

House of Assembly—No 1

As restored to the Notice Paper, 6 February 2020

South Australia

**Independent Commissioner Against Corruption
(Investigation Powers) No 2 Amendment Bill 2020**

A BILL FOR

An Act to amend the *Independent Commissioner Against Corruption Act 2012*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Independent Commissioner Against Corruption (Investigation Powers) No 2 Amendment Act 2020*.

2—Commencement

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

3—Amendment provisions

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

Part 2—Amendment of *Independent Commissioner Against Corruption Act 2012*

4—Amendment of section 7—Functions

15 (1) Section 7(1)(cb)—delete "to exercise the powers of an inquiry agency in dealing with" and substitute:

to investigate

(2) Section 7(1)(cc)—delete "to exercise the powers of an inquiry agency in dealing with" and substitute:

to investigate

20 (3) Section 7(4)(a)(ii)—delete subparagraph (ii)

(4) Section 7(5)—delete "subsection (1)(d)" and substitute:

subsection (1)(cb), (cc), (d)

(5) Section 7(5)(b)—before "may regulate" insert:

subject to section 36A(1),

5 **5—Amendment of section 24—Action that may be taken**

(1) Section 24(2)(b)—delete "exercise the powers of an inquiry agency in dealing with" and substitute:

investigate

10 (2) Section 24(2)(c)—delete "exercise the powers of an inquiry agency in dealing with" and substitute:

investigate

6—Repeal of sections 26 and 27

Sections 26 and 27—delete the sections

7—Repeal of sections 33 to 36

15 Sections 33, 34, 35 and 36—delete the sections

8—Substitution of section 36A

Section 36A—delete the section and substitute:

36A—Investigation by Commissioner

- 20 (1) Schedule 3A applies in relation to an investigation by the Commissioner in respect of a matter raising potential issues of misconduct or maladministration in public administration.
- (2) The Commissioner may at any time withdraw from an investigation, or decide to investigate, as the Commissioner sees fit.

36B—Determination of Commissioner's jurisdiction

- 25 (1) If—
- (a) an investigation by the Commissioner in respect of a matter raising potential issues of misconduct or maladministration in public administration has been commenced or is proposed; and
- 30 (b) a question arises as to whether—
- (i) the Commissioner has jurisdiction to conduct the investigation; or
- (ii) a determination by the Commissioner to conduct a public inquiry for the purposes of the investigation was properly made (in accordance with Schedule 3A clause 2),
- 35

the Supreme Court may, on the application of the Commissioner or a public officer or public authority that may be affected by the investigation, determine the question and make any orders necessary to give effect to the determination.

- 5 (2) An application under this section must, subject to subsection (3), be made within the period of 21 days after the Commissioner publishes the written notice required under Schedule 3A clause 2(3) in relation to the public inquiry.
- 10 (3) The Supreme Court may, in its discretion, extend the time fixed for making an application under this section.
- (4) In this section—
public officer includes a former public officer.

36C—Appeals

- 15 (1) If—
- (a) the Commissioner has determined to conduct a public inquiry for the purposes of an investigation in respect of a matter raising potential issues of misconduct or maladministration in public administration; and
- 20 (b) the person heading the investigation has refused an application by a witness or other person for the making of an order under Schedule 3A clause 3(1) forbidding the publication or disclosure of specified matter or matter of a specified kind,
- the witness or other person may appeal to the Supreme Court against the decision to refuse the application.
- 25 (2) The appeal lies to the Supreme Court constituted of a single Judge (but the Judge may, if the Judge thinks fit, refer the matter for hearing and determination by the Full Court).
- 30 (3) The appeal must, subject to subsections (4) and (5), be made within 1 month of the making of the decision appealed against.
- (4) If the reasons of the person heading the investigation were not given in writing at the time of making the decision—
- 35 (a) the person heading the investigation must, if so required by the person to whom the decision relates (within 1 month of the making of the decision), state in writing the reasons; and
- (b) the time for instituting the appeal runs from the time at which the person to whom the decision relates receives the written statement of those reasons.
- 40 (5) The Supreme Court may, in its discretion, extend the time fixed for lodging an appeal.
- (6) On the hearing of an appeal, the Supreme Court may—
- (a) confirm or set aside the decision subject to the appeal; and

- (b) confirm or set aside the decision subject to the appeal or substitute its own decision; and
- (c) make any other order (including an order for costs) that may be necessary or desirable in the circumstances.

