

## Legislative Council

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South Australia

# Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Bill 2021

A BILL FOR

An Act to amend the *Independent Commissioner Against Corruption Act 2012* and to make related amendments to other Acts to implement recommendations contained in the Report of the Crime and Public Integrity Policy Committee into matters of public integrity in South Australia.

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

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021*.

**2—Commencement**

- (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by the Governor.
- (2) Section 59 comes into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

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 *Independent Commissioner Against Corruption Act 2012*

### 4—Amendment of long title

Long title—delete "Commissioner" and substitute:

Commission

### 5—Amendment of section 1—Short title

Section 1—delete "Commissioner" and substitute:

Commission

### 6—Amendment of section 3—Primary objects

(1) Section 3(1)(a)—delete paragraph (a) and substitute:

- (a) to establish the Independent Commission Against Corruption with functions designed to further—
  - (i) the identification and investigation of corruption in public administration; and
  - (ii) the prevention or minimisation of corruption in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures; and

(2) Section 3(2)(a)—delete paragraph (a) and substitute:

- (a) that the Commission will exercise its functions only in relation to corruption in public administration; and

(3) Section 3(2)(b)—delete "an inquiry agency or to a public authority (unless the circumstances set out in section 7(1)(cb) or (cc) apply)" and substitute:

another inquiry agency or to a public authority

### 7—Amendment of section 4—Interpretation

(1) Section 4(1)—after the definition of *Australian Parliament* insert:

*Commission* means the Independent Commission Against Corruption;

(2) Section 4(1)—after the definition of *corruption in public administration* insert:

*Director of OPI* means the person holding or acting in the office of the Director of OPI under Part 3;

(3) Section 4(1), definition of *inquiry agency*—delete the definition and substitute:

*inquiry agency* means—

- (a) the Commission;

- (b) the Ombudsman;
- (c) the Judicial Conduct Commissioner;
- (4) Section 4(1)—after the definition of *judicial body* insert:

*Judicial Conduct Commissioner* means the person for the time being holding or acting in the office of Judicial Conduct Commissioner under the *Judicial Conduct Commissioner Act 2015*;

- (5) Section 4(2)—delete subsection (2)

## **8—Amendment of section 5—Corruption, misconduct and maladministration**

- (1) Section 5(1)(c)—delete paragraph (c)
- (2) Section 5(2)—delete subsection (2)
- (3) Section 5(3), (4), (5) and (6)—delete subsections (3), (4), (5) and (6) and substitute:

- (3) In this Act—

*maladministration* in public administration has the same meaning as in the *Ombudsman Act 1972*; and

*misconduct* in public administration has the same meaning as in the *Ombudsman Act 1972*.

## **9—Amendment of section 6—Parliamentary privilege unaffected**

Section 6—after "members" insert:

and powers under this Act may not be exercised in relation to any matter to which parliamentary privilege applies

### **Note—**

Examples of material that falls within this section include statements made or documents or material tabled or received in the course of the proceedings of the Parliament or a committee of the Parliament.

## **10—Amendment of heading to Part 2**

Heading to Part 2—delete "Commissioner" and substitute:

Commission

## **11—Amendment of section 7—Establishment and functions of Commission**

- (1) Section 7(1)—delete subclause (1) and substitute:
  - (1) There is to be an Independent Commission Against Corruption with the following functions:
    - (a) to identify corruption in public administration and to—
      - (i) investigate and refer it to a law enforcement agency for any further investigation and prosecution; or
      - (ii) refer it to a law enforcement agency for investigation and prosecution;



- (b) to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption in public administration;
  - (c) to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption in public administration.
  - (d) if, in the course of performing functions in relation to potential corruption in public administration, any suspected misconduct or maladministration or any offences (not being offences that constitute the potential corruption in public administration) are identified—to report the matter to the Office or the Ombudsman for assessment or refer the matter to a law enforcement agency, the Ombudsman or a public authority or public officer, as the Commission considers appropriate.
- (2) Section 7—delete "Commissioner" wherever occurring and substitute in each case:  
Commission
- (3) Section 7(3)—delete subsection (3)
- (4) Section 7(4)—delete "his or her" first occurring and substitute:  
its
- (5) Section 7(4)(a)—delete paragraph (a) and substitute:  
(a) is as open and accountable as is practicable, while recognising, in particular, that examinations relating to corruption in public administration must be conducted in private; and
- (6) Section 7(5)—delete "his or her functions under subsection (1)(d) or (e), or for reviewing a legislative scheme under subsection (3)" and substitute:  
its functions under subsection (1)(b) or (c)
- (7) Section 7—after subsection (5) insert:  
(6) The Commission—  
(a) is a body corporate; and  
(b) has perpetual succession and a common seal; and  
(c) is capable of suing and being sued in its corporate name.

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

- (1) Section 8(1)—after "The Commissioner" insert:  
will be the principal officer of the Commission and
- (2) Section 8(8)—delete "Subject to subsection (8a), the" and substitute:  
The
- (3) Section 8(8a)—delete subsection (8a)

### **13—Amendment of section 12—Employees**

- (1) Section 12(1)—delete "Commissioner" first occurring and substitute:  
Commission
- (2) Section 12(2)—delete "Commissioner" and substitute:  
Commission

### **14—Amendment of section 13—Use of services or staff of other government entities**

Section 13—delete "The Commissioner" wherever occurring and substitute in each case:  
The Commission

### **15—Amendment of section 14—Examiners and investigators**

- (1) Section 14(4)—delete "Commissioner" and substitute:  
Commission
- (2) Section 14(4a)—delete "Commissioner" third occurring and substitute:  
Commission

### **16—Amendment of section 15—Cooperation with law enforcement agencies**

- (1) Section 15—delete "Commissioner" and substitute:  
Commission
- (2) Section 15—delete "the Commissioner's" and substitute:  
its

### **17—Substitution of Part 3**

Part 3—delete the Part and substitute:

## **Part 3—Office for Public Integrity**

### **Division 1—Establishment and functions**

#### **17—Establishment of Office and functions**

- (1) The Office for Public Integrity continues in existence with the following functions:
  - (a) to receive and assess complaints about public administration from members of the public;
  - (b) to receive and assess reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers;
  - (c) to refer complaints and reports to inquiry agencies, public authorities and public officers or to determine to take no action in accordance with this section.

- (2) The Office is to be comprised of—
  - (a) the Director of OPI; and
  - (b) Public Service employees assigned to the Office.
- (3) While a Public Service employee is assigned to the Office, directions given to the employee by the Director of OPI prevail over directions given to the employee by the chief executive of the administrative unit of the Public Service in which the employee is employed to the extent of any inconsistency.

### **18—Director of OPI**

- (1) There is to be a Director of OPI appointed by the Governor for a term not exceeding 7 years and on conditions determined by the Governor.
- (2) A person appointed to be the Director of OPI is, at the end of a term of appointment, eligible for reappointment.
- (3) A person is only eligible for appointment as the Director of OPI if the person—
  - (a) is a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; and
  - (b) is not a judicial officer or member of an Australian Parliament.
- (4) The Director of OPI must not, without the consent of the Attorney-General, engage in any remunerated employment or undertaking outside official duties.
- (5) The Governor may remove the Director of OPI from office for—
  - (a) contravention of a condition of appointment; or
  - (b) misconduct; or
  - (c) failure or incapacity to carry out official duties satisfactorily.
- (6) The office of Director of OPI becomes vacant if the holder—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Governor; or
  - (d) is appointed to judicial office; or
  - (e) is nominated for election as a member of an Australian Parliament; or

- (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) is convicted of—
    - (i) an indictable offence against the law of this State; or
    - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
    - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding subparagraph; or
  - (h) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
  - (i) is removed from office by the Governor under subsection (5).
- (7) Except as is provided by this section, the Director of OPI may not be removed from office, nor will the office of the Director of OPI become vacant.
- (8) The Director of OPI is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

## **Division 2—Complaints and reports**

### **18A—Complaints system**

- (1) A system for the receipt of complaints about public administration is to be established for the Office by the Director of OPI.
- (2) The system must permit the making of complaints relating to matters that are (in the opinion of the Director of OPI) sensitive, complex or of significant public interest to be made in person to a member of the Office.
- (3) The system must ensure that the Office gives consideration to the motives of a complainant and that complaints that are apparently made in bad faith, for an improper purpose, are vexatious or that otherwise amount to an abuse of the complaints system are not received for consideration by the Office.

### **18B—Reporting system**

- (1) The Director of OPI must prepare directions and guidelines governing reporting to the Office of matters that an inquiry agency, public authority or public officer reasonably suspects involves corruption in public administration.

- (2) The directions and guidelines—
  - (a) must include provisions specifying the matters required to be reported and guidance as to how they should be reported; and
  - (b) may require matters to be reported even if the matter has been referred to the inquiry agency, public authority or public officer under another Act; and
  - (c) must be made available free of charge on the Internet, and at premises established for the receipt of complaints or reports by the Office, for inspection by members of the public.
- (3) The directions and guidelines must not require—
  - (a) a public officer to report to the Office any information that is subject to legal professional privilege or parliamentary privilege; or
  - (b) a judicial officer to report to the Office any information that has been received by the judicial officer in the exercise of their judicial functions; or
  - (c) a member of Parliament to report to the Office any information that has been received by the member in the exercise of their functions as a member of Parliament.
- (4) An inquiry agency, public authority or public officer—
  - (a) must make reports to the Office in accordance with the directions; and
  - (b) may report to the Office any matter that the agency, authority or officer reasonably suspects involves corruption in public administration.
- (5) The Attorney-General may, in any event, report such matters to the Office for consideration as the Attorney-General considers appropriate.

### **18C—Obstruction of complaint or report**

A person must not—

- (a) prevent another person from making a complaint or report under this Act about a matter that may involve corruption in public administration; or
- (b) hinder or obstruct another person in making such a complaint or report.

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

### **18D—False or misleading statements in complaint or report etc**

A person must not—

- (a) make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided in a complaint or report; or
- (b) make a complaint or report knowing that there are no grounds for the making of the complaint or report.

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

### **Division 3—Assessment**

#### **18E—Assessment of complaint or report**

- (1) On receipt by the Office of a complaint or report, the matter must be assessed as to whether—
  - (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution and should be referred to the Commission; or
  - (b) it raises some other issue that should be referred to another inquiry agency; or
  - (c) it is trivial, vexatious or frivolous, it has previously been dealt with by an inquiry agency or a public authority and there is no reason to reexamine it or there is other good reason why no action should be taken in respect of it,

and a determination made as to whether or not action should be taken to refer the matter to a law enforcement agency or an inquiry agency.

- (2) An inquiry agency may also require the Office to assess, according to the criteria set out in subsection (1), any other matter identified by them in the course of performing functions under any Act.
- (3) The Office may, for the purpose of assessing a matter, by written notice, require a public authority or public officer—
  - (a) to produce a specified document or a document relating to a specified matter; or
  - (b) to produce a written statement of information about a specified matter or to answer specified questions, within a specified period and in a specified form, verified if the written notice so requires by statutory declaration.
- (4) A person must not refuse or fail to comply with a requirement of a notice under subsection (3).

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

## **Division 4—Referrals**

### **18F—Action that may be taken following assessment**

- (1) Following an assessment the Office may take action in relation to a matter as follows:
  - (a) if the matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution, the matter must be referred to the Commission;
  - (b) if the matter is assessed as raising other issues that should be dealt with by an inquiry agency, the matter must be referred, or the complainant or reporting agency advised to refer the matter, to the agency.
- (2) The same matter, or different aspects of the same matter, may be dealt with contemporaneously under more than 1 paragraph of subsection (1).
- (3) The making of an assessment, and whether action is taken, and what action is taken, by the Office in respect of the assessment is at the absolute discretion of the Director of OPI.
- (4) A matter may be dealt with under this section even if it is a matter referred to an inquiry agency or a public authority under another Act.
- (5) Subject to subsection (6) and any directions by the Director of OPI, reasonable steps must be taken to ensure that a complainant or reporting agency receives an acknowledgment of the complaint or report and is informed as to the action, if any, taken in respect of the matter.
- (6) If the Office has determined that no action should be taken in relation to a complaint in accordance with section 18E(1)(c), the Office must notify the complainant of that determination as soon as practicable after the determination is made.

### **18G—Referral to inquiry agency**

The Office must, before referring a matter to an inquiry agency, take reasonable steps to obtain the views of the agency as to the referral.

## **18—Substitution of heading to Part 4**

Part 4 heading—delete the heading and substitute:

### **Part 4—Procedures and powers of Commission**

## **19—Repeal of Part 4 Division 1**

Part 4 Division 1—delete the Division

## **20—Substitution of heading to Part 4 Division 2**

Part 4 Division 2 heading—delete the heading and substitute:

### **Division 2—Investigations**

## **21—Repeal of heading to Part 4 Division 2 Subdivision 1**

Part 4 Division 2 Subdivision 1 heading—delete the heading

## **22—Repeal of section 23**

Section 23—delete the section

## **23—Amendment of section 24—Action that may be taken**

- (1) Section 24(1)—after "prosecution" insert:  
and is referred to the Commission
- (2) Section 24(1)(a)—delete "Commissioner" and substitute:  
Commission
- (3) Section 24(2) to (8)—delete subsections (2) to (8) inclusive and substitute:
  - (2) Whether action is taken, and what action is taken, in respect of a matter that has been referred to the Commission is at the absolute discretion of the Commissioner.
  - (3) Subject to any directions of the Commissioner, reasonable steps must be taken to ensure that a complainant or reporting agency is informed as to the action, if any, taken by the Commission in respect of the matter.

