

(Reprint No. 1)

**SOUTH AUSTRALIA**

**POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS)  
ACT, 1985**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 18 March 1993.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

## SUMMARY OF PROVISIONS

### PART I

#### PRELIMINARY

##### Section

1. Short title
2. Commencement
3. Interpretation
4. Act not to derogate from other law

### PART II

#### POLICE COMPLAINTS AUTHORITY

5. Appointment of Police Complaints Authority
6. Authority not to engage in other remunerative employment
7. Term of office
8. Removal from office
9. Public Service Act not to apply
10. Officers of Authority
11. Acting Authority
12. Protection for Authority and persons acting under his direction

### PART III

#### POLICE INTERNAL INVESTIGATION BRANCH

13. Constitution of internal investigation branch of police force
14. Officer in charge entitled to report directly to Commissioner
15. Duties of members serving in internal investigation branch

### PART IV

#### COMPLAINTS AND THEIR INVESTIGATION

16. Complaints to which this Act applies
17. Right of persons detained in custody to make complaint to Authority
18. Action upon complaint being made to member of police force
19. Action upon complaint being made to Authority
20. Authority to notify complainant of receipt of complaint
21. Determination by Authority that investigation not warranted
22. Conciliation
23. Determination that complaint be investigated by Authority
24. Effect of certain determinations of Authority
25. Investigation of complaints by internal investigation branch
26. Powers of Authority to oversee investigations by internal investigation branch
27. Register to be kept by internal investigation branch
28. Investigation of complaints by Authority
29. Register to be kept by Authority
30. Authority to respond to inquiries by complainants

### PART V

#### ACTION CONSEQUENTIAL ON INVESTIGATION

31. Reports of investigations by internal investigation branch to be furnished to Authority
32. Authority to make assessment and recommendations in relation to investigations by internal investigation branch
33. Authority to report upon and make assessment and recommendations in relation to investigation carried out by him
34. Recommendations of Authority and consequential action by Commissioner
35. Commissioner to notify Authority of laying of charges or other action consequential upon investigation
36. Particulars in relation to complaint to be entered in register and furnished to complainant and member of police force concerned

### PART VI

#### POLICE DISCIPLINARY TRIBUNAL

37. Constitution of Police Disciplinary Tribunal
38. Registrar of Tribunal
39. Charges in respect of breach of discipline
40. Proceedings before the Tribunal
41. Powers of the Tribunal
42. Protection of Tribunal, counsel and witnesses
43. Case stated
44. Costs
45. Reasons for decision

PART VII

APPEALS IN RESPECT OF DISCIPLINE

46. Appeal against decision of Tribunal or punishment for breach of discipline

PART VIII

MISCELLANEOUS

47. Application to Supreme Court as to powers and duties under Act  
48. Secrecy  
49. Offences in relation to complaints  
50. Authority may revoke or vary determination  
51. Authority and Commissioner may report to Minister  
52. Annual and special reports to Parliament by Authority  
53. Minister to review and report to Parliament upon operation of Act  
54. Summary proceedings  
55. Regulations



# **POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) ACT, 1985**

being

Police (Complaints and Disciplinary Proceedings) Act, 1985, No. 26 of 1985 [Assented to 28 March 1985]<sup>1</sup>

as amended by

Police (Police Aides) Amendment Act 1992 No. 60 of 1992 [Assented to 12 November 1992]<sup>2</sup>

**An Act to provide for the investigation of complaints made in respect of members of the police force; to provide for the appointment of a Police Complaints Authority and to prescribe his duties and functions; to make provision in relation to police disciplinary proceedings; and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

## **PART I PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Police (Complaints and Disciplinary Proceedings) Act, 1985*.

### **Commencement**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

### **Interpretation**

3. In this Act, unless the contrary intention appears—

“the Authority” means the person appointed to be the Police Complaints Authority under Part II or a person acting in the office of Police Complaints Authority in pursuance of that Part:

---

<sup>1</sup>Came into operation 1 September 1985: *Gaz.* 29 August 1985, p. 604.

<sup>2</sup>Came into operation 18 March 1993: *Gaz.* 18 March 1993, p. 914.

*Note:* 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

“breach of discipline” means breach of the *Police Regulation Act, 1952*, for which there is liability to punishment by the Commissioner pursuant to that Act:

“the Commissioner” means the Commissioner of Police and includes—

(a) the Deputy Commissioner of Police acting subject to the direction of the Commissioner;

or

(b) the Deputy Commissioner or an Assistant Commissioner of Police acting in the place of the Commissioner during a period for which the Commissioner is absent or the office of the Commissioner is vacant:

“conduct” of a member of the police force means—

(a) an act or decision of a member of the police force;

or

(b) failure or refusal by a member of the police force to act or make a decision,

in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside the State, of a power, function or duty that he has as, or by virtue of being, a member of the police force:

“the internal investigation branch” means the branch of the police force established in pursuance of Part III:

“member” or “member of the police force” means a person who is a member of the police force within the meaning of the *Police Regulation Act, 1952*, and includes—

(a) a person appointed to be a police cadet or a special constable under that Act;

or

(b) an officer or person employed in or performing duties or functions in the department of the public service of which the Commissioner is permanent head under the *Public Service Act, 1967*:

“prescribed officer or employee” means—

(a) a person appointed to be a special constable under the *Police Regulation Act, 1952*;

(ab) a person appointed to be a police aide under the *Police Act 1952*;

or

(b) an officer or employee referred to in paragraph (b) of the definition of “member”:

“the Tribunal” means the Police Disciplinary Tribunal established under Part V.

#### **Act not to derogate from other law**

4. The provisions of this Act are in addition to and do not derogate from the provisions of any other law.

## PART II

## POLICE COMPLAINTS AUTHORITY

**Appointment of Police Complaints Authority**

5. (1) Subject to this Act, the Governor may appoint a person to be the Police Complaints Authority.

(2) A person shall not be appointed to be the Authority unless he is enrolled as a barrister or solicitor, or both, or legal practitioner, of the High Court or the Supreme Court of this State or another State or Territory of the Commonwealth and has been so enrolled for not less than five years.

(3) The Authority shall be appointed upon such terms and conditions and shall be entitled to receive such salary and allowances as may be from time to time determined by the Governor.

(4) A rate of salary determined to be payable to the Authority shall not be reduced during his term of office.

(5) The salary and allowances payable to the Authority under this section shall be paid out of the General Revenue of the State which is appropriated by this section to the necessary extent.

**Authority not to engage in other remunerative employment**

6. The Authority shall not, without the consent of the Minister, engage in any remunerative employment or undertaking outside the duties of his office.

**Term of office**

7. (1) The Authority shall be appointed—

(a) for a term of office of seven years;

or

(b) if that period would extend beyond the date on which he will attain the age of sixty-five years—for a term of office expiring on the day on which he attains the age of sixty-five years.