5 **9—Heading to Part 4 Division 2 Subdivision 4**

Delete "Request for Auditor-General to examine accounts" and substitute:

General provisions relating to action taken by Commissioner

10—Insertion of sections 39A to 39F

After section 39 insert:

10

39A—Standard operating procedures

- (1) The Commissioner must prepare standard operating procedures governing the exercise of powers by investigators for the purposes of investigations under this Act.
- (2) The standard operating procedures must—
 - (a) include provisions designed to ensure that persons in relation to whom powers are to be exercised under this Act are provided with appropriate information about their rights, obligations and liabilities under this Act; and
 - (b) 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) Contravention of the operating procedures constitutes a ground for suspending, dismissing or taking other disciplinary action against the investigator (but the validity of the exercise of a power cannot be questioned on the ground of contravention of the operating procedures).

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39B—Management of investigation

- (1) If the Commissioner decides to investigate a matter, the Commissioner must oversee the investigation.
- (2) Subject to subsection (3), the Commissioner may determine to head the investigation himself or herself or appoint the Deputy Commissioner or an examiner to head the investigation and report to the Commissioner.
- (3) If the Commissioner determines to conduct a public inquiry for the purposes of an investigation into misconduct or maladministration in public administration, the Commissioner must head the investigation.
- (4) The person heading the investigation may appoint 1 or more legal practitioners to assist as counsel in relation to the investigation.

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39C—Obstruction

- (1) A person must not—
- (a) refuse or fail to provide a statement of information as required by the person heading an investigation; or
 - 5 (b) include information in a statement of information knowing that it is false or misleading in a material particular; or
 - (c) without lawful excuse, refuse or fail to comply with a requirement or direction of an investigator under this Act; or
 - 10 (d) alter, destroy, conceal or fabricate a document or other thing knowing that it is or is likely to be required by an investigator performing functions under this Act; or
 - (e) otherwise hinder or obstruct an investigator, or a person assisting an investigator, in the performance of his or her functions.

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

- (2) An investigator may arrest a person without warrant if the investigator reasonably suspects that the person has committed, is committing, or is about to commit, an offence against subsection (1) and—
- 20 (a) when required to do so by an investigator the person failed to state truthfully his or her personal details or to produce true evidence of those details; or
 - (b) the investigator has reasonable grounds for believing that the person would, if not arrested—
 - 25 (i) fail to attend court in answer to a summons issued in respect of the offence; or
 - (ii) continue the offence or repeat the offence; or
 - (iii) alter, destroy, conceal or fabricate evidence relating to the offence; or
 - 30 (iv) intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.
- (3) On arresting a person under this section, the investigator must immediately deliver the person, or cause the person to be delivered, into the custody of a police officer (and the person will, for the purposes of any other law, then be taken to have been apprehended by the police officer without warrant).
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39D—Limiting action by other agencies and authorities

- 5
- (1) The Commissioner may, by written notice, require a South Australian law enforcement agency, inquiry agency or public authority to refrain from taking action, in respect of a particular matter being investigated by the Commissioner under this Act or to conduct a joint investigation with the Commissioner in respect of a particular matter (and the agency or authority must comply with the requirement even if the agency or authority is otherwise required or authorised to take action under another Act).
- 10
- (2) The notice must specify the period for which it is to apply and set out details of the action that is not to be taken or the requirements governing any joint investigation.
- (3) The Commissioner must consider any comments of the agency or authority with respect to the terms of the notice.

39E—Injunction to refrain from conduct pending investigation

- 15
- (1) The Supreme Court may, on application made by the Commissioner (in a case where section 39D does not apply or the Commissioner 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 Commissioner.
- 20
- (2) The Supreme Court must not grant an injunction under this section unless it is satisfied—
- 25
- (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.

