment of section 12—Making of complaints

(1) Section 12(3)—delete "subsection (4)" and substitute:

subsections (4) and (4a)

(2) Section 12—after subsection (4) insert:

(4a) The Commissioner may, if the Commissioner thinks fit, determine not to give any notices under subsection (3) in relation to a complaint until the Commissioner has determined whether the complaint is one that must be dismissed under section 17(1).

8—Amendment of section 13—Preliminary examination of complaints

(1) Section 13(1)—delete "The Commissioner" and substitute:

Subject to subsection (6), the Commissioner

(2) Section 13(1)(b)—delete "his or her power under section 16 to take no further action in respect of" and substitute:

a power under this Act to dismiss

(3) Section 13(1)(c)—delete paragraph (c)

(4) Section 13—after subsection (5) insert:

(6) If, before conducting a preliminary examination of a complaint, the Commissioner determines that the complaint is one that must be dismissed under section 17(1), the Commissioner may dismiss the complaint without conducting a preliminary examination.

(7) If the Commissioner exercises the power under subsection (6) to dismiss a complaint, the Commissioner is not required to give any notification in relation to the complaint to the judicial officer who is the subject of the complaint or to the relevant jurisdictional head but must give any complainant, written notification stating—

(a) that the Commissioner has exercised that power; and

(b) the grounds on which the Commissioner is satisfied that the complaint is one that must be dismissed under section 17(1).

9—Amendment of section 16—Discretionary dismissal of complaint

(1) Section 16(1)—delete "take no further action in respect of a complaint" and substitute:
determine to dismiss a complaint without taking any further action

(2) Section 16(2)—after paragraph (d) insert:

(e) that the Commissioner has previously considered the subject matter of the complaint;

(f) that the Commissioner has determined that the subject matter of the complaint could not, if substantiated, warrant the taking of any action under this Act.

(3) Section 16(4)—delete "under this section to take no further action in respect of a complaint" and substitute:

to dismiss a complaint under this section

10—Amendment of section 17—Mandatory dismissal of complaint

(1) Section 17(1)(g)—delete paragraph (g)

(2) Section 17(3)—delete subsection (3) and substitute:

(3) If the Commissioner dismisses a complaint under this section, the Commissioner is not required to give any notification in relation to the complaint to the judicial officer who is the subject of the complaint or to the relevant jurisdictional head but must give any complainant, written notification stating—

(a) that the complaint has been dismissed; and

(b) the grounds on which that decision was made.

11—Amendment of section 18—Referral of complaint to relevant jurisdictional head

Section 18(1)(b)—delete "the power to take no further action in respect of the complaint under section 16 or has dismissed the complaint under section 17" and substitute:

a power under this Act to dismiss the complaint

12—Amendment of section 25—Report by panel

Section 25(3)—after "provided to" insert:

the Commissioner, to

13—Amendment of section 27—Commissioner's annual report

Section 27(2)(b)(ii) and (iii)—delete subparagraphs (ii) and (iii) and substitute:

- (ii) the number and general nature of any complaints dismissed under this Act; and

14—Amendment of section 30—Immunity from liability

Section 30(2), definition of *member of the Commissioner's staff*—after "includes" insert:

any person exercising, or purportedly exercising, powers or functions under this Act in accordance with an arrangement established under section 10 and

15—Amendment of section 32—Confidentiality, disclosure of information and publication of reports

- (1) Section 32(3)—delete ", or a decision to take no further action in relation to a complaint or" and substitute:

or a decision

- (2) Section 32—after subsection (4) insert:

(5) A notification required to be given by the Commissioner under this Act to a judicial officer who is the subject of a complaint or the relevant jurisdictional head in relation to a complaint must not disclose the identity of any complainant unless—

- (a) the complainant has consented to the complainant's identity being so disclosed; or

- (b) subject to subsections (6) and (7), the Commissioner is of the opinion—

- (i) in the case of a notification required to be given to the judicial officer the subject of the complaint—that the disclosure of the complainant's identity is necessary to ensure that the judicial officer can properly respond to the complaint; or

(ii) in the case of a notification required to be given to the relevant jurisdictional head—that the disclosure of the complainant's identity is necessary to ensure that the relevant jurisdictional head can properly exercise their responsibilities in relation to the complaint.

(6) Before disclosing the identity of a complainant in accordance with subsection (5)(b), the Commissioner must give the complainant written notification that the Commissioner intends to disclose the complainant's identity (and providing reasons for the determination) and must allow the complainant a reasonable opportunity to make submissions to the Commissioner in relation to the determination or to withdraw the complaint.

(7) If the complainant notifies the Commissioner that the complainant wishes to withdraw the complaint, the Commissioner must determine to take no further action in respect of the matter the subject of the complaint.

16—Amendment of section 33—Publication of information and evidence

Section 33(1)—delete "if publication of the information or evidence is prohibited by the Commissioner"