(2) Subject to this Act, a person appointed to be the Authority may, upon the expiration of his term of office, be reappointed to the office.

(3) A person who has attained the age of sixty-five years shall not be appointed or reappointed to the office of the Authority.

**Removal from office**

8. (1) The Governor may remove the Authority from office upon the presentation of an address from both Houses of Parliament praying for his removal.

(2) The Governor may suspend the Authority from office on the grounds of incompetence or misbehaviour.

(3) Where the Authority is suspended from office under subsection (2), the suspension shall cease to have effect—

(a) if a full statement of the reasons for the suspension is not laid before both Houses of Parliament within seven sitting days of Parliament after the suspension;

or

(b) upon the expiration of one month from the date on which a statement is laid before both Houses of Parliament pursuant to paragraph (a), unless an address is presented to the Governor by both Houses of Parliament praying for the removal of the Authority.

(4) The office of the Authority shall become vacant if—

(a) he dies;

(b) he resigns by written notice addressed to the Governor, or his term of office expires;

(c) he is removed from office under subsection (1);

(d) he is declared bankrupt;

(e) he is imprisoned or convicted of an offence punishable by imprisonment for a term of six months or more;

(f) he becomes a member of Parliament of the State, the Commonwealth or another State or Territory of the Commonwealth;

or

(g) he is removed from office by the Governor on the ground of mental or physical incapacity to carry out satisfactorily the duties of his office.

(5) Except as provided by this section, the Authority shall not be removed or suspended from office nor shall his office become vacant.

#### **Public Service Act not to apply**

9. The provisions of the *Public Service Act, 1967*, shall not apply to or in relation to the office of the Authority.

#### **Officers of Authority**

10. (1) The Governor may, subject to and in accordance with the *Public Service Act, 1967*, appoint such officers as he considers necessary or expedient for the purposes of this Act and an officer so appointed shall hold office subject to and in accordance with that Act.

(2) The Minister may, by notice published in the *Gazette*, determine—

(a) that specified provisions of the *Public Service Act, 1967*, and the regulations under that Act shall not apply to or in relation to an officer appointed under subsection (1);

and

(b) that provisions contained, or referred to, in the notice shall apply to and in relation to the officer instead of those provisions,

and the notice shall have effect according to its terms.

(3) The Minister may, by notice published in the *Gazette*, vary or revoke a notice under subsection (2).

(4) The Authority may, with the approval of the Minister, appoint, upon terms and conditions from time to time determined by the Governor, such officers and employees as he considers necessary or expedient for the purposes of this Act, and the *Public Service Act, 1967*, shall not apply to or in relation to persons so appointed.

(5) The Authority may, with the approval of the Minister administering a department of the public service of the State, upon terms mutually arranged, make use of the services of an officer or use any facilities of the department.

**Acting Authority**

11. (1) The Governor may appoint a suitable person to act in the office of the Authority during any period for which the office is vacant or the Authority is absent for any reason.

(2) A person shall be appointed under subsection (1) upon such terms and conditions and shall be entitled to receive such salary and allowances as may be from time to time determined by the Governor.

(3) The salary and allowances payable to a person appointed under subsection (1) shall be paid out of the General Revenue of the State which is appropriated by this section to the necessary extent.

**Protection for Authority and persons acting under his direction**

12. No liability shall attach to the Authority or any person acting under his direction or authority for an act or omission in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of a power, function or duty under this Act.

PART III

POLICE INTERNAL INVESTIGATION BRANCH

**Constitution of internal investigation branch of police force**

13. (1) The Commissioner shall constitute within the police force a separate branch to carry out investigations under this Act in relation to complaints about the conduct of members of the police force.

(2) In addition to carrying out investigations referred to in subsection (1), the internal investigation branch may carry out such other investigations in relation to the conduct of members of the police force as may be required by the Commissioner.

**Officer in charge entitled to report directly to Commissioner**

14. The officer in charge of the internal investigation branch shall be entitled to report directly to the Commissioner upon any matter relating to the branch or the performance of its functions.

**Duties of members serving in internal investigation branch**

15. Where a member serving in the internal investigation branch is able to do so without unduly interfering with the performance by the branch of its functions, the member may be directed by the Commissioner to perform duties not related to investigations into the conduct of members of the police force (not being duties involving the investigation of offences alleged to have been committed by persons other than members of the police force).

## PART IV

## COMPLAINTS AND THEIR INVESTIGATION

**Complaints to which this Act applies**

16. (1) A complaint about the conduct of a member of the police force may be made—

(a) to a member of the police force (not being the member about whose conduct the complaint is made);

or

(b) to the Authority.

(2) Where a person makes a complaint to a member of the police force about the conduct of that member, that member shall, as soon as reasonably practicable, advise the person that, in order for the complaint to be one to which this Act applies, the complaint must be made—

(a) to some other member of the police force;

or

(b) to the Authority.

(3) A complaint made to the Authority must, if the Authority so requires, be reduced to writing.

(4) This Act applies to a complaint made under this section—

(a) whether or not the member of the police force about whose conduct the complaint is made is identified by the complainant;

(b) whether or not the identity of the complainant is known by or disclosed to the member of the police force to whom the complaint is made or the Authority, as the case may be;

(c) whether the complaint is made by a person on his own behalf or on behalf of some other person;

(d) whether the person by whom or on whose behalf the complaint is made is a natural person or a body corporate.

(5) This Act does not apply to a complaint—

(a) made to a member of the police force by or on behalf of another member of the police force;

(b) made about conduct that occurred before the commencement of this section;

or

(c) made by or on behalf of a member or members of the police force in relation to the employment or terms or conditions of employment of the member or members.

**Right of persons detained in custody to make complaint to Authority**

17. (1) Where a person detained in custody wishes to make a complaint to the Authority about the conduct of a member of the police force, any person performing duties in connection with the detention of the person shall—

(a) at the request of the person, provide him with facilities to enable him to prepare the complaint and to enclose and seal it in an envelope;

and

(b) upon receiving the sealed envelope from the person for delivery to the Authority—

(i) ensure that the sealed envelope is plainly addressed to the Authority and marked as being confidential;

and

(ii) cause the sealed envelope to be delivered to the Authority without undue delay.

(2) A request referred to in subsection (1)—

(a) must be made to a person other than the member of the police force about whose conduct the complaint is to be made;

and

(b) shall be complied with as soon as reasonably practicable (but without there being any obligation to interrupt the carrying out of any other lawful procedure or function).

(3) Where a request referred to in subsection (1) is made to the member of the police force about whose conduct the complaint is to be made, the member shall, as soon as reasonably practicable, advise the person of the requirement that the request be made to some other person who is performing duties in connection with the person's detention.

(4) Where a person receives a sealed envelope for delivery to the Authority under subsection (1), no person other than the Authority or a person acting with the authority of the Authority shall open the envelope or inspect its contents.