39F—Prosecutions and disciplinary action

- 30
- (1) On completing an investigation or at any time during an investigation the Commissioner may do either or both of the following:
- (a) refer a matter to the relevant law enforcement agency for further investigation and potential prosecution;
- (b) refer a matter to a public authority for further investigation and potential disciplinary action against a public officer for whom the authority is responsible.
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- (2) The Commissioner may disclose to the relevant law enforcement agency or public authority any evidence or information that the Commissioner has in respect of the matter.
- (3) The Commissioner need not obtain the views of a public authority before referring a matter under this section.

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- (4) If a matter is referred to a public authority under subsection (1)(b), the Commissioner may give directions or guidance to the authority, which may include (without limitation)—
- (a) a requirement that the authority submit a report or reports on action taken in respect of the matter as set out in the directions; and
- (b) a recommendation as to the action that should be taken by the authority and the period within which it should be taken.
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- (5) The Commissioner may not give directions to the Governor or a judicial officer or to the Attorney-General in relation to a matter concerning the Governor or a judicial officer.
- (6) The Commissioner may not give directions to a House of Parliament or the Joint Parliamentary Service Committee in relation to a matter concerning a public officer.
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- (7) The Commissioner may at any time—
- (a) revoke a referral to a public authority; or
- (b) revoke or vary directions or guidance given to a public authority or give further directions or guidance,
- as the Commissioner sees fit.
- 20
- (8) If—
- (a) a referral of a matter by the Commissioner 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 Commissioner is not satisfied that a public authority has
- 25
- duly and properly taken action in relation to the matter,
- the Commissioner must inform the authority of the grounds of the Commissioner's dissatisfaction and give the authority an opportunity to comment within a specified time.
- 30
- (9) If, after considering any comments received from the public authority within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister responsible for the authority setting out the grounds of dissatisfaction, together with any comments from the authority.
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- (10) If, after considering any comments received from the Minister responsible for the public authority within 21 days after the report was submitted to the Minister, the Commissioner is still not satisfied, the Commissioner 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.
- 40
- (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.

11—Amendment of section 42—Reports

Section 42(1a)(b)—delete paragraph (b)

12—Amendment of section 45—Commissioner's annual report

Section 45(2)(b)(x)—delete subparagraph (x)

5 **13—Amendment of section 48—Commissioner's website**

Section 48(h)—delete paragraph (h) and substitute:

- (h) information, presented in a reasonably prominent way, relating to Schedule 4, including—
 - 10 (i) a statement that complaints about the Commissioner or the Office may be made to the reviewer appointed under Schedule 4; and
 - (ii) information about how to make a complaint to the reviewer or a link to such information on the reviewer's website maintained under Schedule 4 clause 2A; and
 - 15 (iii) a statement that the reviewer conducts an annual review in relation to the Commissioner and the Office and publishes a report on the review, as well as a link to the latest such report published on the reviewer's website maintained under Schedule 4 clause 2A; and

20 **14—Amendment of section 54—Confidentiality**

Section 54(3)—after paragraph (c) insert:

or

- (d) the disclosure occurs in the course of a public inquiry referred to in Schedule 3A clause 2.

25 **15—Amendment of section 56—Publication of information and evidence**

- (1) Section 56—delete "A person" and substitute:

Subject to subsection (2), a person

- (2) Section 56—after its present contents (now to be designated as subsection (1)) insert:

- (2) This section does not apply to information disclosed—

- 30 (a) in a notice published in accordance with Schedule 3A clause 2(3); or
- (b) in the course of a public inquiry referred to in Schedule 3A clause 2.

16—Amendment of section 57—Victimisation

- 35 (1) Section 57(6), penalty provision—delete "\$10 000" and substitute:

\$20 000 or imprisonment for 2 years

(2) Section 57(8), definition of *detriment*, (a)—delete paragraph (a) and substitute:

(a) loss or damage (including damage to reputation); or

(aa) injury or harm (including psychological harm); or

(3) Section 57—after subsection (8) insert:

(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.

17—Insertion of section 62

After section 61 insert:

62—Review of Act by Crime and Public Integrity Policy Committee

(1) Without limiting section 15O of the *Parliamentary Committees Act 1991*, the Crime and Public Integrity Policy Committee of the Parliament (the *Committee*) must inquire into and consider the operation of the whole of the *Independent Commissioner Against Corruption Act 2012* (as amended by the *Independent Commissioner Against Corruption (Investigation Powers) No 2 Amendment Act 2020*).