## **24—Substitution of section 25**

Section 25—delete the section and substitute:

### **25—Public statements**

- (1) The Office must not make any public statement that discloses, or contains information from which a person could infer, that a particular matter is, is proposed to be or was the subject of a complaint or report under this Act.
- (2) The Commission must not make any public statement that discloses, or contains information from which a person could infer, that a particular matter is being or is proposed to be investigated under this Act.



- (3) After an investigation of a particular matter under this Act has concluded—
- (a) if the matter has been referred to any law enforcement agency, inquiry agency or public authority—the Commission must not make any public statement that discloses, or contains information from which a person could infer, that the matter has been the subject of an investigation under this Act (except in a report that complies with section 42); or
  - (b) in any other case—if the Commissioner is satisfied that no criminal proceedings, proceedings for the imposition of a penalty or disciplinary action will be commenced as a result of the investigation, the Commission may make a public statement in relation to the matter.
- (4) The Commission must, before making any public statement under subsection (3)(b), have regard to the following:
- (a) the benefits that might be derived from making the statement;
  - (b) whether the statement is necessary in order to allay public concern or to prevent or minimise the risk of prejudice to the reputation of a person;
  - (c) the risk of prejudicing the reputation of a person by making the statement;
  - (d) if an allegation against a person has been made public and, in the opinion of the Commissioner following an investigation, the person is not implicated in corruption in public administration—whether the statement would redress prejudice caused to the reputation of the person as a result of the allegation having been made public;
  - (e) whether any person has requested that the Commission make the statement.
- (5) For the avoidance of doubt—
- (a) nothing in this section affects the provision of information to the Crime and Public Integrity Policy Committee of the Parliament;
  - (b) a public statement must not include any findings or suggestions of criminal or civil liability and must not include any findings that, if proved to the requisite standard by a court, would constitute a criminal offence or a civil wrong.

## **25—Repeal of heading to Part 4 Division 2 Subdivision 2**

Part 4 Division 2 Subdivision 2 heading—delete the heading

**26—Amendment of section 26—Standard operating procedures**

Section 26(1)—delete "Commissioner" and substitute:

Commission

**27—Amendment of section 27—Management of investigation**

Section 27(1)—delete "Commissioner" first occurring and substitute:

Commission

**28—Amendment of section 34—Limiting action by other agencies and authorities**

Section 34—delete "Commissioner" wherever occurring and substitute in each case:

Commission

**29—Amendment of section 35—Injunction to refrain from conduct pending investigation**

Section 35—delete "Commissioner" wherever occurring and substitute in each case:

Commission

**30—Amendment of section 36—Prosecutions and disciplinary action**

- (1) Section 36(1)—delete "(whether relating to a potential issue of corruption in public administration or of misconduct or maladministration in public administration), the Commissioner" and substitute:

, the Commission

- (2) Section 36—after subsection (1) insert:

(1a) For the avoidance of doubt, the Commission must not refer a matter directly to a prosecution authority but may only refer it to a law enforcement agency who will be responsible for any further investigation and prosecution of the matter.

- (3) Section 36—delete "Commissioner" wherever occurring and substitute in each case:

Commission

- (4) Section 36(8)—delete "Commissioner's" and substitute:

Commission's

**31—Insertion of section 36A**

After section 36 insert:

**36A—Determination of Commission's jurisdiction**

If—

- (a) an investigation has been commenced or is proposed under this Act; and
- (b) a question arises as to whether the Commission has jurisdiction to conduct the investigation,

the Supreme Court may, on the application of the Commission, a public officer or a public authority, determine the question and make any orders necessary to give effect to the determination.

**32—Repeal of Part 4 Division 2 Subdivision 3**

Part 4 Division 2 Subdivision 3—delete the Subdivision

**33—Repeal of heading to Part 4 Division 2 Subdivision 4**

Part 4 Division 2 Subdivision 4 heading—delete the heading

**34—Amendment of section 39—Request for Auditor-General to examine accounts**

- (1) Section 39—delete "Commissioner" wherever occurring and substitute in each case:  
Commission
- (2) Section 39—delete "an assessment,"

**35—Insertion of section 39A**

After section 39 insert:

**39A—Information to be provided**

If—

- (a) on completing the investigation of a matter involving potential issues of corruption in public administration, the Commission determines not to refer the matter to a relevant law enforcement agency or to a public authority; or
- (b) a relevant law enforcement agency or public authority to whom a matter is referred by the Commission determines not to further investigate or deal with the matter,

reasonable steps must be taken by the Commission, or by the agency or authority (as the case may be), to ensure that each person who was the subject of the investigation is informed of that determination as soon as practicable.

**36—Amendment of section 40—Evaluation of practices, policies and procedures**

- (1) Section 40(1)—delete "Commissioner's functions, the Commissioner decides to evaluate the practices, policies and procedures of an inquiry agency or public authority, the Commissioner" and substitute:  
Commission's functions, the Commission decides to evaluate the practices, policies and procedures of an inquiry agency or public authority in relation to corruption, or matters relating to corruption, the Commission
- (2) Section 40(2), (3), (4) and (5)—delete "Commissioner" wherever occurring and substitute in each case:  
Commission

**37—Amendment of heading to Part 4 Division 4**

Part 4 Division 4 heading—delete "Commissioner" and substitute:

Commission

**38—Amendment of section 41—Recommendations**

(1) Section 41—delete "Commissioner" wherever occurring and substitute in each case:

Commission

(2) Section 41(4)—delete "Commissioner's" and substitute:

Commission's

**39—Amendment of section 42—Reports**

(1) Section 42(1)—delete subsection (1) and substitute:

(1) The Commission may prepare a report setting out (subject to subsection (1a))—

- (a) recommendations, formulated in the course of the performance of the Commission's functions, for the amendment or repeal of a law; or
- (b) findings or recommendations resulting from completed investigations by the Commission in respect of matters raising potential issues of corruption in public administration; or
- (c) other matters arising in the course of the performance of the Commission's functions that the Commission considers to be in the public interest to disclose.

(2) Section 42(1a)—delete "Commissioner" wherever occurring and substitute in each case:

Commission

(3) Section 42(1a)(b)—delete paragraph (b) and substitute:

- (b) prepare a report under this section that includes any findings or suggestions of criminal or civil liability and must not include any findings that, if proved to the requisite standard by a court, would constitute a criminal offence or a civil wrong.

#### **40—Substitution of section 43**

Section 43—delete the section and substitute:

#### **43—Referral of matter etc does not limit performance of functions**

The Commission may perform functions or exercise powers in respect of a particular matter despite the referral of the matter for prosecution or investigation and prosecution, the institution of any proceedings before a judicial body or the charging of a person with an offence (but in such a case the Commission must endeavour to avoid, as far as practicable, prejudice to any person affected by the referral or proceedings or who is charged with the offence).

#### **41—Amendment of section 44—Public authority to assist with compliance by public officers**

Section 44(2)(b)—delete "Commissioner" and substitute:

Commission

#### **42—Substitution of section 45**

Section 45—delete the section and substitute:

#### **45—Annual reports by Office and Commission**

- (1) The Director of OPI must, before 30 September in each year, prepare a report on the operations of the Office.
- (2) The report of the Director of OPI must—
  - (a) relate to the financial year preceding the making of the report; and
  - (b) describe—
    - (i) the number and general nature of complaints and reports received by the Office; and
    - (ii) the number and general nature of matters referred for investigation to the Commissioner of Police or other law enforcement agency; and
    - (iii) the number and general nature of matters referred to an inquiry agency or public authority; and
  - (c) deal with any other matters stipulated by the regulations.
- (3) The Commission must, before 30 September in each year, prepare a report on the operations of the Commission.
- (4) The report of the Commission must—
  - (a) relate to the financial year preceding the making of the report; and
  - (b) describe—

- (i) the number and general nature of matters investigated by the Commission; and
  - (ii) the number of warrants issued by the Commission and by judges of the Supreme Court; and
  - (iii) the number of examinations conducted; and
  - (iv) the extent to which investigations have resulted in prosecutions or disciplinary action; and
  - (v) the number and general nature of matters referred for investigation to the Commissioner of Police or other law enforcement agency; and
  - (vi) the number and general nature of occasions on which public statements have been made by the Commission; and
  - (vii) the number and general nature of matters referred to an inquiry agency or public authority; and
  - (viii) the number and general nature of directions or guidance given in referring matters under this Act; and
  - (ix) the number and general nature of requests for examinations of accounts by the Auditor-General; and
  - (x) the number and general nature of recommendations made to an inquiry agency or public authority by the Commission; and
  - (xi) the number and general nature of reports made to the Attorney-General, President of the Legislative Council or Speaker of the House of Assembly; and
  - (xii) a description of the activities carried out in relation to its evaluation and educational functions; and
- (c) deal with any other matters stipulated by the regulations.
- (5) A copy of a report under this section must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.
- (6) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.

**43—Amendment of section 47—Crime and Public Integrity Policy Committee**

Section 47—delete "Commissioner" wherever occurring and substitute in each case:  
Commission

#### **44—Substitution of sections 48 and 49**

Sections 48 and 49—delete the sections and substitute:

##### **48—OPI and Commission websites**

- (1) The Commission must maintain a website for the purposes of this Act and include on it—
  - (a) information about the educational programs conducted or facilitated by the Commission; and
  - (b) information about the evaluations of practices, policies and procedures of inquiry agencies and public authorities conducted by the Commission; and
  - (c) information about the other functions of the Commission; and
  - (d) the Commission's standard operating procedures; and
  - (e) the reports prepared under section 41; and
  - (f) the reports prepared under section 42; and
  - (g) the Commission's annual reports; and
  - (h) information about the Inspector under Schedule 4 and the manner in which a complaint can be made to the Inspector; and
  - (i) the reports on annual reviews laid before Parliament in accordance with Schedule 4; and
  - (j) information designed to assist in preventing or minimising corruption in public administration or other material, as considered appropriate by the Commission.
- (2) The Office must maintain a website for the purposes of this Act and include on it—
  - (a) information about the functions of the Office; and
  - (b) information about the how to make a complaint to the Office; and
  - (c) the Office's annual reports; and
  - (d) information about the Inspector under Schedule 4 and the manner in which a complaint can be made to the Inspector; and
  - (e) the reports on annual reviews laid before Parliament in accordance with Schedule 4; and
  - (f) other material, as considered appropriate by the Office or as prescribed by the regulations.

#### **49—Provision of information to Attorney-General**

- (1) The Commissioner and the Director of OPI must keep the Attorney-General informed of the general conduct of the functions of the Commission and the Office and, if the Attorney-General so requests, provide information to the Attorney-General relevant to the performance of the functions of the Commission or the Office (but not information identifying or about a particular matter subject to assessment, investigation or referral under this Act).
- (2) However, if the Commissioner or the Director of OPI is of the opinion that to provide information as requested by the Attorney-General would compromise the proper performance of the Commission's functions or the Office's functions (as the case may be), they may instead provide to the Governor a detailed written explanation of the reasons for that opinion.

#### **45—Amendment of section 51—Arrangements for provision of information by Commissioner of Police**

Section 51—delete "Commissioner and other persons performing functions under this Act are" and substitute:

Commission is

#### **46—Amendment of section 52—Commission to be regarded as law enforcement body**

Section 52—delete "Commissioner and members of the staff of the Commissioner are" and substitute:

Commission is

#### **47—Amendment of section 53—Impersonation**

Section 53—delete "he or she is the Commissioner, the Deputy Commissioner, an examiner or an investigator" and substitute:

they are a member of the Commission

#### **48—Amendment of section 54—Confidentiality**

- (1) Section 54(1)—after "Commissioner" insert:  
or the Director of OPI
- (2) Section 54(2)(d)—delete "Commissioner" and substitute:  
Commission
- (3) Section 54(3)(a)—delete paragraph (a) and substitute:
  - (a) the person is authorised in writing by the Commissioner or the Director of OPI, or by a person approved by the Commissioner or the Director of OPI under this section to give an authorisation; or
- (4) Section 54(3)(b)(i)—delete "Commissioner" and substitute:  
Commission



- (5) Section 54(3)(b)—after subparagraph (iv) insert:
- (v) a person advising their employer; or
  - (vi) a person advising their business partners or others with whom a relevant fiduciary relationship exists; or
  - (vii) the management of a workers compensation claim; or
- (6) Section 54—after subsection (3) insert:
- (3a) An authorisation to disclose information must be granted under subsection (3)(a) on application by a person—
- (a) if—
    - (i) the information relates to the applicant; and
    - (ii) the person determining the application is satisfied that disclosure of the information would not reasonably be expected to prejudice any further action in respect of the matter; or
  - (b) if—
    - (i) the information was disclosed to the applicant by a close family member; and
    - (ii) the information relates to the close family member; and
    - (iii) the close family member is deceased or is otherwise no longer able to apply for authorisation to disclose the information; and
    - (iv) the person determining the application is satisfied that disclosure of the information would not reasonably be expected to prejudice any further action in respect of the matter.
- (7) Section 54—after subsection (4) insert:
- (5) A person must not, except as authorised in writing by the Commissioner or the Director of OPI, or by a person approved by the Commissioner or the Director of OPI under this section to give an authorisation, or by a court hearing proceedings for an offence against this Act, publish, or cause to be published—
- (a) information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under this Act; or
  - (b) information that might enable a person who has made a complaint or report under this Act to be identified or located; or
  - (c) the fact that a person has made or may be about to make a complaint or report under this Act; or

- (d) information that might enable a person who has given or may be about to give information or other evidence under this Act to be identified or located; or
- (e) the fact that a person has given or may be about to give information or other evidence under this Act; or
- (f) any other information or evidence publication of which is prohibited by the Commission.