Penalty: One thousand dollars.

(5) It shall be a defence to a charge of an offence against subsection (4) if the defendant proves that the acts to which the charge relates were done inadvertently.

#### **Action upon complaint being made to member of police force**

18. (1) Where a complaint to which this Act applies is made to a member of the police force, the member shall, in accordance with any directions of the Commissioner—

(a) refer the complaint, by the most expeditious means available to him, to the internal investigation branch for investigation;

or

(b) refer the complainant to a member of the police force authorized to receive the complaint.

(2) Where a complaint is made to a member of the police force to whom the complainant has been referred under subsection (1)(b), that member shall refer the complaint, by the most expeditious means available to him, to the internal investigation branch for investigation.

(3) Where a complaint is referred to the internal investigation branch under this section, the Authority shall be notified, by writing, of the complaint and furnished with particulars of the complaint.

(4) Notwithstanding the other provisions of this section, where a complaint made to a member of the police force concerns the conduct of a prescribed officer or employee, the complaint shall not be referred to the internal investigation branch but shall, in accordance with any directions of the Commissioner, be referred to the Authority.

(5) Where a complaint is referred to the Authority pursuant to subsection (4), the provisions of this Act shall apply in relation to the complaint as if it were a complaint made to the Authority.

#### **Action upon complaint being made to Authority**

19. (1) Where a complaint to which this Act applies is made to the Authority, the Authority shall—

(a) notify the Commissioner, by writing, of the complaint and furnish him with particulars of the complaint;

and

(b) subject to any determination under section 21, 22 or 23, refer the complaint to the Commissioner.

(2) Where a complaint is referred to the Commissioner under subsection (1)(b), the Commissioner shall refer the complaint to the internal investigation branch for investigation.

#### **Authority to notify complainant of receipt of complaint**

20. The Authority shall, unless the identity of the complainant is not known, acknowledge, by writing, each complaint made to the Authority and each complaint of which he is notified under section 18.

#### **Determination by Authority that investigation not warranted**

21. (1) The Authority may, in his discretion, determine that a complaint to which this Act applies (whether being a complaint made to the Authority or a complaint of which the Authority has been notified under section 18) should not be investigated or further investigated under this Act—

(a) if he is satisfied that the complaint was made more than six months after the complainant or person on whose behalf the complaint was made became aware of the conduct complained of and that there are no special reasons justifying the investigation or further investigation of the complaint;

(b) if in his opinion—

(i) the complaint is trivial, frivolous or vexatious or was not made in good faith;

or

(ii) the complainant or person on whose behalf the complaint was made does not have a sufficient interest in the matter raised in the complaint,

and there are no special reasons justifying the investigation or further investigation of the complaint;

(c) if the complaint was made without disclosure of the identity of the complainant and there are not, in the opinion of the Authority, any special reasons justifying investigation of the complaint;

(d) if a person has been charged with an offence or breach of discipline in relation to the conduct complained of;

(e) if the complainant or person on whose behalf the complaint was made has exercised a right of action or has or has exercised a right of appeal or review in relation to the matter complained of and there are not, in the opinion of the Authority, any special reasons justifying the investigation or further investigation of the complaint;

or

(f) if, in his opinion, the investigation or further investigation of the complaint is unnecessary or unjustifiable having regard to all the circumstances of the case.

(2) Where the Authority makes a determination under this section, he shall, by writing, notify the Commissioner and, unless the identity of the complainant is not known, the complainant of the determination and his reasons for making the determination.

### Conciliation

22. (1) The Commissioner may in relation to a complaint to which this Act applies (being a complaint made to a member of the police force), if he considers it appropriate to do so, attempt to resolve the matter by conciliation.

(2) The Commissioner shall not attempt conciliation in relation to a complaint except with the agreement of the Authority.

(3) The Authority may in relation to a complaint to which this Act applies (whether being a complaint made to the Authority or a complaint of which the Authority has been notified under section 18), if he considers it appropriate to do so, attempt to resolve the matter by conciliation.

(4) The Commissioner or the Authority may, in attempting conciliation under this section, act personally or through some other person.

(5) The Authority, before attempting conciliation in relation to a complaint, shall notify the Commissioner of his intention to do so and may request that any investigation or further investigation of the complaint be deferred pending the results of his action.

(6) Where conciliation is to be attempted in relation to a complaint, the Commissioner may, or, at the request of the Authority under subsection (5), shall, direct that any investigation or further investigation of the complaint by members of the police force be deferred pending the results of that action.

(7) Where conciliation is attempted under this section by the Commissioner or the Authority, the one shall report to the other the results of his action.

(8) The Authority may, if he is satisfied that the matter raised by a complaint has been properly resolved by conciliation undertaken by him or by the Commissioner, determine that the complaint should not be investigated or further investigated under this Act.

(9) Where the Authority makes a determination under subsection (8), he shall, by writing, notify the Commissioner and, unless the identity of the complainant is not known, the complainant of the determination.

(10) Where the Authority disagrees with an assessment of the Commissioner contained in a report under subsection (7) that the matter raised by a complaint has been properly resolved by conciliation undertaken by the Commissioner, the Authority shall, by writing, notify the Commissioner of his disagreement and the reasons for his disagreement.

**Determination that complaint be investigated by Authority**

23. (1) Subject to subsection (2), the Authority may determine that a complaint to which this Act applies (whether being a complaint made to the Authority or a complaint of which the Authority has been notified under section 18) should be investigated by him.

(2) The Authority may make a determination under subsection (1)—

(a) after consultation with the Commissioner, in relation to any complaint that he is satisfied—

(i) concerns conduct of a member of the police force holding a rank equal to or senior to the rank held by the officer in charge of the internal investigation branch;

(ii) concerns conduct of a member of the police force serving in the internal investigation branch;

(iii) is in substance about the practices, procedures or policies of the police force;

or

(iv) should for any other reason be investigated by the Authority;

(b) in relation to any complaint that concerns conduct of a prescribed officer or employee—if the Authority is of the opinion, having regard to the nature of the matters raised by the complaint in relation to the prescribed officer or employee, that there are no special reasons justifying investigation of the complaint by the internal investigation branch;

or

(c) as otherwise provided under this Act.

(3) Where a determination is made under subsection (1), the Authority may, in addition, make one or more of the following determinations:

(a) a determination—

(i) that the complaint;

or

(ii) that a matter or matters raised by the complaint,

should be investigated or further investigated by the internal investigation branch in conjunction with the investigation to be carried out by him;

(b) a determination—

(i) that the complaint;

or

(ii) that a matter or matters raised by the complaint,

should not be investigated or further investigated by the internal investigation branch or any member of the police force acting under the direction of the Commissioner.

(4) Where the Authority makes a determination under this section, he shall, by writing, notify the Commissioner of the determination.