(2) Without limiting the matters that may be considered in the inquiry under this section, the Committee must inquire into the effect (if any) that the operation of the *Independent Commissioner Against Corruption Act 2012* has had on the functions, operations and effectiveness of State law enforcement and integrity agencies.

(3) The inquiry under this section must be completed by 31 July 2020.

(4) For the purposes of the *Parliamentary Committees Act 1991*, the inquiry under this section will be taken to be a matter referred to the Committee under this Act.

(5) In this section—

State law enforcement and integrity agencies—the following are State law enforcement and integrity agencies:

(a) South Australia Police;

(b) the Ombudsman;

(c) the Auditor-General;

(d) any other agency or instrumentality of Crown, or holder of an office established under an Act, whose functions consist of or include law enforcement, or the investigation of matters related to public integrity.

18—Insertion of Schedule 3A

After Schedule 3 insert:

Schedule 3A—Investigations into misconduct and maladministration

Part 1—Preliminary

1—Interpretation

- (1) In this Schedule—
examiner means—
 - (a) in relation to a public inquiry—the Commissioner; or
 - (b) in relation to any other investigation into misconduct or maladministration in public administration—
 - (i) the Commissioner; or
 - (ii) the Deputy Commissioner; or
 - (iii) an examiner appointed by the Commissioner.
- (2) An examiner appointed by the Commissioner must be a legal practitioner.

2—Commissioner may conduct public inquiry

- (1) For the purposes of an investigation into misconduct or maladministration in public administration, the Commissioner may, if the Commissioner is satisfied that it is in the public interest to do so, conduct a public inquiry.
- (2) Without limiting the factors that the Commissioner may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commissioner must consider the following:
 - (a) the benefit of exposing to the public, and making it aware of, misconduct or maladministration in public administration;
 - (b) the seriousness of the matter being investigated;
 - (c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry);
 - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

(3) At least 21 days before a public inquiry is commenced, the Commissioner must publish, on a website determined by the Commissioner and in a newspaper circulating generally in the State, a written notice—

- (a) specifying that the Commissioner intends to conduct a public inquiry; and
- (b) identifying the matter that is to be the subject of the public inquiry; and
- (c) setting out the basis on which the Commissioner is satisfied that it is in the public interest to conduct the public inquiry.

(4) If the Commissioner determines to conduct a public inquiry for the purposes of an investigation, any examinations of witnesses will be conducted in public (subject to any orders under clause 3) and otherwise in accordance with the directions of the Commissioner.

(5) For the avoidance of doubt, unless the Commissioner makes a determination in accordance with this clause, an investigation into misconduct or maladministration in public administration must be conducted in private.

3—Orders

(1) If, in the course of an investigation into misconduct or maladministration in public administration, the person heading the investigation considers it desirable to exercise powers conferred by this clause in order to prevent undue prejudice or undue hardship to any person, or otherwise in the public interest, the person may by order—

- (a) direct that certain evidence will be taken in private; or
- (b) direct that any persons specified (by name or otherwise) absent themselves from any place used for the purposes of the investigation during the whole or a specified part of the investigation; or
- (c) forbid the publication or disclosure of specified evidence, or of any account or report of specified evidence, either absolutely or subject to conditions; or
- (d) forbid the publication or disclosure of the contents of any document, or a description of any thing, produced, seized or obtained for the purposes of the investigation; or
- (e) forbid the publication or disclosure of the name of—
 - (i) a witness or potential witness; or
 - (ii) a person referred to in the course of the inquiry,and of any other material that might enable any such witness or person to be identified or located; or

(f) forbid the publication or disclosure of the fact that a person has been served with a summons or has given or may be about to give information or other evidence for the purposes of the investigation.

5 (2) An order under subclause (1) may be varied or revoked by—

(a) the Commissioner; or

(b) the person who made the order.

(3) A person who contravenes, or fails to comply with, an order under this clause is guilty of an offence.

10 Maximum penalty:

(a) in the case of a body corporate—\$150 000;

(b) in the case of a natural person—\$30 000.

(4) If the Commissioner has determined to conduct a public inquiry for the purposes of an investigation, a witness or other person may apply to the person heading the investigation (in such manner as the person heading the investigation thinks fit) for the making of an order under subclause (1) forbidding the publication or disclosure of specified matter or matter of a specified kind.