Maximum penalty:

- (a) in the case of a body corporate—\$150 000;
  - (b) in the case of a natural person—\$30 000.
- (6) A person does not however commit an offence against this section by publishing—
- (a) any information the disclosure of which has been authorised under subsection (3)(a); or
  - (b) a report of anything said in any proceedings to which parliamentary privilege applies.
- (7) The Director of OPI and the Commissioner must enter into an agreement about the manner in which they will each exercise the power to authorise disclosure of information under this section.

**49—Amendment of section 55—Proceedings to be heard in private**

Section 55(1)—delete "Commissioner" and substitute:

Commission

**50—Repeal of section 56**

Section 56—delete the section

**51—Amendment of section 56A—Use of evidence or information**

Section 56A—delete ", misconduct or maladministration" wherever occurring

**52—Amendment of section 57—Victimisation**

Section 57(1)—delete "Commissioner" and substitute:

Commission

**53—Amendment of section 59—Evidence**

Section 59(2)—delete subsection (2)

## **54—Insertion of section 59A**

After section 59 insert:

### **59A—Legal assistance**

- (1) Despite any other Act or law but subject to subsection (2), the Attorney-General must determine a claim for a relevant payment in respect of legal expenses incurred after the commencement of this section in accordance with the policy set out in Schedule 5.
- (2) This section does not prevent the Attorney-General making any payment to a person in excess of the amount that would be payable in accordance with the policy set out in Schedule 5 or in circumstances other than those referred to in that Schedule.
- (3) In this section—

*relevant payment* means a payment as reimbursement of costs associated with the engagement of an independent legal practitioner by a public officer who has been the subject of, or required to participate in, an investigation under this Act.

## **55—Amendment of section 60—Regulations**

Section 60(2)(a)—delete "Commissioner, the Deputy Commissioner, an examiner or an investigator" and substitute:

Commission

## **56—Repeal of section 61**

Section 61—delete the section

## **57—Amendment of Schedule 2—Examination and production of documents and other things**

- (1) Schedule 2, clause 3(5)—delete "Commissioner" and substitute:  
Commission
- (2) Schedule 2, clause 3(7)—delete "Commissioner" and substitute:  
Commission
- (3) Schedule 2, clause 3(13)—delete "examiner or to the Commissioner a certificate to that effect and, if the court does so, the examiner or the Commissioner, as the case may be," and substitute:  
Commission a certificate to that effect and, if the court does so, the  
Commission
- (4) Schedule 2, clause 3(14)(a)—delete "examiner or the Commissioner" and substitute:  
Commission
- (5) Schedule 2, clause 4(6)(b)—delete "Commissioner" first occurring and substitute:  
Commission

- (6) Schedule 2, clause 5(1)(a)—delete "Commissioner" and substitute:  
Commission
- (7) Schedule 2, clause 6(4) and (5)—delete "Commissioner" wherever occurring and substitute in each case:  
Commission
- (8) Schedule 2, clause 7(2)—delete subclause (2) and substitute:
- (2) Subclause (1) does not prevent the person from making a disclosure—
    - (a) in accordance with the circumstances, if any, specified in the notation; or
    - (b) for the purpose of—
      - (i) obtaining legal advice or legal representation or for the purposes of determining whether a person is entitled to an indemnity for legal costs; or
      - (ii) obtaining medical or psychological assistance from a medical practitioner or psychologist; or
    - (c) where the information relates to the person and is disclosed by the person to a close family member of the person (within the meaning of section 54).
    - (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
    - (e) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under clause 8(3) to the legal practitioner answering a question or producing a document at an examination before an examiner.
- (9) Schedule 2, clause 7(4)(a)—delete "subclause (2)(c)" and substitute:  
subclause (2)(d)
- (10) Schedule 2, clause 8(4)(b)—delete paragraph (b)
- (11) Schedule 2, clauses 12, 13 and 14—delete "Commissioner" wherever occurring and substitute in each case:  
Commission
- (12) Schedule 2, clause 17(2)—delete "Commissioner or an examiner" and substitute:  
Commission

### **58—Amendment of Schedule 3—Search warrants and privilege**

Schedule 3—delete "Commissioner" wherever occurring and substitute in each case:

Commission

## 59—Substitution of Schedule 4

Schedule 4—delete the Schedule and substitute:

### **Schedule 4—Inspector and reviews**

#### **Part 1—Preliminary**

##### **1—Interpretation**

In this Schedule—

*Committee* means the Crime and Public Integrity Policy Committee established under the *Parliamentary Committees Act 1991*;

*Deputy Inspector*—see clause 3;

*employees of the Commission* includes staff subject to an arrangement under section 13;

*employees of the Office* means the employees assigned to the Office in accordance with section 17(2);

*Inspector*—see clause 2;

*relevant complaint* means a complaint made in accordance with any requirements prescribed by the regulations relating to the conduct of any person exercising or purporting to exercise functions and powers under this Act.

#### **Part 2—Inspector and Deputy Inspector**

##### **2—Inspector**

- (1) The Governor must appoint a person (the *Inspector*)—
  - (a) to conduct annual reviews examining the operations of the Office and the Commission during each financial year; and
  - (b) to conduct reviews relating to relevant complaints received by the Inspector; and
  - (c) to conduct other reviews on the Inspector's own motion or at the request of the Attorney-General or the Committee; and
  - (d) to perform any other functions conferred on the Inspector by other Acts.
- (2) The Inspector—
  - (a) subject to subclause (3), must be a person who would be eligible for appointment as the Commissioner; and
  - (b) will be appointed under this clause for a term not exceeding 3 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (3) Despite section 8(3)(b), a person who is not appointed as a judicial officer on a permanent basis may be appointed as the Inspector.

- (4) Before a person is appointed to be the Inspector, the Attorney-General must ensure that the position is advertised in a newspaper or newspapers circulating in each State and Territory.
- (5) A person may only be appointed to be the Inspector if, following referral by the Attorney-General of not less than 2 candidates who are qualified for appointment as the Inspector to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*, the appointment has been recommended by at least a two-thirds majority of that Committee.
- (6) Despite the *Parliamentary Committees Act 1991*, the Statutory Officers Committee must not report on, or publish material in relation to, matters referred to the Committee under subclause (5) except to the extent allowed by the Attorney-General (but this subclause does not derogate from section 15I(2) of the *Parliamentary Committees Act 1991*).
- (7) Subject to subclause (9), the Governor may, on the address of both Houses of Parliament, remove the Inspector from office.
- (8) Subject to subclause (9), the Governor may suspend the Inspector from office for—
  - (a) contravention of a condition of appointment; or
  - (b) misconduct; or
  - (c) failure or incapacity to carry out official duties satisfactorily.
- (9) The Governor may not remove or suspend the Inspector unless the Committee has inquired into the proposed removal or suspension and has reported to each House of Parliament in relation to its inquiry.
- (10) If the Governor suspends the Inspector from office, a full statement of the reason for the suspension must be laid before both Houses of Parliament within 7 days after the suspension if Parliament is then in session or, if not, within 7 days after the commencement of the next session of Parliament.
- (11) If, at the end of 20 sitting days after the statement is laid before Parliament, neither House of Parliament has presented an address to the Governor requiring the Inspector to be restored to office, the Inspector is removed from office.
- (12) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the Inspector to be restored to office, the Inspector is restored to office.
- (13) The office of Inspector becomes vacant if the holder—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Governor; or
  - (d) is appointed to judicial office; or

- (e) is nominated for election as a member of an Australian Parliament; or
  - (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) is convicted of—
    - (i) an indictable offence against the law of this State; or
    - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
    - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding subparagraph; or
  - (h) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
  - (i) is removed from office by the Governor under this clause.
- (14) Except as is provided by this clause, the Inspector may not be removed or suspended from office, nor will the office of the Inspector become vacant.
- (15) The Inspector is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

### **3—Deputy Inspector**

- (1) There is to be a Deputy Inspector responsible for assisting the Inspector as directed by the Inspector.
- (2) The Deputy Inspector is to be appointed by the Governor for a term not exceeding 3 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (3) A person is only eligible for appointment as the Deputy Inspector if the person—
  - (a) is a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; and
  - (b) is not a judicial officer or member of an Australian Parliament.
- (4) The Deputy Inspector may—
  - (a) act as the Inspector during any period for which—

- (i) no person is for the time being appointed as the Inspector; or
    - (ii) the Inspector is absent from, or unable to discharge, official duties; and
  - (b) when not so acting, perform functions or exercise powers at the direction of the Inspector.
- (5) The Governor may remove the Deputy Inspector from office for—
  - (a) contravention of a condition of appointment; or
  - (b) misconduct; or
  - (c) failure or incapacity to carry out official duties satisfactorily.
- (6) The office of Deputy Inspector becomes vacant if the holder—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Governor; or
  - (d) is appointed to judicial office; or
  - (e) is nominated for election as a member of an Australian Parliament; or
  - (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) is convicted of—
    - (i) an indictable offence against the law of this State; or
    - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
    - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding subparagraph; or
  - (h) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
  - (i) is removed from office by the Governor under subclause (5).
- (7) Except as is provided by this clause, the Deputy Inspector may not be removed from office, nor will the office of the Deputy Inspector become vacant.
- (8) The Deputy Inspector is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.



#### **4—Use of services or staff of administrative units**

The Inspector may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

### **Part 3—Powers**

#### **5—Evidence**

The Inspector may, for the purposes of a review—

- (a) receive any evidence that, in the opinion of the Inspector, may assist the Inspector to carry out the review, whether or not the evidence would be admissible in a court of law; and
- (b) take evidence on oath or affirmation (and for that purpose an oath or affirmation may be administered by the Inspector or the Deputy Inspector); and
- (c) permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by—
  - (i) in the case of written evidence—statutory declaration; or
  - (ii) in any other case—oath or affirmation.

#### **6—Issue of summons**

- (1) The Inspector may, for the purposes of a review, summon a person to appear before the Inspector at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons.
- (2) Before issuing a summons under subclause (1), the Inspector must be satisfied that it is reasonable in all the circumstances to do so.
- (3) The Inspector must also record in writing the reasons for the issue of the summons.
- (4) The Inspector may exercise the powers of an examiner under Schedule 2 in relation to a person summoned for examination under this clause (and that Schedule applies, subject to any modifications prescribed by the regulations, as if the Inspector were an examiner).

#### **7—Production of documents etc**

- (1) The Inspector may, for the purposes of a review, do any of the following:
  - (a) require a person to produce any documents or things in that person's possession or control or copies of those documents or things;
  - (b) require a person to provide information to the Inspector, in a form approved by the Inspector;

- (c) require a person to verify by statutory declaration any written information, copies of documents, or representations of things provided to the Inspector;
  - (d) examine or make copies of any document or thing that is produced or provided by a person.
- (2) The Inspector may, by instrument in writing given to a person, order a person to comply with a requirement of a kind specified in subclause (1).

## **8—Entry and search**

- (1) The Inspector (or a person authorised by the Inspector) may, for the purposes of a review, at any time, enter and search any place or vehicle occupied by the Commission, the Office or an inquiry agency, and anything in or on the place or vehicle, as if the Inspector or other person were authorised by a warrant under this clause.
- (2) A magistrate may, on application under this clause, issue a warrant authorising the Inspector or a person authorised by the Inspector to enter and search any place or vehicle (not being a place or vehicle to which subclause (1) applies).
- (3) An application may be made under this clause by the Inspector or a person authorised by the Inspector.
- (4) A warrant may only be issued if the magistrate is satisfied that the warrant is reasonably required in the circumstances for the purposes of the review.
- (5) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and attend in person, by fax, email or telephone in accordance with practices and procedures prescribed by rules of the Magistrates Court.
- (6) The grounds of an application for a warrant must be verified by affidavit.
- (7) A warrant must—
  - (a) specify the place or vehicle to which the warrant relates; and
  - (b) state whether entry is authorised at any time of the day or night or during specified hours of the day or night.
- (8) A warrant authorises the Inspector or any person authorised by the Inspector—
  - (a) to enter and search and, if necessary, use reasonable force to break into or open—
    - (i) the place or vehicle to which the warrant relates; or
    - (ii) part of, or anything in or on, a place or vehicle to which the warrant relates; and

- (b) to give directions with respect to the stopping or movement of a vehicle to which the warrant relates; and
- (c) in the course of executing the warrant—
  - (i) to take photographs, films or audio, video or other recordings; and
  - (ii) to examine, copy or take extracts from a document connected with the investigation; and
  - (iii) to examine or test any thing connected with the investigation, or cause or require it to be examined or tested.
- (9) In executing a warrant, the Inspector or person authorised by the Inspector may be assisted by such other persons as they consider necessary in the circumstances.
- (10) The Inspector or person authorised by the Inspector may require an occupier of a place or a person apparently in charge of a document or thing to give them, or a person assisting them, such assistance as is reasonably required by them for the effective execution of a warrant.
- (11) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.
- (12) The provisions set out in Schedule 3 apply in relation to a warrant under this clause subject to any modifications prescribed by the regulations.