(5) Where—

(a) a determination is made under this section in relation to a complaint;

and

(b) the internal investigation branch has commenced but not completed an investigation or further investigation of the complaint,

the officer in charge of the branch shall, as soon as is practicable, cause a report, in writing, of the results of the investigation or further investigation to be prepared and delivered to the Commissioner.

(6) The Commissioner shall, as soon as practicable after his receipt of a report under subsection (5), furnish a copy of the report to the Authority and, when doing so, may attach to the report such comments as he thinks fit to make in relation to the investigation or further investigation.

#### **Effect of certain determinations of Authority**

24. Where the Authority has made—

(a) a determination under section 21 or 22 that a complaint should not be investigated or further investigated under this Act;

or

(b) a determination under section 23 that a complaint should be investigated by him,

the Commissioner may nevertheless, in his discretion, but subject to any determination under section 23(3)(b), direct that the complaint, or a matter or matters raised by the complaint, be investigated or further investigated, but, in that event, the provisions of this Act shall not apply to or in relation to that investigation or further investigation.

#### **Investigation of complaints by internal investigation branch**

25. (1) Subject to any determination made by the Authority under section 21, 22 or 23, or direction given by the Commissioner under section 22, each complaint that is referred to the internal investigation branch under this Act for investigation or further investigation shall be investigated or further investigated by that branch.

(2) An investigation or further investigation referred to in subsection (1) shall be conducted, subject to any directions of the Commissioner, in such manner as the officer in charge of the internal investigation branch thinks fit.

(3) Subject to any directions of the Commissioner, a member of the internal investigation branch may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as he thinks fit.

(4) Subsections (2) and (3) do not authorize a member of the police force to contravene or fail to comply with a law that would, if those subsections had not been enacted, apply in relation to the investigation of a complaint referred to the internal investigation branch, but nothing in this subsection affects the operation of any other provision of this section.

(5) A member of the internal investigation branch may, for the purposes of the investigation, direct a member of the police force to furnish information, produce a document or other record or answer a question, being information, a document or record or a question that is relevant to the investigation.

**Police (Complaints and Disciplinary Proceedings) Act, 1985**

(6) For the purposes of the *Police Regulation Act, 1952*, a direction given by a member of the internal investigation branch under subsection (5) has effect as if it had been given by the Commissioner.

(7) A member of the internal investigation branch shall, before giving any direction under subsection (5) to the member about whose conduct the complaint was made, inform the member of the general nature of the complaint.

(8) A member of the police force who—

(a) without reasonable excuse, refuses or fails to furnish information, produce a document or other record or answer a question when so required in pursuance of this section;

or

(b) furnishes information or makes a statement to a member of the internal investigation branch knowing that it is false or misleading in a material particular,

may be dealt with in accordance with the *Police Regulation Act, 1952*, for breach of discipline.

(9) Where a member of the police force is directed under subsection (5) to furnish information, produce a document or record or answer a question, the member is not excused from complying with the direction on the ground—

(a) that the furnishing of the information, the production of the document or record or the answering of the question—

(i) would be contrary to the public interest;

or

(ii) would contravene the provisions of any other enactment;

or

(b) that the information, the document or record or the answer to the question might tend to show that he has committed a breach of discipline.

(10) A member of the police force may refuse to furnish information, produce a document or record or answer a question if the information, the document or record or the answer to the question might tend to incriminate him or a close relative of his, but any such refusal may be dealt with in accordance with the *Police Regulation Act, 1952*, as a breach of discipline.

(11) In subsection (10)—

“close relative” of a member of the police force means a spouse (including a putative spouse within the meaning of the *Family Relationships Act, 1975*), a parent or a child of the member.

(12) A member of the police force who furnishes information, produces a document or record or answers a question is not liable to a penalty under the provisions of any other law prohibiting such an act if the act is done in compliance with a direction given by a member of the internal investigation branch under this section.

(13) The officer in charge of the internal investigation branch may, subject to any directions of the Commissioner, require a member of the police force not serving in that branch to assist the branch in conducting investigations under this section or to conduct investigations on behalf of the branch, and, in that event, the provisions of this section shall apply as if that member were a member of the internal investigation branch.

(14) In this section—

“member of the police force” does not include a prescribed officer or employee.

**Powers of Authority to oversee investigations by internal investigation branch**

26. (1) The Authority may, at any time after a complaint has been referred to the internal investigation branch for investigation or further investigation under this Act—

(a) discuss the complaint or any aspect of the complaint with the complainant;

or

(b) require the Commissioner or, as approved by the Commissioner, the officer in charge or any other member of the internal investigation branch—

(i) to provide information to him about the progress of the investigation;

(ii) to arrange for him to inspect any document or record in the possession or under the control of the branch that is relevant to the complaint;

or

(iii) to arrange for him to interview a person other than the complainant in relation to the complaint.

(2) The Commissioner shall ensure that any requirement of the Authority made under subsection (1)(b) is complied with without any undue delay.

(3) The Authority may, by writing, notify the Commissioner of any directions that he considers should be given by the Commissioner as to—

(a) the matters to be investigated;

(b) the methods to be employed;

(c) the use for investigative purposes of members not serving in the internal investigation branch;

or

(d) any other matter or thing,

in relation to an investigation or investigations by the internal investigation branch under this Act.

(4) Where the Commissioner is notified by the Authority under subsection (3) of any directions that the Authority considers should be given by the Commissioner, the Commissioner shall—

(a) give the directions accordingly;

or

(b) if he does not agree that the directions should be given—notify the Authority, by writing, of his disagreement and the reasons for his disagreement.

(5) Where the Authority is notified of disagreement by the Commissioner under subsection (4)(b), the Authority may, if he is unable to resolve the matter by consultation with the Commissioner, refer it to the Minister and the Minister may determine what directions (if any) should be given by the Commissioner.

(6) A determination of the Minister under subsection (5) that relates to complaints generally, or to a class of complaints, shall not be binding on the Commissioner unless embodied in a direction of the Governor given under section 21 of the *Police Regulation Act, 1952*.

(7) In this section—

“directions” includes directions varying or revoking directions previously given by the Commissioner whether under this section or otherwise.

#### **Register to be kept by internal investigation branch**

27. The officer in charge of the internal investigation branch shall maintain a register containing the prescribed particulars with respect to each complaint referred to the branch for investigation or further investigation under this Act.

#### **Investigation of complaints by Authority**

28. (1) Where the Authority has made a determination under section 23 that a complaint should be investigated by him, the investigation shall be conducted in private and, subject to this section, in such manner as he thinks fit.

(2) Whenever it becomes necessary or desirable for the Authority to use persons with police training in connection with his investigation of a complaint, he may, and shall insofar as it is practicable to do so, use, in connection with that investigation—

(a) a member of the police force who is made available to him by the Commissioner for the purposes of the investigation;

or

(b) a member of the police force of the Commonwealth or of another State or a Territory of the Commonwealth whom that police force agrees to make available to the Authority, for the purposes of the investigation, under arrangements made by or with the approval of the Minister.