4—Procedure and evidence

20 (1) Subject to this Schedule, the person heading an investigation may conduct the investigation as they see fit, provided that they act in accordance with the principles of procedural fairness.

25 (2) In the case of a public inquiry, an examination of a witness must be conducted in accordance with the rules of evidence and the practices and procedures applicable to a witness giving evidence in summary proceedings in the Magistrates Court.

(3) For the avoidance of doubt, nothing in this clause affects any other requirement to act in accordance with the principles of procedural fairness for the purposes of this Act or any other Act.

5—Right to present evidence at public inquiry

A person who gives evidence as a witness in a public inquiry is entitled to call and present evidence relevant to the investigation (including by calling witnesses or presenting evidence by affidavit) and to make submissions to the person heading the investigation.

6—Representation

35 (1) The person heading an investigation into misconduct or maladministration in public administration—

40 (a) must allow a person who has been called as a witness by another witness in a public inquiry held for the purposes of the investigation (in accordance with clause 5) to appear at the public inquiry as such a witness; and

- 5 (b) may, if satisfied that special circumstances exist, allow any other person to appear at any public inquiry held for the purposes of the investigation or to otherwise make submissions for the purposes of the investigation despite the fact that the person has not been required to give evidence at an examination.
- 10 (2) For the purposes of subclause (1), *special circumstances* may, for example, include circumstances in which the person's rights or interests are likely to be affected by the evidence given by others in the course of the investigation.
- (3) A person who is required to give evidence at an examination, or a person who is allowed to appear or make submissions in accordance with subclause (1), may be represented by a legal practitioner.
- 15 (4) A person who is required to give evidence at an examination held as part of a public inquiry may also be represented by a legal practitioner at any other examination of a person held for the purposes of the public inquiry.
- 20 (5) A legal practitioner representing a person may (in addition to representing the person at any examination of the person and at any public inquiry held for the purposes of the investigation) make submissions to the person heading the investigation in relation to any evidence and any procedural matters arising out of the investigation.

7—Privilege against self-incrimination

25 A person is not required to answer a question, provide information or produce a document or thing under this Schedule if the answer to the question, the information or the contents of the document or thing, would tend to incriminate the person of an offence.

8—Legal professional privilege and public interest immunity

- 30 (1) Subject to this clause, nothing in this Act prevents a person who is required under this Act to answer a question, provide information or produce a document or thing from claiming legal professional privilege as a reason for not complying with that requirement.
- (2) Subclause (1) does not apply to any privilege of a public authority or public officer in that capacity.
- 35 (3) Subject to this clause, it is not an excuse for a person to refuse or fail to comply with a requirement under this Schedule on the grounds of public interest immunity.
- (4) No person is required or authorised by virtue of this Schedule to take action—
- 40 (a) to furnish any information or answer any questions relating to the proceedings of the Cabinet or of any committee of the Cabinet; or
- (b) to produce or inspect so much of any document as relates to any such proceedings,

unless a Minister has certified that Cabinet has approved the action.

- (5) For the purposes of subclause (4) a certificate issued under the hand of a Minister certifying—
- (a) that any information or question or any document or part of a document relates to proceedings referred to in that subclause; or
 - (b) that Cabinet have, or have not, authorised any action specified in the certificate,

is conclusive evidence of the fact so certified.

9—Statements made in investigation not admissible in evidence

The following are not (except in proceedings for an offence against this Act) admissible in evidence against a person in any civil or criminal proceedings in any court:

- (a) a statement or disclosure made by the person—
 - (i) in answer to a question put to the person in an examination or by written notice under clause 23; or
 - (ii) in a written statement of information provided by the person in response to a written notice under clause 23;
- (b) the fact of production of a document or thing by the person in response to a written notice under clause 24.

Part 2—Examination of witnesses

10—Examinations

- (1) An examiner may conduct an examination for the purposes of an investigation into misconduct or maladministration in public administration.
- (2) Subject to this Schedule, an examiner may regulate the conduct of proceedings at an examination as the examiner thinks fit.
- (3) At an examination before an examiner—
 - (a) counsel assisting the examiner generally or in relation to the matter to which the investigation relates; or
 - (b) any person authorised by the examiner to appear before the examiner at the examination; or
 - (c) any legal practitioner representing a person at the examination in accordance with clause 6,

may, so far as the examiner thinks appropriate, examine or cross-examine any witness on any matter that the examiner considers relevant to the investigation.