## **Part 4—Reviews**

### **9—Reviews**

- (1) Without limiting the matters that may be the subject of a review, the Inspector—
  - (a) must, in the case of an annual review, consider the following in relation to the financial year to which the review relates:
    - (i) whether the powers under this Act were exercised in an appropriate manner, including—
      - (A) whether there was any evidence of—
        - corruption, misconduct or maladministration in public administration on the part of the Office or the Commission or employees of the Office or the Commission; or
        - unreasonable delay in the conduct of investigations under this Act; or

- unreasonable invasions of privacy by the Office or the Commission or employees of the Office or the Commission; and
- (B) whether undue prejudice to the reputation of any person was caused;
- (ii) whether the practices and procedures of the Office and the Commission were effective and efficient;
  - (iii) whether the Office and the Commission carried out their functions in a manner that was likely to assist in preventing or minimising corruption in public administration; and
- (b) may examine any particular exercises of power by the Office or the Commission; and
- (c) may make any recommendations to the Office, the Commission or the Attorney-General that the Inspector thinks fit.
- (2) Before commencing an annual review, the Inspector must publish a notice calling for public submissions to be made (within a specified period of not less than 1 month and in a manner specified in the notice) in relation to the operations of the Office and the Commission during the financial year to which the annual review is to relate.
- (3) A notice under subclause (2) must be published on the Inspector's website and in the Gazette and may be published in any additional manner determined by the Inspector.
- (4) The Office and the Commission must ensure that the Inspector is provided with such information as the Inspector may require for the purpose of conducting a review.
- (5) A review conducted at the request of the Committee must be completed within any period specified by the Committee (which must be reasonable) and the Attorney-General must ensure that the Inspector is provided with any assistance required to complete the review within that period.
- (6) On completing a review, or at any time during a review, the Inspector may do any of the following:
- (a) refer a matter to the relevant law enforcement agency for further investigation and potential prosecution;
  - (b) refer a matter to the Office, the Commission or a public authority for further investigation and potential disciplinary action against a public officer for whom the Office, the Commission or authority is responsible;

- (c) if the Inspector finds that undue prejudice to the reputation of any person was caused by the Office or the Commission, the Inspector may—
  - (i) publish any statement or material that the Inspector thinks will help to alleviate that prejudice; or
  - (ii) recommend that the Commission or the Office (as the case may require) pay an amount of compensation to the person.
- (7) Before referring a matter under subclause (6), the Inspector must notify the Office or the Commission (as the case may require) of the proposed referral unless the Inspector is of the opinion that it would be inappropriate to do so in the circumstances of the case.
- (8) The Inspector may disclose to the relevant law enforcement agency, or to the Office, the Commission or the public authority, information that the Inspector has in respect of the matter.
- (9) The Inspector—
  - (a) must, in preparing a report on a review, consider the effect of the proposed report on any complaint, report, assessment, investigation or referral under this Act; and
  - (b) must not include information in a report if publication of the information would constitute an offence against section 54.
- (10) A report on a review must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly—
  - (a) in the case of an annual review examining the operations of the Office and the Commission and relevant complaints received during a financial year—on or before 30 September in the following financial year; or
  - (b) in any other case—as soon as practicable after completion of the review.
- (11) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.

## 60—Insertion of Schedule

After Schedule 4 insert:

### Schedule 5—Reimbursement of Legal Fees Policy

#### 1—Interpretation

In this Policy, unless the contrary intention appears—

**Government Board appointee** means a member of a full-time or part-time board, committee, tribunal, trust, commission, council, authority, panel, taskforce, forum, working party or group—

- (a) established by or under an Act of Parliament of South Australia (excluding the *Local Government Act 1999*) and having a majority of members appointed by either a Minister or the Governor; or
- (b) established by a Minister or legal instrument such as a constitution or charter, having a majority of members appointed by either a Minister or the Governor,

and includes a former Government Board appointee where the investigation or proceeding concerns conduct that occurred at a time when that person was a Government Board appointee;

**Government employee** means—

- (a) a public sector employee as defined by the *Public Sector Act 2009*; or
- (b) a person who is appointed to any office under an Act; or
- (c) a volunteer within the meaning of the *Volunteers Protection Act 2001* where the work carried out by the volunteer is directed or coordinated by a public authority,

and includes a former Government employee where the investigation or proceeding concerns conduct that occurred at a time when that person was a Government employee;

**Member of Parliament** or **Member** includes a former Member where the investigation concerns conduct that occurred at a time when that person was a Minister of the Crown;

**relevant ICAC investigation** means an investigation under this Act.

#### 2—Who can claim for reimbursement

- (1) A Government employee, Government Board appointee, Minister or Member of Parliament is to be reimbursed for costs they have incurred associated with their engagement of an independent legal practitioner where—
  - (a) the Government employee, Government Board appointee, Minister or member of parliament has been the subject of, or required to participate in, a relevant ICAC investigation; and

- (b) the additional criteria for reimbursement set out in clause 3 are satisfied.
- (2) A Government employee's union or professional association that has paid legal costs on behalf of the Government employee in respect of their participation in a relevant ICAC investigation may seek reimbursement in accordance with this Policy subject to the same restrictions and conditions as if the Government employee had made the claim.

### **3—Additional criteria for reimbursement**

The additional criteria for reimbursement are—

- (a) the Government employee, Government Board appointee, Minister or Member of Parliament has not been convicted of an indictable offence that constitutes corruption in public administration as a result of the relevant ICAC investigation; and
- (b) the Crown Solicitor (or some other person authorised by the Crown Solicitor) has, in writing—
  - (i) advised the Government employee, Government Board appointee, Minister or Member of Parliament that they will not be represented by the Crown Solicitor for the purposes of responding to or participating in the relevant ICAC investigation (or the Crown Solicitor considers that it was appropriate in all the circumstances for the Government employee, Government Board appointee, Minister or Member of Parliament not to approach the Crown Solicitor before obtaining legal representation); and
  - (ii) agreed that the legal representation of the Government employee, Government Board appointee, Minister or Member of Parliament for the purposes of responding to or participating in the proceedings or investigation is or was reasonably required; and
- (c) the Crown Solicitor (or some other person authorised by the Crown Solicitor) has, in writing, certified that the costs to be reimbursed are reasonable; and
- (d) the Government employee, Government Board appointee, Minister or Member of Parliament is not indemnified in relation to those costs (including by the State of South Australia (through SAICorp or another agency), or under a policy of insurance) and is not entitled to assistance pursuant to the Department of Health Professional Indemnity (Medical Malpractice) Program; and

- (e) the Government employee, Government Board appointee, Minister or Member of Parliament has assigned to the Crown in the right of the State of South Australia any right to recover the costs to be reimbursed from any other party.

#### **4—Reasonable costs**

- (1) The Crown Solicitor (or some other person authorised by the Crown Solicitor) will only certify that costs to be reimbursed are reasonable where satisfied that—
  - (a) the costs claimed have been reasonably incurred in order to allow the Government employee, Government Board appointee, Minister or Member of Parliament to appropriately respond to or participate in the relevant ICAC investigation; and
  - (b) the costs claimed have been calculated consistently with the applicable Crown Solicitor's rates for private solicitor fees as published on the Attorney-General's Department website from time to time; and
  - (c) in the case of costs associated with the briefing of Senior Counsel or Queen's Counsel, and including where costs associated with the briefing of junior counsel in the same matter are also sought, the exceptional circumstances of the matter justify such expenditure; and
  - (d) in the case of costs associated with any review or appeal proceedings arising out of the relevant ICAC investigation instigated or joined by the Government employee, Government board appointee, Minister or Member of Parliament, the exceptional circumstances of the matter justify such expenditure; and
  - (e) any costs or expenses recovered by the Government employee, Government Board appointee, Minister or Member of Parliament from other sources have been appropriately deducted from the costs claimed; and
  - (f) the Government employee, Government Board appointee, Minister or Member of Parliament has provided all information reasonably requested to allow the costs claimed to be assessed in accordance with this Policy.
- (2) The amount to be reimbursed under this Policy shall include GST on the legal costs to be reimbursed if the Government employee, Government Board appointee, Minister or Member of Parliament or, in the case of a Government employee, their union or professional association, is not able to recover the GST as an input tax credit.



## **5—Procedure for reimbursement**

- (1) In the event that it is necessary for the Independent Commissioner Against Corruption or the Director of OPI to authorise the provision of information to another person for the purposes of this Policy, the Government employee, Government Board appointee, Minister or Member of Parliament will seek that authorisation as appropriate.
- (2) A Government employee, Government Board appointee, Minister or Member of Parliament seeking reimbursement of legal fees in accordance with this Policy must—
  - (a) obtain as soon as practicable the necessary written agreement from the Crown Solicitor as required by clause 3(b); and
  - (b) await the finalisation of the relevant ICAC investigation and, if the person has been charged with an offence referred to in clause 3(a), await the finalisation of proceedings for that offence (unless seeking an interim payment in accordance with this Policy); and
  - (c) submit a written claim for certification of the reasonableness of the costs for reimbursement to the Crown Solicitor, including—
    - (i) an assignment of rights (as contemplated by clause 3(e)) in a form approved by the Crown Solicitor; and
    - (ii) all relevant information in support of the eligibility of the claim pursuant to this Policy, including any additional information reasonably requested by the Crown Solicitor; and
  - (d) enter into a legally enforceable agreement with appropriate security for repayment of any reimbursement in the event that they are convicted of an offence referred to in clause 3(a).
- (3) If the costs claimed (or part thereof) are certified as reasonable, the Crown Solicitor will forward the claim to the Attorney-General (or their nominee) for finalisation of the claim.

## **6—Interim payments**

- (1) Prior to the finalisation of a relevant ICAC investigation, a Government employee, Government Board appointee, Minister or Member of Parliament may be reimbursed on an interim basis for costs they have incurred associated with their engagement of an independent legal practitioner, where—
  - (a) the Government employee, Government Board appointee, Minister or Member of Parliament enters into a legally enforceable agreement with appropriate security for repayment of any reimbursement in the event that they are convicted of an offence referred to in clause 3(a);
  - (b) the criteria for reimbursement set out in this Policy are otherwise satisfied.
- (2) A Government employee, Government Board appointee, Minister or Member of Parliament seeking an interim payment of legal fees must do so in accordance with the procedure for reimbursement set out in this Policy.
- (3) A refusal by the Attorney-General (or their nominee) to approve an interim payment does not prevent a Government employee, Government Board appointee, Minister or Member of Parliament from seeking reimbursement in accordance with this Policy following the finalisation of the criminal proceedings or relevant ICAC investigation.
- (4) If the Crown Solicitor certifies that costs in excess of \$100 000 are likely to be incurred by a Government employee, Government Board appointee, Minister or Member of Parliament in respect of a relevant ICAC investigation, the Attorney-General must not refuse to approve interim payments on the making of an application in accordance with the requirements of this clause.

## **Schedule 1—Related amendments and savings and transitional provisions**

### **Part 1—Related amendment of *Ageing and Adult Safeguarding Act 1995***

#### **1—Amendment of section 6—Interaction with *Independent Commission Against Corruption Act 2012***

Section 6—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

## **Part 2—Related amendment of *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981***

### **2—Amendment of section 4—Interpretation**

Section 4(1), definition of *Independent Commissioner Against Corruption*—delete the definition

### **3—Amendment of section 19—Unauthorised entry on lands**

Section 19(8)(bb)—delete paragraph (bb) and substitute:

- (bb) a person performing a function under the *Independent Commission Against Corruption Act 2012*; or

## **Part 3—Related amendment of *Child Sex Offenders Registration Act 2006***

### **4—Amendment of section 67—Confidentiality of information**

Section 67(3)(f)—delete paragraph (f) and substitute:

- (f) to the Independent Commission Against Corruption, the Office for Public Integrity, the Ombudsman or the Internal Investigation Section of South Australia Police for the purposes of an investigation under the *Independent Commission Against Corruption Act 2012*, the *Ombudsman Act 1972*, the *Police Complaints and Discipline Act 2016* or this Act; or

### **5—Amendment of Schedule 2—Information disclosure principles**

Schedule 2, clause 4(f)—delete paragraph (f) and substitute:

- (f) if the disclosure is made to the Independent Commission Against Corruption, the Office for Public Integrity, the Ombudsman or the Internal Investigation Section of South Australia Police for the purposes of an investigation under the *Independent Commission Against Corruption Act 2012*, the *Ombudsman Act 1972*, the *Police Complaints and Discipline Act 2016* or this Act;

## **Part 4—Related amendment of *Children and Young People (Oversight and Advocacy Bodies) Act 2016***

### **6—Amendment of section 41—Commissioner, Guardian and Committee may report, and must refer, certain matters to appropriate body**

(1) Section 41(1)(b)—delete paragraph (b) and substitute:

- (b) in the case of corruption in public administration—must refer the matter to the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*; or
- (c) in the case of misconduct or maladministration in public administration—must refer the matter to the Ombudsman under the *Ombudsman Act 1972*.