(3) Subject to this section, the Authority may, for the purposes of an investigation under this section, obtain information from such persons, and make such inquiries, as he thinks fit.

(4) Subject to subsection (5), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the Authority or any other person in connection with an investigation by the Authority under this section.

(5) The Authority shall not make a report in respect of an investigation of a complaint under this section in which he sets out opinions that are, either expressly or impliedly, critical of—

(a) the police force;

or

(b) a person (including a member of the police force),

unless, before completing the investigation, he has afforded—

(c) if the opinions relate to the police force or a member of the police force—the Commissioner and that member;

or

(d) if the opinions relate to a person (other than a member)—that person,

opportunities, or an opportunity, to appear (whether personally or by a representative) before him, or before an authorized person, and to make submissions, either orally or in writing, in relation to the complaint.

(6) The Authority may, by notice in writing, require a person whom he believes to be capable of giving information relevant to an investigation under this section to furnish to him in writing, within a period specified in the notice, such information, and to produce to him such documents and other records, being information, documents or records relevant to the investigation, as are specified in the notice.

(7) For the purposes of an investigation under this section, the Authority may, by notice in writing, require—

(a) the complainant or person on whose behalf the complaint was made;

or

(b) a member of the police force or any other person who is, in the opinion of the Authority, able to give information relevant to the investigation,

to attend before him at a time and place specified in the notice and there to answer questions relevant to the investigation.

(8) Where the Authority makes a requirement under subsection (6) or (7) of the member of the police force about whose conduct the complaint was made, the Authority shall state in the notice by which the requirement is made the general nature of the complaint.

(9) Where the Attorney-General furnishes to the Authority a certificate certifying that the disclosure of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure of the contents of any documents or records would be contrary to the public interest, by reason of the fact that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet, the Authority is not entitled to require a person to furnish any information concerning the matter, or to produce those documents or records, to the Authority.

(10) A person shall not—

(a) without reasonable excuse—

(i) fail to attend before a person;

or

(ii) refuse or fail to furnish information, produce a document or other record or answer a question,

when so required in pursuance of this section;

or

(b) furnish information or make a statement to the Authority or an authorized person knowing that it is false or misleading in a material particular.

(11) Where—

(a) a person other than a member of the police force contravenes subsection (10), he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars;

or

(b) a member of the police force contravenes subsection (10), he may be dealt with in accordance with the *Police Regulation Act, 1952*, for breach of discipline.

(12) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this section on the ground that—

**Police (Complaints and Disciplinary Proceedings) Act, 1985**

- (a) the furnishing of the information, the production of the document or record or the answering of the question—
- (i) would contravene the provisions of any other enactment;
  - or
  - (ii) would be contrary to the public interest;
- (b) in the case of a person who is a member of the police force, the information, the document or record or the answer to the question might tend to show that he has committed a breach of discipline;
- or
- (c) the information, the document or record or the answer to the question would disclose legal advice furnished to a Minister or to the police force.

(13) A person may refuse to furnish information, produce a document or record or answer a question if the information, the document or record or the answer to the question—

- (a) might tend to incriminate him;
  - (b) might tend to incriminate a close relative of his;
- or
- (c) might tend to show that a close relative of his who is a member of the police force has committed a breach of discipline,

but any such refusal on the part of a member of the police force may be dealt with in accordance with the *Police Regulation Act, 1952*, as a breach of discipline.

(14) In subsection (13)—

“close relative” of a person means a spouse (including a putative spouse within the meaning of the *Family Relationships Act, 1975*), a parent or a child of the person.

(15) A person who furnishes information, produces a document or record or answers a question is not liable to a penalty under the provisions of any other enactment prohibiting such an act if the act is done in compliance with a requirement made of the person under this section.

(16) For the purposes of an investigation under this section, the Authority or an authorized person may, at any reasonable time of the day, enter any premises used by the police force or any other place and may carry on the investigation at that place and for that purpose inspect any documents or records relevant to the investigation kept at that place (other than a document in respect of which the Attorney-General has furnished a certificate under subsection (9)).

(17) The power of entry conferred by subsection (16) shall not be exercised by any person in relation to premises in which any person resides or carries on business unless a special magistrate is satisfied that there are reasonable grounds for the exercise of the power and issues a warrant authorizing the person to enter the premises.

(18) A person who, without reasonable excuse, wilfully obstructs, hinders or resists the Authority or any other person in the exercise of his powers under this section—

- (a) in the case of a person other than a member of the police force—shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars;
- (b) in the case of a member of the police force—may be dealt with in accordance with the *Police Regulation Act, 1952*, for a breach of discipline.

(19) Where a member of the police force is of the opinion that he might, in complying with a requirement of the Authority or an authorized person made in the exercise of his powers under this section, disclose information that should be the subject of a certificate of the Commissioner under section 48(3), the member shall be entitled to refuse to comply with the requirement for such period (not exceeding forty-eight hours) as is necessary for the purpose of enabling the Commissioner to determine whether or not to furnish such a certificate in respect of the information.

(20) A person exercising or proposing to exercise any powers under this section shall, upon demand by a person in relation to whom the powers are or are to be exercised, produce for his inspection a certificate of authority in the prescribed form.

(21) In this section—

“authorized person” means a person appointed by the Authority to be an authorized person for the purposes of this section:

“member of the police force” does not include a prescribed officer or employee.

#### **Register to be kept by Authority**

29. The Authority shall maintain a register containing particulars of each complaint made to him or of which he has been notified under section 18, including particulars of any determination made under section 21, 22 or 23 in relation to the complaint and particulars of any investigation or further investigation of the complaint under this Act.

#### **Authority to respond to inquiries by complainants**

30. Any inquiry by a complainant as to the investigation of his complaint shall be directed to the Authority who shall, in response to the inquiry, furnish such information as he considers appropriate in relation to the investigation or further investigation of the complaint.

## PART V

## ACTION CONSEQUENTIAL ON INVESTIGATION

**Reports of investigations by internal investigation branch to be furnished to Authority**

31. (1) When the internal investigation branch completes an investigation or further investigation of a complaint referred to it under this Act, the officer in charge of the branch shall, as soon as practicable, cause a report, in writing, of the results of the investigation or further investigation to be prepared and delivered to the Commissioner.

(2) The Commissioner shall, as soon as practicable after his receipt of a report under subsection (1), unless he directs that further investigations be carried out by the internal investigation branch, furnish a copy of the report to the Authority and, when doing so, may attach to the report such comments as he thinks fit to make in relation to the investigation or further investigation.