- (4) A legal practitioner representing a person at an examination has—
- (a) the same rights in examining and cross-examining witnesses and making submissions to the person heading the investigation; and
 - (b) the same professional obligations,
- as if the legal practitioner were representing the person in summary proceedings in the Magistrates Court.
- (5) For the avoidance of doubt, an examination may be conducted whether or not the Commissioner has determined to conduct a public inquiry.

11—Power to summon witnesses and take evidence

- (1) An examiner may summon a person to appear before the examiner 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 examiner must be satisfied that it is reasonable in all the circumstances to do so.
- (3) The examiner must also record in writing the reasons for the issue of the summons.
- (4) A summons under subclause (1) requiring a person to appear before an examiner must—
- (a) set out, so far as is reasonably practicable, why the person is being summoned and the general nature of the matters in relation to which the examiner intends to question the person; and
 - (b) specify whether the examination will be conducted in public or in private,
- but nothing in this subclause prevents the examiner from questioning the person in relation to any matter that relates to an investigation into misconduct or maladministration in public administration.
- (5) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.
- (6) An examiner may, at an examination, take evidence on oath or affirmation and for that purpose—
- (a) the examiner may require a person appearing at the examination to give evidence either to take an oath or to make an affirmation in a form approved by the examiner; and
 - (b) the examiner, or a person who is a member of the staff of the Commissioner authorised for the purpose by the Commissioner, may administer an oath or affirmation to a person so appearing at the examination.

12—Failure of witnesses to attend and answer questions

(1) A person served, as prescribed, with a summons to appear as a witness at an examination before an examiner must not—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by the examiner.

Maximum penalty: \$20 000 or imprisonment for 4 years.

(2) A person appearing as a witness at an examination before an examiner must not—

- (a) when required pursuant to this Division either to take an oath or make an affirmation—refuse or fail to comply with the requirement; or
- (b) refuse or fail to answer a question that he or she is required to answer by the examiner; or
- (c) refuse or fail to produce a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed.

Maximum penalty: \$20 000 or imprisonment for 4 years.

13—Warrant for arrest of witness

(1) If, on application by an examiner, a judge of the Supreme Court is satisfied by evidence on oath that there are reasonable grounds to believe—

(a) that a person in relation to whom a summons has been issued under this Division—

- (i) has absconded or is likely to abscond; or
- (ii) is otherwise attempting, or is otherwise likely to attempt, to evade service of the summons; or

(b) that a person has committed an offence under clause 12(1) or is likely to do so,

the judge may issue a warrant for the apprehension of the person.

(2) The warrant may be executed by any person to whom it is addressed and the person executing it has power to break into and enter any premises or vehicle for the purpose of executing it.

(3) The warrant may be executed even if the warrant is not at the time in the possession of the person executing it.

(4) A person executing the warrant may only use such reasonable force as is necessary for the execution.

(5) If a person is apprehended under the warrant, he or she must be brought, as soon as practicable, before a judge of the Supreme Court and the judge may—

- 5 (a) admit the person to bail, with such security as the judge thinks fit, on such conditions as he or she thinks necessary to ensure the appearance of the person as a witness before the examiner; or
- 10 (b) order the continued detention of the person for the purposes of ensuring his or her appearance as such a witness; or
- (c) order the release of the person.

15 (6) If a person is under detention under this clause, he or she must, within 14 days after he or she was brought, or last brought, before a judge of the Supreme Court in accordance with this clause, or within such shorter or longer time as a judge has fixed upon the last previous appearance of the person before a judge under this clause, be again brought before a judge and the judge may then exercise any of the powers of a judge under subclause (5).

14—False or misleading evidence

20 A person must not, at an examination before an examiner, give evidence that the person knows is false or misleading in a material particular.

Maximum penalty: \$20 000 or imprisonment for 4 years.