(2) Section 41(3)—delete subsection (3) and substitute:

(3) In this section—

*corruption in public administration* means corruption in public administration within the meaning of the *Independent Commission Against Corruption Act 2012*;

*misconduct or maladministration in public administration* means misconduct in public administration or maladministration in public administration, within the meaning of the *Ombudsman Act 1972*.

#### **7—Amendment of section 45—Referral of matters to inquiry agencies etc not affected**

Section 45(3), definition of *inquiry agency*, (d)—delete "Commissioner" and substitute:

Commission

### **Part 5—Related amendment of *Correctional Services Act 1982***

#### **8—Amendment of section 28—Removal of prisoner for criminal investigation, attendance in court etc**

Section 28(2a)—delete "*Independent Commission Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

#### **9—Substitution of section 35AA**

Section 35AA—delete the section and substitute:

##### **35AA—Assistance to make certain complaints**

If a prisoner informs the manager of a correctional institution that the prisoner wishes to make a complaint about—

- (a) corruption in public administration (within the meaning of the *Independent Commission Against Corruption Act 2012*);  
or
- (b) misconduct in public administration or maladministration in public administration (both within the meaning of the *Ombudsman Act 1972*),

the manager of the correctional institution must take such steps as are necessary to facilitate the making of a complaint (including providing facilities to enable the prisoner to prepare the complaint and enclose and seal it in an envelope and delivering the sealed envelope to the Commission or Ombudsman without undue delay).

## Part 6—Related amendment of *Criminal Investigation (Covert Operations) Act 2009*

### 10—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *chief officer*, (a)(iii)—delete "Commissioner" first occurring and substitute:

Commission
- (2) Section 3(1), definition of *law enforcement agency*, (c)—delete "Commissioner" and substitute:

Commission
- (3) Section 3(1), definition of *law enforcement officer*, (c)—delete paragraph (c) and substitute:
  - (c) in relation to the Independent Commission Against Corruption—an investigator under the *Independent Commission Against Corruption Act 2012*;

### 11—Amendment of section 4—Approval of undercover operations

Section 4(1a)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

## Part 7—Related amendment of *Criminal Law Consolidation Act 1935*

### 12—Amendment of section 237—Definitions

Section 237, definition of *public officer*—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

### 13—Amendment of section 246—Confidentiality of jury deliberations and identities

- (1) Section 246(5)(ba)—delete "Commissioner Against Corruption, the Deputy Commissioner, an examiner or an investigator under the *Independent Commissioner Against Corruption Act 2012* or in the course of making a complaint or report under that Act" and substitute:

Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*
- (2) Section 246(6)(ba)—delete "Commissioner Against Corruption, the Deputy Commissioner, an examiner or an investigator under the *Independent Commissioner Against Corruption Act 2012* or in the course of the assessment of a complaint or report under that Act" and substitute:

Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*

#### **14—Amendment of section 251—Abuse of public office**

Section 251—after subsection (2) insert:

- (3) This section does not apply in relation to the use of information by a member of Parliament in the course of, or for the purposes of, the proper exercise of the functions of a member of Parliament (which include, without limitation, receiving information from constituents and making enquiries on behalf of constituents).

### **Part 8—Related amendment of *Defamation Act 2005***

#### **15—Amendment of section 4—Interpretation**

Section 4, definition of *Australian tribunal*—delete "Commissioner Against Corruption, the Deputy Commissioner or an examiner conducting an examination under the *Independent Commissioner Against Corruption Act 2012*" and substitute:

Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*

### **Part 9—Related amendment of *Judicial Conduct Commissioner Act 2015***

#### **16—Amendment of section 7—Appointment of Commissioner**

- (1) Section 7(7)—delete "Subject to subsection (8), the" and substitute:

The

- (2) Section 7(8)—delete subsection (8)

#### **17—Amendment of section 10—Staff**

Section 10(4)—delete subsection (4)

#### **18—Amendment of section 15—Referral of complaint to ICAC**

- (1) Section 15(1)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

- (2) Section 15(1)(b)—delete "Independent Commissioner Against Corruption notifies the Commissioner that he or she considers" and substitute:

Independent Commission Against Corruption notifies the Commissioner that they consider

- (3) Section 15(2)—delete "Commissioner Against Corruption must give the Commissioner the notification referred to in subsection (1)(b) as soon as practicable after conducting the assessment required under section 23 of the *Independent Commissioner Against Corruption Act 2012*" and substitute:

Commission Against Corruption must give the Commissioner the notification referred to in subsection (1)(b) as soon as practicable after the assessment required under the *Independent Commission Against Corruption Act 2012* has been conducted

- (4) Section 15(3)(b)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

## **19—Repeal of section 29A**

Section 29A—delete the section

## **Part 10—Related amendment of *Legal Practitioners Act 1981***

### **20—Amendment of section 21—Entitlement to practise**

Section 21(5), definition of *tribunal*—delete "Commissioner Against Corruption, the Deputy Commissioner or an examiner conducting an examination under the *Independent Commissioner Against Corruption Act 2012*" and substitute:

Commission Against Corruption

### **21—Amendment of section 51—Right of audience**

Section 51(1)(h)—delete "Commissioner" second occurring and substitute:

Commission

### **22—Amendment of section 67B—Application of Part**

Section 67B(e)—delete "Independent Commissioner Against Corruption or the office of the Deputy Commissioner under the *Independent Commissioner Against Corruption Act 2012*" and substitute:

Commissioner or the Deputy Commissioner under the *Independent Commission Against Corruption Act 2012*

## **Part 11—Related amendment of *Local Government Act 1999***

### **23—Amendment of section 264—Complaint lodged with SACAT**

Section 264(2)—delete "Commissioner" and substitute:

Commission

### **24—Amendment of section 265—Hearing by SACAT**

Section 265(2)(a)—delete "Commissioner Against Corruption or another person" and substitute:

Commission Against Corruption or another person or body

### **25—Amendment of section 273—Action on report**

- (1) Section 273(1)(a)—delete "Commissioner" and substitute:

Commission

- (2) Section 273(2)(b)(iv)—delete "Commissioner" and substitute:

Commission

## Part 12—Related amendment of *Ombudsman Act 1972*

### 26—Long title

Long title—after "certain agencies" insert:

and allegations of misconduct or maladministration in public administration

### 27—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *agency to which this Act applies*—delete "the Independent Commissioner Against Corruption" and substitute:

an inquiry agency

- (2) Section 3(1), definition of *complainant*—after "complaint" insert:

or report

- (3) Section 3(1), definition of *complaint*—delete the definition and substitute:

*complaint* in relation to public administration, means a complaint that gives rise, or may give rise, to an investigation into an administrative act or other act in the course of public administration;

- (4) Section 3(1)—after the definition of *council* insert:

*inquiry agency* means—

- (a) the Independent Commission Against Corruption; or
- (b) the Ombudsman; or
- (c) the Judicial Conduct Commissioner;

- (5) Section 3(1), definition of *investigation*—after "administrative act" insert:

or other act in the course of public administration

- (6) Section 3(1)—after the definition of *investigation* insert:

*maladministration in public administration*—see section 4;

*misconduct in public administration*—see section 4;

- (7) Section 3(1)—after the definition of *officer of the Ombudsman* insert:

*OPI* means the Office for Public Integrity established under the *Independent Commission Against Corruption Act 2012*;

- (8) Section 3(1)—after the definition of *principal officer* insert:

*public administration*—without limiting the acts that may comprise public administration, an administrative act will be taken to be carried out in the course of public administration;

*public authority* has the same meaning as in the *Independent Commission Against Corruption Act 2012*;

*public officer* has the same meaning as in the *Independent Commission Against Corruption Act 2012*;

*report* means a report to the Ombudsman of a kind referred to in section 12D;



## 28—Insertion of sections 4 and 4A

After section 3 insert:

### 4—Misconduct and maladministration

- (1) *Misconduct in public administration* means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.
- (2) *Maladministration in public administration*—
  - (a) means—
    - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
    - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
  - (b) includes conduct resulting from impropriety, incompetence or negligence; and
  - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- (3) Without limiting or extending the conduct that may comprise misconduct or maladministration in public administration, this Act applies to conduct that—
  - (a) occurred before the commencement of this section; or
  - (b) occurs outside this State; or
  - (c) comprises a failure to act; or
  - (d) is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or
  - (e) is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.
- (4) A reference in subsection (1) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.

### 4A—Parliamentary privilege unaffected

Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members and powers under this Act may not be exercised in relation to any matter to which parliamentary privilege applies.

## **29—Insertion of section 5A**

Before section 6 insert:

### **5A—Functions**

There is to be an Ombudsman with the following functions:

- (a) to receive, assess and investigate or otherwise deal with complaints made or referred to the Ombudsman about public administration;
- (b) to receive, assess and investigate or otherwise deal with reports about misconduct and maladministration in public administration made or referred to the Ombudsman;
- (c) to assist agencies to identify and deal with inappropriate or improper administrative acts;
- (d) to give directions or guidance to public authorities in dealing with misconduct and maladministration in public administration, as the Ombudsman considers appropriate;
- (e) to evaluate the practices, policies and procedures of public authorities with a view to advancing comprehensive and effective systems for preventing or minimising misconduct and maladministration in public administration;
- (f) to conduct or facilitate the conduct of educational programs or the publication or distribution of educational materials designed to prevent or minimise misconduct and maladministration in public administration;
- (g) to perform other functions conferred on the Ombudsman by this or any other Act.

## **30—Insertion of Part 2A**

After section 12 insert:

### **Part 2A—Receiving and assessing complaints and reports**

#### **12A—Complaints system**

- (1) A system for the receipt of complaints about public administration is to be established by the Ombudsman.
- (2) The system must permit the making of complaints relating to matters that are (in the opinion of the Ombudsman) sensitive, complex or of significant public interest to be made in person to an officer of the Ombudsman.
- (3) The system must ensure that the Ombudsman gives consideration to the motives of a complainant and that complaints that are apparently made in bad faith, for an improper purpose, are vexatious or that otherwise amount to an abuse of the complaints system are not received for consideration by the Ombudsman.

## 12B—Persons who may make complaints

- (1) A complaint about public administration may be made—
  - (a) if the complaint relates to alleged misconduct or maladministration in public administration—by any person; or
  - (b) in any other case—
    - (i) by a person or body of persons directly affected by the acts to which the complaint relates; or
    - (ii) in accordance with subsection (4).
- (2) If the person by whom a complaint might have been made has died or is unable to make the complaint personally, the complaint may be made by a person who is, in the Ombudsman's opinion, a suitable representative of that person.
- (3) A complaint in respect of an act that could, apart from this subsection, be made by a person or body of persons may, with the consent of that person or body, be made on behalf of that person or body by a member of either House of Parliament and with the consent of that person or body that member may act on behalf of that person or body in and in connection with all matters relating to the matter of complaint.
- (4) A complaint may be made by the Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People or the Guardian for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* despite the fact that they are not directly affected by the acts to which the complaint relates.
- (5) Notwithstanding any enactment prohibiting or restricting, or authorising the imposition of prohibitions or restrictions on, communication, a person having the care or custody of another person must not refuse or fail to take all steps necessary to facilitate any communication by that other person necessary for or incidental to a complaint under this Act and to ensure the privacy of that communication.

Maximum penalty: \$2 000.

## 12C—Time within which complaints may be made

- (1) Subject to this section, a complaint under this Act must not be entertained by the Ombudsman if it is made after 12 months from the day on which the complainant first had notice of the matters alleged in the complaint unless the Ombudsman is of the opinion that, in all the circumstances of the case, it is proper to entertain the complaint.
- (2) For the purposes of this section a complainant will be presumed to have had notice of the matters alleged in the complaint at the time they might reasonably be expected to have had such notice.

- (3) This section does not apply in relation to a complaint made by the Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People or the Guardian for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

### **12D—Reporting system for misconduct and maladministration**

- (1) The Ombudsman must prepare directions and guidelines governing reporting to the Ombudsman of matters that an inquiry agency, public authority or public officer reasonably suspects involves misconduct or maladministration in public administration.
- (2) The directions and guidelines—
- (a) must include guidance as to how matters may be reported; and
  - (b) must be made available free of charge on the Internet, and at premises established for the receipt of complaints or reports by the Ombudsman, for inspection by members of the public.
- (3) A public authority or public officer may report to the Ombudsman any matter that the authority or officer reasonably suspects involves misconduct or maladministration in public administration.
- (4) The Attorney-General may, in any event, report such matters to the Ombudsman for consideration as the Attorney-General considers appropriate.

### **12E—Referral of matter by OPI**

If a matter is referred to the Ombudsman under the *Independent Commission Against Corruption Act 2012*, the matter must be dealt with under this Act as if a complaint or report had been made under this Act and—

- (a) if the matter was the subject of a complaint or report under that Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
- (b) if the matter was identified by the Independent Commission Against Corruption in the course of performing functions under that Act—as if the Commissioner under that Act was the complainant under this Act.

### **12F—Obstruction of complaint or report**

A person must not—

- (a) prevent another person from making a complaint or report under this Act; or
- (b) hinder or obstruct another person in making such a complaint or report.

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

### **12G—False or misleading statements in complaint or report etc**

A person must not—

- (a) make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided in a complaint or report; or
- (b) make a complaint or report knowing that there are no grounds for the making of the complaint or report.