**Authority to make assessment and recommendations in relation to investigations by internal investigation branch**

32. (1) Where the Authority receives from the Commissioner pursuant to section 31 a report of the results of the investigation or further investigation of a complaint by the internal investigation branch, he shall consider the report and any comments of the Commissioner attached to the report and, subject to subsection (2), shall, by writing, notify the Commissioner of—

(a) his assessment of whether—

(i) any conduct of a member of the police force—

(A) constituted an offence or breach of discipline or was contrary to law;

(B) was unreasonable, unjust, oppressive or improperly discriminatory;

(C) was in accordance with a rule of law, a provision of an enactment or a practice, procedure or policy, being a rule, provision, practice, procedure or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory;

(D) was based either wholly or partly on a mistake of law or of fact;

or

(E) was otherwise, in all the circumstances, wrong;

(ii) a member exercised a discretionary power for an improper purpose or on irrelevant grounds;

or

(iii) in a case where the conduct to which the complaint relates comprised or included a decision by a member to exercise a discretionary power in a particular manner or to refuse to exercise such a power—

(A) irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that manner or to refuse to exercise the power, as the case may be;

or

- (B) the complainant in respect of the investigation or some other person was entitled at law to have been furnished, but was not furnished, with the reasons for deciding to exercise the power in that manner or to refuse to exercise the power, as the case may be;

and

(b) his recommendations as to whether—

(i) action should be taken—

- (A) to charge a member of the police force with an offence or breach of discipline;
- (B) to reconsider, vary or reverse a decision or to provide reasons for a decision;
- (C) to rectify, mitigate or alter the effects of a decision, act or omission;

or

- (D) to alter a rule of law, a provision of an enactment or a practice, procedure or policy on which a decision, act or omission was based;

(ii) any other action should be taken in relation to the matter;

or

(iii) no action should be taken in relation to the matter.

(2) Notwithstanding the provisions of subsection (1), the Authority may, if he considers that the complaint has not been adequately investigated, in addition to or instead of making an assessment and recommendations under that subsection—

(a) refer the complaint back to the Commissioner for further investigation;

or

(b) make a determination under section 23(1) that the complaint should be investigated by the Authority.

(3) Where a complaint is referred to the Commissioner under subsection (2)(a), the Commissioner shall refer the complaint to the internal investigation division for further investigation.

**Authority to report upon and make assessment and recommendations in relation to investigation carried out by him**

33. When the Authority completes any investigation or further investigation of a complaint conducted by him under this Act, he shall furnish to the Commissioner a report, in writing, of the results of the investigation or further investigation and shall include in the report his assessment of and recommendations as to the matters referred to in section 32(1)(a) and (b).

**Recommendations of Authority and consequential action by Commissioner**

34. (1) When the Commissioner receives from the Authority pursuant to section 32 or 33 an assessment and recommendations made by the Authority in relation to the investigation or further investigation of a complaint, he shall, as soon as practicable, consider the assessment and recommendations together with the report relating to the investigation or further investigation and—

(a) if he agrees with the assessment and recommendations, notify the Authority, by writing, of his agreement;

or

(b) if he does not agree with the assessment or a recommendation, notify the Authority, by writing, of his disagreement and the reasons for his disagreement.

(2) The Authority shall, where the Commissioner notifies him of disagreement with an assessment or recommendation pursuant to subsection (1), after considering the Commissioner's reasons for disagreement and conferring with the Commissioner, by notice in writing to the Commissioner, confirm or vary the assessment or recommendation or substitute for the assessment or recommendation a new assessment or recommendation.

(3) The Commissioner shall—

(a) take all such steps (if any) as are necessary to give effect to any recommendations of the Authority—

(i) as agreed to by the Commissioner pursuant to subsection (1);

or

(ii) as confirmed, varied or substituted by the Authority pursuant to subsection (2);

or

(b) refer the matter to the Minister.

(4) Where a matter is referred to the Minister under subsection (3), the Minister may determine—

(a) that certain action of a kind referred to in section 32(1)(b)(i) or (ii) should be taken in consequence of the investigation or further investigation;

(b) that no action should be taken in consequence of the investigation or further investigation;

or

(c) that the complaint should be further investigated by the internal investigation branch or by the Authority, as he thinks fit.

(5) The Minister shall not make a determination under subsection (4) as to whether action should be taken to charge a member of the police force with an offence or breach of discipline except in consultation with the Attorney-General.

(6) The Authority and the Commissioner shall be notified, by writing, of any determination made by the Minister under subsection (4).

(7) Where the Minister makes a determination under subsection (4)(a), the Commissioner shall take all such steps as are necessary to give effect to the determination.

(8) Notwithstanding the provisions of subsection (7), a determination of the Minister under subsection (4)(a) that action should be taken to alter a practice, procedure or policy relating to the police force shall not be binding on the Commissioner unless embodied in a direction of the Governor given under section 21 of the *Police Regulation Act, 1952*.

(9) Where the Minister makes a determination under subsection (4)(c)—

(a) that the complaint should be further investigated by the internal investigation branch, the Commissioner shall refer the complaint to that branch for further investigation;

or

(b) that the complaint should be further investigated by the Authority, the provisions of this Act shall apply as if the determination of the Minister were a determination made by the Authority under section 23(1).

#### **Commissioner to notify Authority of laying of charges or other action consequential upon investigation**

35. (1) Where a member of the police force is charged with an offence or breach of discipline or other action is taken by the Commissioner pursuant to section 34 in consequence of the investigation or further investigation of a complaint, the Commissioner shall, by writing, notify the Authority of the laying of the charges or other action so taken.

(2) Where a member of the police force is charged with an offence or breach of discipline pursuant to section 34, the Commissioner shall, by writing, notify the Authority of the final outcome of proceedings in respect of the charge including any decision of a court or the Commissioner as to punishment of the member.

#### **Particulars in relation to complaint to be entered in register and furnished to complainant and member of police force concerned**

36. (1) The Authority shall, in relation to each complaint, enter in the register kept by him pursuant to section 29 and furnish to the member of the police force concerned and, unless the identity of the complainant is not known, to the complainant—

(a) particulars of all assessments and recommendations made by the Authority in relation to the complaint, being assessments and recommendations—

(i) as agreed to by the Commissioner pursuant to section 34(1);

or

(ii) as confirmed, varied or substituted by the Authority pursuant to section 34(2);

and

(b) particulars of any determination made by the Minister under section 34(4) in relation to the complaint.

(2) The Authority shall, in relation to each complaint, enter in the register kept by him pursuant to section 29 and, unless the identity of the complainant is not known, furnish to the complainant—

(a) particulars of action taken by the Commissioner pursuant to section 34 in consequence of the investigation or further investigation of the complaint;

and

**Police (Complaints and Disciplinary Proceedings) Act, 1985**

---

(b) where the action involves the laying of a charge of an offence or breach of discipline against a member of the police force—particulars of the final outcome of proceedings in respect of the charge including any decision of a court or the Commissioner as to punishment of the member.