15—Protection of witnesses from harm or intimidation

If it appears to an examiner that, by reason of the fact that a person—

- 25 (a) is to appear, is appearing or has appeared at an examination before the examiner to give evidence or to produce a document or thing; or
- 30 (b) proposes to furnish or has furnished information, or proposes to produce or has produced a document or thing, to the Commissioner or the Office otherwise than at an examination before the examiner,

35 the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment, the examiner may make such arrangements (including arrangements with South Australia Police) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

16—Contempt of Commissioner

A person is in contempt of the Commissioner if he or she—

- 40 (a) when appearing as a witness at an examination before an examiner—
- (i) refuses or fails to take an oath or affirmation when required to do so under this Division; or

(ii) refuses or fails to answer a question that he or she is required to answer by the examiner; or

(iii) refuses or fails to produce a document or other thing that he or she was required to produce by a summons or notice under this Act that was served on him or her in accordance with this Act; or

(b) gives evidence at an examination before an examiner that he or she knows is false or misleading in a material particular; or

(c) obstructs or hinders an examiner in the performance of his or her functions as an examiner; or

(d) disrupts an examination before an examiner; or

(e) threatens a person present at an examination before an examiner.

17—Supreme Court to deal with contempt

(1) If an examiner is of the opinion that, during an examination before the examiner, a person is in contempt of the Commissioner, the examiner may apply to the Supreme Court for the person to be dealt with in relation to the contempt.

(2) Before making the application, the examiner must inform the person that the examiner proposes to make the application.

(3) The application must be accompanied by a certificate that states—
(a) the grounds for making the application; and
(b) evidence in support of the application.

(4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.

(5) If, after—
(a) considering the matters specified in the certificate; and
(b) hearing or receiving any evidence or statements by or in support of the Commissioner; and
(c) hearing or receiving any evidence or statements by or in support of the person,

the Supreme Court finds that the person was in contempt of the Commissioner, the Court may deal with the person as if the acts or omissions involved constituted a contempt of that Court.

18—Conduct of contempt proceedings

(1) This clause applies if an application for a person to be dealt with in relation to a contempt of the Commissioner is made to the Supreme Court under clause 17.

(2) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any rules of court) that apply in relation to the punishment of a contempt of the Supreme Court.

5 (3) In proceedings in relation to the application, a certificate under clause 17(3) is prima facie evidence of the matters specified in the certificate.

19—Person in contempt may be detained

10 (1) If an examiner proposes to make an application under clause 17(1) in respect of a person, he or she may, during the hearing concerned, direct a police officer to detain the person for the purpose of bringing the person before the Supreme Court for the hearing of the application.

15 (2) If the person is detained under subclause (1)—
(a) the examiner must apply to the Court as soon as practicable under clause 17(1) in respect of the person; and
(b) the person must, subject to subclause (3), be brought before the Court as soon as practicable.

20 (3) The Court may—
(a) direct that the person be released from detention on condition that he or she will appear before the Court in relation to the application; or
(b) order that the person continue to be detained until the application is determined.

25 (4) The Court may also impose any other condition on the release, for example—
(a) that the person surrenders his or her passport; or
(b) that the person gives an undertaking as to his or her living arrangements; or

30 (c) that the person reports as required to a law enforcement agency.

(5) The Court may at any time vary or revoke a condition imposed under subclause (4).

20—Examiner may withdraw contempt application

35 (1) An examiner may at any time withdraw an application in relation to a person under clause 17(1).

(2) If—
(a) the examiner does so; and
(b) the person is in detention under clause 19,
40 the person must be released from detention immediately.

21—Legal protection of examiners, counsel and witnesses

- 5
- (1) An examiner has, in the performance of his or her functions or the exercise of his or her powers as an examiner in relation to an examination before the examiner, the same protection and immunity as a judge of the Supreme Court.
- (2) A legal practitioner assisting the person heading the investigation or an examiner, or representing a person at an examination before an examiner, has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- 10
- (3) Subject to this Act, a person summoned to attend or appearing before an examiner as a witness has the same protection as a witness in proceedings in the Supreme Court.

22—Offence to hinder, obstruct or disrupt

15 A person must not—

- (a) hinder or obstruct an examiner in the performance of his or her functions as an examiner; or
- (b) disrupt an examination before an examiner.