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

### **12H—Assessment of complaint or report**

- (1) On receipt by the Ombudsman of a complaint or report, the matter must be assessed as to whether—

- (a) it raises an issue that should be investigated under this Act; or
- (b) it raises some other issue that should be referred to a law enforcement agency, another inquiry agency, a public authority or a public officer; or
- (c) it is trivial, vexatious or frivolous, it has previously been dealt with by an inquiry agency or a public authority and there is no reason to reexamine it or there is other good reason why no action should be taken in respect of it,

and a determination made as to whether or not action should be taken to investigate or refer the matter.

- (2) The Ombudsman may, for the purpose of assessing a matter, by written notice, require a public authority or public officer—

- (a) to produce a specified document or a document relating to a specified matter; or
- (b) to produce a written statement of information about a specified matter or to answer specified questions, within a specified period and in a specified form, verified if the written notice so requires by statutory declaration.

- (3) A person must not refuse or fail to comply with a requirement of a notice under subsection (2).

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

### **31—Amendment of section 13—Matters subject to investigation**

- (1) Section 13(1)—after "administrative act" insert:

or any suspected misconduct or maladministration in public administration

- (2) Section 13(2)—delete subsection (2) and substitute:
- (2) The Ombudsman may make such an investigation either on receipt of a complaint or report or on the Ombudsman's own initiative and, where a complaint or report is made, the Ombudsman may investigate any act in the course of public administration notwithstanding that, on the face of it, the complaint or report may not appear to relate to that act.
- (2a) Despite any other provision of this Act, if the Ombudsman becomes aware that—
- (a) an investigation under the *Independent Commission Against Corruption Act 2012* or other criminal investigation is being conducted in relation to a matter that is the subject of a complaint or is otherwise being investigated under this Act; or
- (b) a person has been or is to be charged with a criminal offence in relation to such a matter,
- the Ombudsman may not proceed to investigate or otherwise deal with the matter under this Act until the criminal investigation has been completed or the proceedings for the offence have been disposed of, withdrawn or permanently stayed.
- (3) Section 13(3)—after "review or remedy" insert:
- or that it is in the public interest to continue the investigation under this Act

### **32—Repeal of sections 14B to 17**

Sections 14B, 15, 15A, 16 and 17—delete the sections

### **33—Amendment of section 18—Procedure on investigations**

- (1) Section 18(1)—delete subsection (1)
- (2) Section 18(1a)—delete "of an administrative act, inform the principal officer of the relevant agency" and substitute:
- under this Act, inform the principal officer of the relevant agency or the relevant public authority
- (3) Section 18(4)—delete "the Ombudsman must allow the principal officer of the agency" and substitute:
- or a public officer or public authority the Ombudsman must allow the principal officer of the relevant agency or the relevant public officer or public authority
- (4) Section 18(5)—delete "breach of duty or misconduct on the part of a member, officer or employee of an agency to which this Act applies to the principal officer of the agency" and substitute:
- misconduct or maladministration in public administration to the relevant public authority

### **34—Insertion of section 20A**

After section 20 insert:

#### **20A—Injunction to refrain from conduct pending investigation**

- (1) The Supreme Court may, on application made by the Ombudsman (in a case where section 19A does not apply or the Ombudsman does not consider it appropriate to issue a notice under that section), grant an injunction restraining a person from engaging in conduct that is the subject of, or affects the subject matter of, an investigation or proposed investigation by the Ombudsman.
- (2) The Supreme Court must not grant an injunction under this section unless it is satisfied—
  - (a) that the conduct sought to be restrained is likely to impede the investigation or proposed investigation; or
  - (b) that it is necessary in the public interest to do so.

### **35—Amendment of section 25—Proceedings on completion of investigation**

- (1) Section 25(1)—delete subsection (1)
- (2) Section 25(2)—delete "In the case of an investigation to which this section applies in which" and substitute:

If, on completion of an investigation,
- (3) Section 25(2)(a)—after "agency" insert:

or authority
- (4) Section 25(2)(b), (c) and (e)—delete "administrative" wherever occurring
- (5) Section 25(2)—after "principal officer of the relevant agency" insert:

or to the relevant public authority
- (6) Section 25(4)—delete "of an agency" and substitute:

or public authority

### **36—Substitution of section 26**

Section 26—delete the section and substitute:

#### **26—Report on investigation**

The Ombudsman may, if of the opinion that it is in the public interest to do so, cause a report on an investigation, or a statement about an investigation, or a decision not to investigate or to discontinue an investigation, to be published in such manner as the Ombudsman thinks fit.

### **37—Amendment of section 27—Report to complainant**

Section 27—after "complaint" wherever occurring insert:

or report

### **38—Amendment of section 28—Determination of the Ombudsman's jurisdiction**

Section 28—after "such an agency" insert:

or a public officer or public authority

### **39—Insertion of section 28A**

After section 28 insert:

#### **28A—Directions following misconduct or maladministration referral**

- (1) If the Ombudsman is satisfied that a matter involves misconduct or maladministration in public administration and the matter is referred to a public authority under this Act, the Ombudsman may issue directions to the public authority doing 1 or both of the following:
  - (a) recommending action that should be taken by the authority and the period within which it should be taken;
  - (b) requiring that the authority submit a report or reports on action taken in respect of the matter.
- (2) The Ombudsman may at any time revoke or vary directions under this section or give further directions.
- (3) If—
  - (a) directions under this section included a requirement that the public authority submit a report or reports on action taken in respect of the matter; and
  - (b) the Ombudsman is not satisfied that the authority has duly and properly taken action in relation to the matter,the Ombudsman must inform the authority of the grounds of the Ombudsman's dissatisfaction and give the authority an opportunity to comment within a specified time.
- (4) If, after considering any comments received from the public authority within the specified time, the Ombudsman is still not satisfied, the Ombudsman may submit a report to the responsible Minister for the authority setting out the grounds of dissatisfaction, together with any comments from the authority.
- (5) If, after considering any comments received from the responsible Minister within 21 days after the report was submitted to the Minister, the Ombudsman is still not satisfied, the Ombudsman may provide to the President of the Legislative Council and the Speaker of the House of Assembly a report setting out the grounds of dissatisfaction.
- (6) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.



#### 40—Substitution of section 29

Section 29—delete the section and substitute:

##### 29—Reviews

- (1) The Inspector appointed under Schedule 4 of the *Independent Commission Against Corruption Act 2012* must conduct the following reviews in accordance with this section:
  - (a) annual reviews examining the operations of the Ombudsman during each financial year;
  - (b) reviews relating to relevant complaints received by the Inspector;
  - (c) other reviews on the Inspector's own motion or at the request of the Attorney-General or the Crime and Public Integrity Policy Committee established under the *Parliamentary Committees Act 1991*.
- (2) Without limiting the matters that may be the subject of a review, the Inspector—
  - (a) must, in the case of an annual review, consider the following in relation to the financial year to which the review relates:
    - (i) whether the powers under this Act were exercised in an appropriate manner (including whether undue prejudice to the reputation of any person was caused);
    - (ii) whether the practices and procedures of the Ombudsman were effective and efficient;
    - (iii) whether the Ombudsman carried out the functions of the Ombudsman under this Act in a manner that was likely to assist in the proper exercise of administrative powers in the State; and
  - (b) may examine any particular exercises of power by the Ombudsman; and
  - (c) may make any recommendations to the Ombudsman or to the Attorney-General that the Inspector thinks fit.
- (3) For the purpose of conducting a review under this section, the Inspector (and any person assisting the Inspector) has the same powers as the Inspector has in conducting a review under the *Independent Commission Against Corruption Act 2012*.
- (4) Before commencing an annual review, the Inspector must publish a notice calling for public submissions to be made (within a specified period of not less than 1 month and in a manner specified in the notice) in relation to the operations of the Ombudsman during the financial year to which the annual review is to relate.

- (5) A notice under subsection (4) must be published on the Inspector's website and in the Gazette and may be published in any additional manner determined by the Inspector.
- (6) The Ombudsman must ensure that the Inspector is provided with such information as the Inspector may require for the purpose of conducting a review.
- (7) A review conducted at the request of the Crime and Public Integrity Policy Committee must be completed within any period specified by the Committee (which must be reasonable) and the Attorney-General must ensure that the Inspector is provided with any assistance required to complete the review within that period.
- (8) On completing a review, or at any time during a review, the Inspector may do any of the following:
  - (a) refer a matter to a law enforcement agency for further investigation and potential prosecution;
  - (b) refer a matter to an inquiry agency or a public authority for further investigation and potential disciplinary action against a public officer for whom the agency or authority is responsible;
  - (c) if the Inspector finds that undue prejudice to the reputation of any person was caused by the Ombudsman, the Inspector may—
    - (i) publish any statement or material that the Inspector thinks will help to alleviate that prejudice; or
    - (ii) recommend that the Ombudsman pay an amount of compensation to the person.
- (9) Before referring a matter under subsection (8), the Inspector must notify the Ombudsman of the proposed referral unless the Inspector is of the opinion that it would be inappropriate to do so in the circumstances of the case.
- (10) On referral of a matter to another agency or authority, the Inspector may disclose to the agency or authority any evidence or information that the Inspector has in respect of the matter.
- (11) Subject to subsection (12), a report on an annual review must—
  - (a) specify how many relevant complaints were made during the financial year to which the report relates; and
  - (b) specify how many reviews were conducted by the Inspector in relation to relevant complaints during the financial year to which the report relates; and
  - (c) describe the types of relevant complaints made during the financial year to which the report relates (in terms of the type of conduct being complained of) and specify how many complaints of each such type were made and describe the outcome of those complaints.

- (12) The Inspector—
- (a) must, in preparing a report on a review, consider the effect of the proposed report on any complaint, report, assessment, investigation or referral under this Act; and
  - (b) must not include information in a report if publication of the information would constitute an offence against section 29A.
- (13) A report on a review must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly—
- (a) in the case of an annual review examining the operations of the Ombudsman and relevant complaints received during a financial year—on or before 30 September in the following financial year; or
  - (b) in any other case—as soon as practicable after completion of the review.
- (14) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.

### **29A—Confidentiality**

- (1) Except as required or authorised by this Act or by the Ombudsman, a person who is or has been engaged in the administration of this Act must not, directly or indirectly, disclose information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment, investigation or referral or evaluation under this Act.
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) Despite subsection (1), a person engaged in the administration of this Act may disclose information—
- (a) for the purposes of the administration or enforcement of this Act; or
  - (b) for the purposes of referring a matter in accordance with this Act to a law enforcement agency, inquiry agency, public authority or public officer; or
  - (c) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
  - (d) for the performance of the functions of the Ombudsman under another Act; or
  - (e) as otherwise required or authorised by this or another Act.

- (3) A person who receives information knowing that the information is connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act must not disclose that information unless—
- (a) the person is authorised in writing by the Ombudsman or by a person approved by the Ombudsman under this section to give an authorisation; or
  - (b) the disclosure of that information is for the purpose of—
    - (i) dealing with a matter under this Act; or
    - (ii) a criminal proceeding, a proceeding for the imposition of a penalty or disciplinary action; or
    - (iii) a person obtaining legal advice or legal representation or for the purposes of determining whether a person is entitled to an indemnity for legal costs; or
    - (iv) a person obtaining medical or psychological assistance from a medical practitioner or psychologist; or
    - (v) a person advising their employer; or
    - (vi) a person advising their business partners or others with whom a relevant fiduciary relationship exists; or
    - (vii) the management of a workers compensation claim; or
  - (c) the information relates to the person and is disclosed by the person to a close family member of the person.

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

- (4) An authorisation to disclose information must be granted under subsection (3)(a) on application by a person—
- (a) if—
    - (i) the information relates to the applicant; and
    - (ii) the person determining the application is satisfied that disclosure of the information would not reasonably be expected to prejudice any further action in respect of the matter; or
  - (b) if—
    - (i) the information was disclosed to the applicant by a close family member; and
    - (ii) the information relates to the close family member; and

- (iii) the close family member is deceased or is otherwise no longer able to apply for authorisation to disclose the information; and
  - (iv) the person determining the application is satisfied that disclosure of the information would not reasonably be expected to prejudice any further action in respect of the matter.
- (5) For the purposes of this section, a person is a *close family member* of another person if—
  - (a) 1 is a spouse of the other or is in a close personal relationship with the other; or
  - (b) 1 is a parent or grandparent of the other (whether by blood or by marriage); or
  - (c) 1 is a brother or sister of the other (whether by blood or by marriage); or
  - (d) 1 is a guardian or carer of the other.
- (6) A person must not, except as authorised in writing by the Ombudsman or a person approved by the Ombudsman under this section to give an authorisation, or by a court hearing proceedings for an offence against this Act, publish, or cause to be published—
  - (a) information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under this Act; or
  - (b) information that might enable a person who has made a complaint or report under this Act to be identified or located; or
  - (c) the fact that a person has made or may be about to make a complaint or report under this Act; or
  - (d) information that might enable a person who has given or may be about to give information or other evidence under this Act to be identified or located; or
  - (e) the fact that a person has given or may be about to give information or other evidence under this Act; or
  - (f) any other information or evidence publication of which is prohibited by the Ombudsman.

Maximum penalty:

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

- (7) A person does not however commit an offence against this section by publishing—
- (a) any information the disclosure of which has been authorised under subsection (3)(a); or
  - (b) a report of anything said in any proceedings to which parliamentary privilege applies.