(3) The Authority may, when furnishing particulars to a member of the police force or a complainant pursuant to subsection (1) or (2), make such comments in relation to the matter as he thinks fit.

## PART VI

## POLICE DISCIPLINARY TRIBUNAL

**Constitution of Police Disciplinary Tribunal**

37. (1) There shall be a tribunal entitled the "Police Disciplinary Tribunal".
- (2) The Tribunal shall be constituted of a magistrate appointed by the Governor.
- (3) The magistrate appointed to constitute the Tribunal shall be appointed for such term of office, not exceeding three years, as the Governor may determine, and on the expiration of his term of office shall be eligible for reappointment.
- (4) The Governor may appoint another magistrate to be the deputy of the magistrate appointed to constitute the Tribunal and the Tribunal shall, for any period for which the magistrate appointed to constitute the Tribunal is absent or unavailable, be constituted of that other magistrate.

**Registrar of Tribunal**

38. (1) The Governor may, subject to and in accordance with the *Public Service Act, 1967*, appoint a person to be the registrar and a person to be the deputy registrar of the Tribunal.
- (2) The office of registrar or deputy registrar of the Tribunal may be held in conjunction with any other office in the public service of the State.
- (3) The registrar and deputy registrar of the Tribunal shall have such duties and functions as are prescribed and such other duties and functions as are directed by the Tribunal.

**Charges in respect of breach of discipline**

39. (1) Where, in accordance with the *Police Regulation Act, 1952*, the Commissioner charges a member of the police force with a breach of discipline and the member does not make an admission of guilt to the Commissioner, the proceedings upon the charge shall be heard and determined by the Tribunal.
- (2) Subsection (1) applies whether the charge is laid by the Commissioner in consequence of the investigation of a complaint to which this Act applies or otherwise.
- (3) Where the Tribunal is satisfied beyond reasonable doubt that the member committed the breach of discipline with which he is charged, the Tribunal shall make a finding that the member is guilty of the breach of discipline and remit the proceedings to the Commissioner for the imposition of punishment on the member in accordance with the *Police Regulation Act, 1952*.
- (4) The Tribunal may, when remitting proceedings to the Commissioner pursuant to subsection (3), indicate to the Commissioner the Tribunal's assessment of the seriousness or otherwise of the breach of discipline of which the member has been found guilty and, in that event, the Commissioner shall, when making his determination as to punishment, have due regard to the Tribunal's assessment.

**Proceedings before the Tribunal**

40. (1) The Tribunal shall, in relation to any proceedings to be heard by the Tribunal, give the Commissioner and the member charged (in this Act referred to as "the parties") reasonable notice of the time and place at which the proceedings are to be heard and shall afford them a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.

(2) The Tribunal shall, when giving notice under subsection (1), also give the Authority notice of the time and place at which the proceedings are to be heard.

(3) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his absence.

(4) The Commissioner may appear personally in proceedings before the Tribunal or may be represented at the proceedings by counsel or a member of the police force.

(5) A party to proceedings before the Tribunal (other than the Commissioner) shall be entitled to appear—

(a) personally or by counsel;

or

(b) by leave of the Tribunal—by some other representative.

(6) Subject to subsection (7), the proceedings of the Tribunal shall be heard in private.

(7) The Tribunal shall permit the Authority or his nominee and may, in its discretion, permit any other person to be present at proceedings of the Tribunal.

(8) Subject to this Act, the Tribunal shall in its proceedings—

(a) be bound by the rules of evidence;

and

(b) follow, to such extent as it considers appropriate, the practice and procedure of courts of summary jurisdiction on the hearing of complaints for simple offences.

### **Powers of the Tribunal**

41. (1) The Tribunal may—

(a) by summons signed by the Tribunal or by the registrar or deputy registrar, require the attendance before the Tribunal of any person;

(b) by summons signed by the Tribunal or by the registrar or deputy registrar, require the production of any books, papers or documents;

(c) inspect any books, papers or documents produced before the Tribunal and retain them for such reasonable period as the Tribunal thinks fit and make copies of any of them, or of any of their contents;

(d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Tribunal, or by any person appearing before the Tribunal, relating to the matter being heard by the Tribunal;

or

(e) require any person appearing before the Tribunal, including a party, (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Tribunal or by any person appearing before the Tribunal.

(2) If any person—

(a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;

- (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
  - (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal;
- or
- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars or imprisonment for six months.

(3) A person is not required to produce any books, papers or documents or to answer a question under this section if the contents of the books, papers or documents or the answer to the question might tend to incriminate him or, in the case of a member of the police force, to prove that he has been guilty of a breach of discipline.

(4) The Tribunal may, upon being satisfied that a person has failed to appear before the Tribunal in obedience to a summons served upon him under this section, issue a warrant authorizing a member of the police force to arrest the person and bring him before the Tribunal.

(5) In the course of any proceedings, the Tribunal may—

- (a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact that it considers proper;

or

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

#### **Protection of Tribunal, counsel and witnesses**

42. (1) The person constituting the Tribunal has in that capacity the same protection and immunity as a judge of the Supreme Court.

(2) Counsel or any other person appearing for a party in proceedings before the Tribunal has the same protection and immunity as counsel appearing for a party in proceedings in the Supreme Court.

(3) A person appearing before the Tribunal as a witness has the same protection and immunity as a witness in proceedings in the Supreme Court.

#### **Case stated**

43. The Tribunal may state a case upon any question of law for the opinion of the Supreme Court.

#### **Costs**

44. (1) The Tribunal may make such orders for costs as the Tribunal thinks just and reasonable.

(2) Where the Tribunal has ordered the payment of costs, the costs shall be recoverable summarily.

**Reasons for decision**

45. Where a party to any proceedings before the Tribunal has, within seven days after the Tribunal has made a decision in those proceedings, requested the Tribunal to give reasons in writing for the decision, the Tribunal shall give reasons in writing for the decision.

## PART VII

## APPEALS IN RESPECT OF DISCIPLINE

**Appeal against decision of Tribunal or punishment for breach of discipline**

46. (1) A party to proceedings before the Tribunal may appeal to the Supreme Court against a decision made by the Tribunal in those proceedings.

(2) A member of the police force may appeal to the Supreme Court against an order of the Commissioner imposing punishment upon him for a breach of discipline.

(3) Subsection (2) applies—

(a) whether the charge for the breach of discipline was laid in consequence of the investigation of a complaint to which this Act applies or otherwise;

and

(b) whether the order imposing the punishment was made upon the member being found guilty of the breach of discipline by the Tribunal or upon the member making an admission of guilt to the Commissioner.

(4) An appeal under this section must be instituted within one month of the making of the decision or order appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal be instituted within that period.