Maximum penalty: \$20 000 or imprisonment for 4 years.

Part 3—General investigation powers

23—Production of statement of information

25 For the purposes of an investigation into misconduct or maladministration in public administration, the person heading the investigation may, by written notice, require an inquiry agency, public authority or public officer 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 person so requires by statutory declaration.

24—Production of documents and other things

30 For the purposes of an investigation into misconduct or maladministration in public administration, the person heading the investigation may, by written notice, require a person to produce a document or thing for the purposes of the investigation within a specified period.

25—Entry and inspection

35 For the purposes of an investigation into misconduct or maladministration in public administration, an investigator may enter and inspect any premises or place occupied by a public authority and anything in or on those premises or that place.

Part 4—Action on completion of investigation

26—Findings

5 Following an investigation into misconduct or maladministration in public administration, the Commissioner or the person heading the investigation may make such findings as the Commissioner or person thinks fit, including findings as to whether or not any misconduct or maladministration has occurred, is occurring or is likely to occur.

27—Recommendations

- 10 (1) Following an investigation into misconduct or maladministration in public administration, the Commissioner or the person heading the investigation may make any recommendations the Commissioner or person thinks fit to the public authority responsible for any public officer to whom the matter relates or to the Minister responsible for that public authority (or both).
- 15 (2) The public authority responsible for any public officer in relation to which a recommendation is made under this clause must, at the request of the Commissioner, report to the Commissioner within a time allowed in the request on what steps have been taken to give effect to the recommendation and, if no such steps have been taken, the reason for the inaction.
- 20 (3) If the Commissioner is not satisfied that a public authority has complied with any recommendation made under this clause, the Commissioner must inform the authority of the grounds of the Commissioner's dissatisfaction and give the authority an opportunity to comment within a specified time.
- 25 (4) If, after considering any comments received from the public authority within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister responsible for the authority setting out the grounds of dissatisfaction, together with any comments from the authority.
- 30 (5) If, after considering any comments received from the Minister responsible for the public authority within 21 days after the report was submitted to the Minister, the Commissioner is still not satisfied, the Commissioner 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.
- 35 (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 (7) This clause is in addition to, and does not derogate from, any other power of the Commissioner to take action following an investigation under this Act.

28—Reports

- 5
- (1) The Commissioner or the person heading the investigation may publish (in such manner as the Commissioner thinks fit) 1 or more reports setting out findings or recommendations (or both) resulting from an investigation into misconduct or maladministration in public administration.
 - (2) This power is in addition to and does not derogate from the power of the Commissioner to publish reports in section 42.

19—Amendment of Schedule 4—Reviews

- 10 (1) Schedule 4—after clause 2 insert:

2A—Reviewer's website

The reviewer must maintain a website for the purposes of this Act and include on it—

- 15
- (a) information about the role of the reviewer; and
 - (b) information about how to make a relevant complaint; and
 - (c) the reports on annual reviews laid before Parliament in accordance with clause 3; and
 - (d) any other information or material required to be published on the reviewer's website under this Act.

- 20 (2) Schedule 4, clause 3—after subclause (1) insert:

- 25
- (1a) Before commencing an annual review, the reviewer 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 Commissioner and the Office during the financial year to which the annual review is to relate.
 - (1b) A notice under subsection (1a) must be published on the reviewer's website and in the Gazette and may be published in any additional manner determined by the reviewer.

- 30 (3) Schedule 4, clause 3—after subclause (6) insert:

- 35
- (6a) Subject to subclause (7), 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 reviewer 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.
- 40

Schedule 1—Transitional provisions

1—Application of amendments

5 If, immediately before the commencement of section 8, the Independent Commissioner Against Corruption (the *Commissioner*) was exercising powers in accordance with section 36A of the *Independent Commissioner Against Corruption Act 2012* (the *Act*) in respect of a matter—

- 10 (a) the Commissioner may continue to investigate the matter in accordance with the Act as amended by this Act and the investigation will be taken to be an investigation conducted under the Act as amended by this Act; and
- (b) any evidence obtained in accordance with the Act as in force before the commencement of this Act may be used for the purposes of the investigation as if the evidence had been obtained in accordance with the Act as in force after the commencement of this Act.