### **29B—Annual report and other public reports**

- (1) The Ombudsman must, before 30 September in each year, prepare a report on the work of the Ombudsman's office during the preceding financial year.
- (2) The Ombudsman may, at any time, prepare a report setting out—
- (a) recommendations, formulated in the course of the performance of the Ombudsman's functions, for the amendment or repeal of a law; or
  - (b) findings or recommendations resulting from completed investigations by the Ombudsman; or
  - (c) other matters arising in the course of the performance of the Ombudsman's functions that the Ombudsman considers to be in the public interest to disclose.
- (3) The Ombudsman must not prepare a report under this section setting out findings or recommendations resulting from a completed investigation that identifies any person involved in the particular matter or matters the subject of the investigation unless—
- (a) the person consents; or
  - (b) the Ombudsman is satisfied (after complying with subsection (4)) that the public interest in identifying the person outweighs any potential damage to the person's reputation or other damage to the person.
- (4) If the Ombudsman proposes to identify any person in a report, the Ombudsman must, using whatever procedure the Ombudsman may determine, be satisfied that the person has been consulted in relation to that proposal, is aware of the context in which they are to be identified in the report and has had an opportunity to make representations to the Ombudsman in relation to the proposal.
- (5) A copy of a report under this section must be provided—
- (a) in the case of a report of a kind referred to in subsection (2)(b)—to the principal officer of any agency to which this Act applies that is the subject of a finding or recommendation and to the responsible Minister for the agency; and
  - (b) in any case—to the Attorney-General, the President of the Legislative Council and the Speaker of the House of Assembly.

- (6) The President of the Legislative Council and the Speaker of the House of Assembly must lay a report received under this section before their respective Houses—
- (a) in the case of an annual report under subsection (1)— on the first sitting day after receiving the report; or
  - (b) in the case of any other report—on the first sitting day after 28 days (or such shorter number of days as the Attorney-General approves) have passed after receiving the report.

### **29C—Legal assistance**

- (1) Despite any other Act or law but subject to subsection (2), the Attorney-General must determine a claim for a relevant payment in respect of legal expenses incurred after the commencement of this section in accordance with the policy set out in Schedule 1.
- (2) This section does not prevent the Attorney-General making any payment to a person in excess of the amount that would be payable in accordance with the policy set out in Schedule 1 or in circumstances other than those referred to in that Schedule.
- (3) In this section—  
*relevant payment* means a payment as reimbursement of costs associated with the engagement of an independent legal practitioner by a public officer who has been the subject of, or required to participate in, an investigation under this Act involving allegations of misconduct or maladministration in public administration.

### **41—Insertion of sections 31 and 31A**

After section 30 insert:

#### **31—Use of evidence or information**

- (1) Subject to this Act (but despite any other Act or law) evidence or information obtained (whether before or after the commencement of this section) by the lawful exercise of powers in relation to a matter—
  - (a) may be used for the purposes of any other investigation under this Act; and
  - (b) may be provided to, and may be received and used by—
    - (i) law enforcement agencies and prosecution authorities for the purposes of any criminal investigation or proceedings or proceedings for the imposition of a penalty; and
    - (ii) agencies to which this Act applies for the purposes of any disciplinary investigation or action,whether the investigation, proceedings or action relate to, or arise from, the same matter or a different matter; and

- (c) is not inadmissible in proceedings before a court merely because the evidence or information was not obtained for the purposes of those proceedings.
- (2) For the purposes of subsection (1), evidence or information will be taken to be obtained by a lawful exercise of powers in relation to a matter notwithstanding a jurisdictional error in the exercise of those powers.
- (3) No civil or criminal liability lies against a person in respect of any use of evidence or information permitted by this section.

### **31A—Victimisation**

- (1) A person 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 or report under this Act or has provided, or intends to provide, information or other assistance to the Ombudsman in connection with an investigation under this Act commits an act of victimisation.
- (2) Causing detriment on the ground that a person—
  - (a) has made a false allegation; or
  - (b) has not acted in good faith,does not constitute an act of victimisation.
- (3) An act of victimisation under this Act may be dealt with—
  - (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

- (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 2 years.



- (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.
- (8) In this section—  
*detriment* includes—
- (a) loss or damage (including damage to reputation); or
  - (b) injury or harm (including psychological harm); or
  - (c) intimidation or harassment; or
  - (d) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
  - (e) threats of reprisal.
- (9) For the purposes of this section, a *threat* of reprisal may be—
- (a) express or implied; or
  - (b) conditional or unconditional,
- and in any proceedings dealing with an act of victimisation (including proceedings for an offence against subsection (6)) it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

## 42—Insertion of Schedule 1

After section 33 insert:

### Schedule 1—Reimbursement of Legal Fees Policy

#### 1—Interpretation

In this Policy, unless the contrary intention appears—

*Government Board appointee* means a member of a full-time or part-time board, committee, tribunal, trust, commission, council, authority, panel, taskforce, forum, working party or group—

- (a) established by or under an Act of Parliament of South Australia (excluding the *Local Government Act 1999*) and having a majority of members appointed by either a Minister or the Governor; or
- (b) established by a Minister or legal instrument such as a constitution or charter, having a majority of members appointed by either a Minister or the Governor,

and includes a former Government Board appointee where the investigation or proceeding concerns conduct that occurred at a time when that person was a Government Board appointee;

*Government employee* means—

- (a) a public sector employee as defined by the *Public Sector Act 2009*; or

- (b) a person who is appointed to any office under an Act; or
- (c) a volunteer within the meaning of the *Volunteers Protection Act 2001* where the work carried out by the volunteer is directed or coordinated by a public authority,

and includes a former Government employee where the investigation or proceeding concerns conduct that occurred at a time when that person was a Government employee;

***Member of Parliament*** or ***Member*** includes a former Member where the investigation concerns conduct that occurred at a time when that person was a Minister of the Crown;

***relevant investigation*** means an investigation under this Act involving allegations of misconduct or maladministration in public administration.

## **2—Who can claim for reimbursement**

- (1) A Government employee, Government Board appointee, Minister or Member of Parliament is to be reimbursed for costs they have incurred associated with their engagement of an independent legal practitioner where—
  - (a) the Government employee, Government Board appointee, Minister or member of parliament has been the subject of, or required to participate in, a relevant investigation; and
  - (b) the additional criteria for reimbursement set out in clause 3 are satisfied.
- (2) A Government employee's union or professional association that has paid legal costs on behalf of the Government employee in respect of their participation in a relevant investigation may seek reimbursement in accordance with this Policy subject to the same restrictions and conditions as if the Government employee had made the claim.

## **3—Additional criteria for reimbursement**

The additional criteria for reimbursement are—

- (a) no material adverse finding against the Government employee, Government Board appointee, Minister or Member of Parliament has been made as a result of the relevant investigation; and
- (b) the Crown Solicitor (or some other person authorised by the Crown Solicitor) has, in writing—

- (i) advised the Government employee, Government Board appointee, Minister or Member of Parliament that they will not be represented by the Crown Solicitor for the purposes of responding to or participating in the relevant investigation (or the Crown Solicitor considers that it was appropriate in all the circumstances for the Government employee, Government Board appointee, Minister or Member of Parliament not to approach the Crown Solicitor before obtaining legal representation); and
- (ii) agreed that the legal representation of the Government employee, Government Board appointee, Minister or Member of Parliament for the purposes of responding to or participating in the proceedings or investigation is or was reasonably required; and
- (c) the Crown Solicitor (or some other person authorised by the Crown Solicitor) has, in writing, certified that the costs to be reimbursed are reasonable; and
- (d) the Government employee, Government Board appointee, Minister or Member of Parliament is not indemnified in relation to those costs (including by the State of South Australia (through SAICorp or another agency), or under a policy of insurance) and is not entitled to assistance pursuant to the Department of Health Professional Indemnity (Medical Malpractice) Program; and
- (e) the Government employee, Government Board appointee, Minister or Member of Parliament has assigned to the Crown in the right of the State of South Australia any right to recover the costs to be reimbursed from any other party.

#### **4—Reasonable costs**

- (1) The Crown Solicitor (or some other person authorised by the Crown Solicitor) will only certify that costs to be reimbursed are reasonable where satisfied that—
  - (a) the costs claimed have been reasonably incurred in order to allow the Government employee, Government Board appointee, Minister or Member of Parliament to appropriately respond to or participate in the relevant investigation; and
  - (b) the costs claimed have been calculated consistently with the applicable Crown Solicitor's rates for private solicitor fees as published on the Attorney-General's Department website from time to time; and

- (c) in the case of costs associated with the briefing of Senior Counsel or Queen's Counsel, and including where costs associated with the briefing of junior counsel in the same matter are also sought, the exceptional circumstances of the matter justify such expenditure; and
  - (d) in the case of costs associated with any review or appeal proceedings arising out of the relevant investigation instigated or joined by the Government employee, Government board appointee, Minister or Member of Parliament, the exceptional circumstances of the matter justify such expenditure; and
  - (e) any costs or expenses recovered by the Government employee, Government Board appointee, Minister or Member of Parliament from other sources have been appropriately deducted from the costs claimed; and
  - (f) the Government employee, Government Board appointee, Minister or Member of Parliament has provided all information reasonably requested to allow the costs claimed to be assessed in accordance with this Policy.
- (2) The amount to be reimbursed under this Policy shall include GST on the legal costs to be reimbursed if the Government employee, Government Board appointee, Minister or Member of Parliament or, in the case of a Government employee, their union or professional association, is not able to recover the GST as an input tax credit.

## **5—Procedure for reimbursement**

- (1) In the event that it is necessary for the Ombudsman to authorise the provision of information to another person for the purposes of this Policy, the Government employee, Government Board appointee, Minister or Member of Parliament will seek that authorisation as appropriate.
- (2) A Government employee, Government Board appointee, Minister or Member of Parliament seeking reimbursement of legal fees in accordance with this Policy must—
  - (a) obtain as soon as practicable the necessary written agreement from the Crown Solicitor as required by clause 3(b); and
  - (b) await the finalisation of the relevant investigation (unless seeking an interim payment in accordance with this Policy); and
  - (c) submit a written claim for certification of the reasonableness of the costs for reimbursement to the Crown Solicitor, including—
    - (i) an assignment of rights (as contemplated by clause 3(e)) in a form approved by the Crown Solicitor; and

- (ii) all relevant information in support of the eligibility of the claim pursuant to this Policy, including any additional information reasonably requested by the Crown Solicitor.
- (3) If the costs claimed (or part thereof) are certified as reasonable, the Crown Solicitor will forward the claim to the Attorney-General (or their nominee) for finalisation of the claim.

## **6—Interim payments**

- (1) Prior to the finalisation of a relevant ICAC investigation, a Government employee, Government Board appointee, Minister or Member of Parliament may be reimbursed on an interim basis for costs they have incurred associated with their engagement of an independent legal practitioner, where—
  - (a) the Government employee, Government Board appointee, Minister or Member of Parliament enters into a legally enforceable agreement with appropriate security for repayment of any reimbursement in the event that a material adverse finding against the Government employee, Government Board appointee, Minister or Member of Parliament is later made as a result of the relevant proceedings or investigation; and
  - (b) the criteria for reimbursement set out in this Policy are otherwise satisfied.
- (2) A Government employee, Government Board appointee, Minister or Member of Parliament seeking an interim payment of legal fees must do so in accordance with the procedure for reimbursement set out in this Policy.
- (3) A refusal by the Attorney-General (or their nominee) to approve an interim payment does not prevent a Government employee, Government Board appointee, Minister or Member of Parliament from seeking reimbursement in accordance with this Policy following the finalisation of the relevant investigation.
- (4) If the Crown Solicitor certifies that costs in excess of \$100 000 are likely to be incurred by a Government employee, Government Board appointee, Minister or Member of Parliament in respect of a relevant investigation, the Attorney-General must not refuse to approve interim payments on the making of an application in accordance with the requirements of this clause.

## Part 13—Related amendment of *Parliamentary Committees Act 1991*

### 43—Amendment of section 150—Functions of Committee

- (1) Section 150(1)(a)(i)—delete "Independent Commissioner Against Corruption" and substitute:

Independent Commission Against Corruption, the Director of the Office of Public Integrity
- (2) Section 150(1)(a)(ii)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*
- (3) Section 150(1)(b)—after subparagraph (ii) insert:

(iia) the *Police Complaints and Discipline Act 2016*; and
- (4) Section 150(1)(c)—delete paragraph (c) and substitute:
  - (c) to inquire into and consider (at least once every 5 years) the operation of the *Independent Commission Against Corruption Act 2012* and, in particular—
    - (i) the performance of functions and exercise of powers by the Independent Commission Against Corruption, the Office for Public Integrity and the Inspector appointed under that Act; and
    - (ii) whether the operation of the Act has adversely affected persons not involved in corruption to an unreasonable extent; and
- (5) Section 150(2)—delete "Commissioner" first occurring and substitute:

Commission
- (6) Section 150(2)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*
- (7) Section 150(2)—after "public knowledge" insert:

or the Committee require disclosure of the information in accordance with subsection (4)
- (8) Section 150(3)—delete "Nothing" and substitute:

Except as provided in subsection (4), nothing
- (9) Section 150(3)(c)—delete "Commissioner" and substitute:

Commission

(10) Section 150O—after subsection (3) insert:

- (4) The Crime and Public Integrity Policy Committee may inquire into the processes, procedures or practices applied by the Commission or the Inspector under the *Independent Commission Against Corruption Act 2012* and the Committee may require the disclosure of any information it thinks necessary for that purpose.