(5) Where the Commissioner has made an order imposing punishment on a member of the police force and the Commissioner or the Supreme Court is satisfied that an appeal against the order has been instituted, the Commissioner or the Supreme Court may suspend the operation of the order until the determination of the appeal.

(6) Where the Commissioner has suspended the operation of an order under subsection (5), the Commissioner may terminate the suspension, and where the Supreme Court has suspended the operation of an order under subsection (5), the Supreme Court may terminate the suspension.

(7) The Supreme Court may, on the hearing of the appeal, exercise one or more of the following powers, according to the nature of the case—

(a) affirm, vary or quash the decision or order appealed against or substitute, or make in addition, any decision or order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Tribunal or the Commissioner, as the case may be, for further hearing or consideration or for rehearing or reconsideration;

(c) make any further or other order as to costs or any other matter that the case requires.

PART VIII  
MISCELLANEOUS

**Application to Supreme Court as to powers and duties under Act**

47. (1) Where, in relation to a complaint about the conduct of a member of the police force, a question arises as to the duties or powers of the Authority or the Commissioner or any other member of the police force, the Authority or the Commissioner may apply to the Supreme Court for a determination of the question.

(2) On an application under subsection (1), the Supreme Court may make such order as it thinks proper and the Authority or the Commissioner, or both, as the case may be, shall give effect to the order.

**Secrecy**

48. (1) In this section—

“prescribed officer” means—

- (a) the Authority;
  - (b) a person acting under the direction or authority of the Authority;
  - (c) the Commissioner;
- or
- (d) a member of the internal investigation branch or any other member of the police force.

(2) Except as required or authorized by this Act or by a relevant person, no person who is, or has been, a prescribed officer shall, either directly or indirectly, make a record of, or divulge or communicate, information acquired by reason of his being, or having been, a prescribed officer, being information that was disclosed or obtained under this Act.

Penalty: Two thousand dollars.

(3) Where the Commissioner furnishes to the Authority a certificate certifying that the divulging or communication of information specified in the certificate, being information that has been disclosed to the Authority by a member of the police force or obtained by the Authority from records of the police force, might—

- (a) prejudice present or future police investigations or the prosecution of legal proceedings whether in the State or elsewhere;
  - (b) constitute a breach of confidence;
- or
- (c) endanger a person or cause material loss or harm or unreasonable distress to a person,

then, notwithstanding any other provisions of this Act, no person who is, or has been, a prescribed officer referred to in subsection (1)(a) or (b) shall, either directly or indirectly, divulge or communicate any part of the information except with the approval of the Commissioner or the approval of the Minister given after consultation with the Commissioner.

Penalty: Two thousand dollars.

(4) This section does not prevent a prescribed officer from divulging or communicating information in proceedings before a court or in proceedings in respect of a breach of discipline whether before the Tribunal or the Commissioner.

(5) For the purposes of subsection (2), a reference to a relevant person is—

(a) in relation to a person who is or has been a prescribed officer referred to in subsection (1)(b) a reference to the Authority;

(b) in relation to a person who is or has been a prescribed officer referred to in subsection (1)(d)—a reference to the Commissioner;

or

(c) in any case—a reference to the Minister or the person by whom or from whom the information was disclosed or obtained under this Act.

#### Offences in relation to complaints

49. (1) Where—

(a) a person in making a complaint under this Act makes a false representation knowing the representation to be false;

and

(b) the complaint would not, apart from the false representation, be liable to be investigated under this Act,

the person making the complaint shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(2) A person who—

(a) prevents another person from making a complaint under this Act;

or

(b) hinders or obstructs another person in making a complaint under this Act,

shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(3) Proceedings for an offence against subsection (1) shall not be commenced except with the consent of the Authority and no proceedings for an offence other than against subsection (1) shall be commenced or heard against a person in respect of his making of a complaint under this Act.

(4) An apparently genuine document purporting to be a certificate of the Authority certifying that he has consented to the commencement of proceedings for an offence against subsection (1) shall be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

(5) Upon convicting a person of an offence against subsection (1), the court may order him to pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made under this Act as a result of the false representation.

(6) Any amount received by the complainant under subsection (5) shall be paid by him to the Treasurer in aid of the General Revenue of the State.

(7) In this section—

“complaint under this Act” means a complaint to a member of the police force or the Authority about the conduct of a member of the police force.

**Authority may revoke or vary determination**

50. (1) The Authority may revoke or vary a determination made by the Authority under this Act.

(2) Where the Authority revokes a determination, or varies a determination, the provisions of this Act shall apply as if the determination had not been made or had been made as so varied.

(3) The revocation or variation of a determination shall not render unlawful anything done prior to the revocation or variation.

**Authority and Commissioner may report to Minister**

51. Nothing in this Act prevents the Authority or the Commissioner from reporting to the Minister upon any matter arising under, or relating to the administration of, this Act.

**Annual and special reports to Parliament by Authority**

52. (1) The Authority shall, as soon as practicable after the thirtieth day of June in each year, submit to the President of the Legislative Council and the Speaker of the House of Assembly a report upon the operations of the Authority during the period of twelve months preceding that thirtieth day of June.

(2) The Authority may, at any other time, if he thinks fit to do so, submit to the President of the Legislative Council and to the Speaker of the House of Assembly a special report upon operations of the Authority under this Act.

(3) Without limiting the generality of subsection (1) or (2), the Authority may report under subsection (1) or (2) upon any case where, in his opinion, there has been a failure to take adequate and appropriate action in consequence of the investigation or further investigation of a complaint, including any case where such failure arises from the nature of a determination made by the Minister under section 34(4).

(4) The Authority shall not make a report under this section in which he sets out opinions that are, either expressly or impliedly, critical of the Commissioner or the police force unless—

(a) before making the report—he has afforded the Commissioner an opportunity to make comments in writing upon the report;

and

(b) where the Commissioner has made comments in writing upon the report—he includes in or attaches to the report those comments.

(5) The Authority shall, when he submits a report under this section, also deliver a copy of the report to the Minister.

(6) The President of the Legislative Council and the Speaker of the House of Assembly shall, upon receiving a report under this section, lay the report before their respective Houses.

**Minister to review and report to Parliament upon operation of Act**

53. (1) The Minister shall, as soon as practicable after the expiration of two years from the commencement of this Act, cause a review and report to be made upon the operation of the Act.

(2) The Minister shall, as soon as practicable after his receipt of the report, cause a copy of the report to be laid before each House of Parliament.

**Summary proceedings**

54. (1) Proceedings for an offence against this Act shall be disposed of summarily.

(2) Proceedings for an offence against this Act shall be commenced within twelve months after the day on which the offence is alleged to have been committed.

**Regulations**

55. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

---

**APPENDIX**

**LEGISLATIVE HISTORY**

Section 3:

definition of "prescribed officer or employee" amended by 60, 1992, Sched. 2