## **Part 14—Related amendment of *Police Complaints and Discipline Act 2016***

### **44—Amendment of section 3—Interpretation**

- (1) Section 3(1), definition of *corruption in public administration*—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

- (2) Section 3(1), definition of *Independent Commissioner Against Corruption* or *ICAC*—delete "Commissioner" first and second occurring and substitute in each case:

Commission

- (3) Section 3(1), definition of *Independent Commissioner Against Corruption* or *ICAC*—delete the "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

- (4) Section 3(1), definition of *maladministration in public administration*—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Ombudsman Act 1972*

- (5) Section 3(1), definition of *misconduct in public administration*—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Ombudsman Act 1972*

### **45—Amendment of section 4—Application of Act**

Section 4(1)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

### **46—Amendment of section 6—Complaint management system**

- (1) Section 6(3)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

### **47—Amendment of section 8—Functions of OPI under Act**

Section 8(c)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

**48—Amendment of section 15—Commissioner may decline to act in relation to certain complaints**

Section 15(a)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

**49—Amendment of section 29—OPI may refer complaints and reports to ICAC**

- (1) Section 29(1) and (2)—delete "*Independent Commissioner Against Corruption Act 2012*" wherever occurring and substitute in each case:

*Independent Commission Against Corruption Act 2012*

- (2) Section 29(3)—delete "he or she" and substitute:  
it

**50—Amendment of section 45—Confidentiality**

Section 45(3)(b)(i)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

**Part 15—Related amendment of *Public Finance and Audit Act 1987***

**51—Amendment of section 32—Audit etc of publicly funded bodies and projects and local government indemnity schemes**

- (1) Section 32(1b)—delete "Commissioner" and substitute:  
Commission
- (2) Section 32(2)(b)—delete "Commissioner" and substitute:  
Commission
- (3) Section 32(3)(c)—delete "Commissioner" wherever occurring and substitute in each case:  
Commission
- (4) Section 32(4)—delete "Commissioner" and substitute:  
Commission

**Part 16—Related amendment of *Public Interest Disclosure Act 2018***

**52—Amendment of section 4—Interpretation**

- (1) Section 4—after the definition of *appropriate disclosure* insert:

*Commission* means the Independent Commission Against Corruption established under the *Independent Commission Against Corruption Act 2012*;



- (2) Section 4, definition of **corruption in public administration**—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

- (3) Section 4, definition of **maladministration in public administration**—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Ombudsman Act 1972*

- (4) Section 4, definition of **misconduct in public administration**—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Ombudsman Act 1972*

- (5) Section 4, definition of **public administration**—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012* and the *Ombudsman Act 1972*

- (6) Section 4, definition of **public officer**—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

### **53—Amendment of section 12—Duties of principal officers**

Section 12(6)(b)—delete "Commissioner" and substitute:

Commission

### **54—Amendment of section 14—Guidelines**

Section 14(1)—delete "Commissioner" and substitute:

Commission

## **Part 17—Related amendment of *Summary Offences Act 1953***

### **55—Amendment of section 74C—Interpretation**

- (1) Section 74C, definition of **interview**—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

- (2) Section 74C, definition of **investigating officer**—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

## **Part 18—Related amendment of *Surveillance Devices Act 2016***

### **56—Amendment of section 3—Interpretation**

- (1) Section 3(1), definition of **chief officer**, (b)—delete "Commissioner" first occurring and substitute:

Commission

- (2) Section 3(1)—after the definition of *duplicate surveillance device (general) warrant* insert:

*Independent Commission Against Corruption* means the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*;

*Independent Commissioner Against Corruption* means the person holding or acting in the office of the Independent Commissioner Against Corruption under the *Independent Commission Against Corruption Act 2012*;

- (3) Section 3(1), definition of *investigating agency*, (b)—delete "Commissioner" and substitute:

Commission

- (4) Section 3(1), definition of *officer of an investigating agency*, (b)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

- (5) Section 3(1), definition of *review agency*—delete "*Independent Commissioner Against Corruption Act 2012*" wherever occurring and substitute in each case:

*Independent Commission Against Corruption Act 2012*

#### **57—Amendment of section 28—Interpretation**

- (1) Section 28(b)—delete "Commissioner" first, second and fourth occurring and substitute in each case:

Commission

- (2) Section 28(b)(i)—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

#### **58—Amendment of section 35—Delegation**

Section 35(3)(b)—delete "Commissioner" wherever occurring and substitute in each case:

Commission

#### **59—Transitional provisions—*Surveillance Devices Act 2016***

- (1) A warrant in force under the *Surveillance Devices Act 2016* immediately before the commencement of this Part that was issued for the purposes of the investigation of a matter by the Independent Commissioner Against Corruption will continue in force.
- (2) Any evidence obtained, before the commencement of this Part, directly or indirectly as a result of a warrant issued under the *Surveillance Devices Act 2016* for the purposes of the investigation of a matter by the Independent Commissioner Against Corruption is not inadmissible in any proceedings merely because the evidence was obtained before the commencement of this Act.

## Part 19—Related amendment of *Telecommunications (Interception) Act 2012*

### 60—Long title

Long title—delete "Commissioner" and substitute:

Commission

### 61—Amendment of section 2—Interpretation

- (1) Section 2(1), definition of *chief officer*, (b)—delete "Commissioner" first occurring and substitute:

Commission

- (2) Section 2(1), definition of *eligible authority*, (b)—delete "Commissioner" and substitute:

Commission

- (3) Section 2(1)—after the definition of *eligible authority* insert:

*Independent Commission Against Corruption* means the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*;

- (4) Section 2(1), definition of *Independent Commissioner Against Corruption*—delete "*Independent Commissioner Against Corruption Act 2012*" and substitute:

*Independent Commission Against Corruption Act 2012*

- (5) Section 2(1), definition of *officer*, (b)—delete paragraph (b) and substitute:

(b) for the Independent Commission Against Corruption—an investigator under the *Independent Commission Against Corruption Act 2012*;

- (6) Section 2(1), definition of *review agency*—delete "*Independent Commissioner Against Corruption Act 2012*" wherever occurring and substitute in each case:

*Independent Commission Against Corruption Act 2012*

- (7) Section 2(1), definition of *review agency*, (b)—delete "Commissioner" and substitute:

Commission

## Part 20—Related amendment of *Witness Protection Act 1996*

### 62—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *designated position* insert:

*Independent Commission Against Corruption* means the Independent Commission Against Corruption established under the *Independent Commission Against Corruption Act 2012*;

### 63—Amendment of section 21—Offences

- (1) Section 21(3)(ab)—delete "Commissioner" and substitute:

Commission

- (2) Section 21(4)(b)(ia)—delete "Commissioner" and substitute:

Commission

**64—Amendment of section 23—Commissioner and members not to be required to disclose information**

Section 23(2)—delete "Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012*" and substitute:

the Independent Commission Against Corruption

**Part 21—Savings and transitional provisions**

**65—Commissioner continues in office**

The Commissioner holding office under the *Independent Commissioner Against Corruption Act 2012* as in force before the commencement of this Act continues to hold office as the Commissioner under the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act.

**66—Judicial Conduct Commissioner continues in office**

Despite section 12(3) and clause 16 of this Schedule, the Judicial Conduct Commissioner holding office under the *Judicial Conduct Commissioner Act 2015* as in force before the commencement of this Act continues to hold that office on the commencement of this Act.

**67—Deputy Commissioner continues in office**

The Deputy Commissioner holding office under the *Independent Commissioner Against Corruption Act 2012* as in force before the commencement of this Act continues to hold office as the Deputy Commissioner under the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act.

**68—OPI organisational structure**

Until the day fixed by the Minister by notice in the Gazette (which must be not more than 3 months after the commencement of this Act), the Minister may appoint either the Commissioner under the *Independent Commission Against Corruption Act 2012* or another person (on terms and conditions determined by the Minister) to act as the Director of OPI under that Act (as amended by this Act).

**69—Staff**

- (1) On the commencement of this Act—
- (a) employees engaged by the Commissioner under section 12 of the *Independent Commissioner Against Corruption Act 2012* (including any employees assigned to the Office under section 18(3)(a) of the Act) will be taken to be engaged by the Commission under that section as amended by this Act; and
  - (b) arrangements established by the Commissioner under section 13 of the *Independent Commissioner Against Corruption Act 2012* will be taken to continue as if they were arrangements established by the Commission under that section as amended by this Act; and

- (c) Public Service employees assigned to the Office under section 18(3)(a) of the *Independent Commissioner Against Corruption Act 2012* will be taken to continue to be assigned to the Office under section 17(2)(b) of the *Independent Commission Against Corruption Act 2012*).
- (2) Despite section 17(2) of the *Independent Commission Against Corruption Act 2012*, the Independent Commission against Corruption and the Director of OPI may enter into an arrangement for the continued assignment of employees who were, immediately before the commencement of this Act, assigned to the Office under section 18(3)(b) of the *Independent Commissioner Against Corruption Act 2012*.

## **70—Investigations etc to continue**

- (1) Subject to this clause, the *Independent Commissioner Against Corruption Act 2012* as in force before the commencement of this Act continues to apply in relation to any complaint or report made under that Act on or before 25 August 2021, or any investigation commenced under that Act before 25 August 2021.
- (2) The following provisions of the *Independent Commission Against Corruption Act 2012* as amended by this Act apply in relation to a matter referred to in subclause (1):
  - (a) section 6;
  - (b) section 59A and Schedule 5 (but only in respect of legal expenses incurred after commencement of section 59A and, in relation to a matter involving suspected misconduct or maladministration in public administration, as if Schedule 1 of the *Ombudsman Act 1972*, as inserted by this Act and with any necessary modifications, applied instead of Schedule 5).
- (3) If a matter that continues to be dealt with under the *Independent Commissioner Against Corruption Act 2012* as in force before the commencement of this Act in accordance with subclause (1) is not completed within 12 months after the commencement of this clause, the matter must be discontinued (but nothing prevents the matter being the subject of a further complaint or report under the *Independent Commission Against Corruption Act 2012*, or the *Ombudsman Act 1972*, as amended by this Act).

## **71—Complaints and reporting system**

- (1) The complaints system established under section 19, and the reporting system established under section 20, of the *Independent Commissioner Against Corruption Act 2012* as in force before the commencement of this Act continue as the complaints system under section 18A and the reporting system under section 18B (respectively) of the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act until new systems can be established under those sections (subject to any modifications that are necessary or are prescribed by the regulations).
- (2) Section 18A(3) of the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act does not apply for the period of 3 months after the commencement of this Act.

- (3) The complaints system established under section 19, and the reporting system established under section 20, of the *Independent Commissioner Against Corruption Act 2012* as in force before the commencement of this Act may be adopted, on the commencement of this Act, by the Ombudsman as the complaints system under section 12A and the reporting system under section 12D (respectively) of the *Ombudsman Act 1972* as in force after the commencement of this Act until new systems can be established under those sections (subject to any modifications that are necessary or are prescribed by the regulations).
- (4) Section 12A(3) of the *Ombudsman Act 1972* as in force after the commencement of this Act does not apply for the period of 3 months after the commencement of this Act.

## **72—Websites**

Despite section 48 of the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act, the websites referred to in that section are not required immediately on the commencement of that section but must be developed as soon as practicable (and in any case within 6 months after the commencement of that section).

## **73—Inspector under *Ombudsman Act 1972***

The operation of section 29 of the *Ombudsman Act 1972* (as inserted by this Act) is suspended until the day on which section 59 of this Act comes into operation.

## **74—Review continues**

Any review being conducted by the reviewer under Schedule 4 of the *Independent Commissioner Against Corruption Act 2012* as in force before the commencement of section 59 may be continued after the commencement of that section as if it had been carried out by the Inspector under Schedule 4 of the *Independent Commission Against Corruption Act 2012* as in force after the commencement of section 59.

## **75—First review after commencement to consider past prejudice to reputation**

- (1) The Inspector under Schedule 4 of the *Independent Commission Against Corruption Act 2012* as in force after the commencement of section 59 must, in undertaking the first annual review occurring under that Schedule after the commencement of section 59, consider whether undue prejudice to the reputation of any person was caused by the Commissioner, employees of the Commissioner or employees of the Office under the *Independent Commissioner Against Corruption Act 2012* as in force at any time before the commencement of this Act.
- (2) If the Inspector finds that undue prejudice to the reputation of any person was caused by the Commissioner, employees of the Commissioner or employees of the Office, the Inspector may—
  - (a) publish any statement or material that the Inspector thinks will help to alleviate that prejudice; or
  - (b) recommend that the Commission pay an amount of compensation to the person.

- (3) The Inspector may also make recommendations to the Attorney-General in relation to the making of ex gratia payments as reimbursement of legal costs incurred by persons the subject of, or required to participate in, any investigation under the *Independent Commissioner Against Corruption Act 2012* (being costs incurred before the commencement of section 59A of the *Independent Commission Against Corruption Act 2012* (as inserted by this Act)).

#### **76—Savings and transitional regulations**

Regulations may be made under any Act amended by this Act (including under the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act) to make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act.