

South Australia

## **Police Act 1998**

An Act to make provision for the establishment and management of South Australia Police; and for other purposes.

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### Legislative history

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

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Police Act 1998*.

### 3—Interpretation

In this Act—

**Assistant Commissioner** means an Assistant Commissioner of Police appointed under Part 3;

**Code** means the Code of Conduct established by regulation under Part 6;

**Commissioner** means the Commissioner of Police appointed under Part 3;

**community constable** means a person appointed under Part 4 to be a community constable, and **community police** means community constables as a group;

**Deputy Commissioner** means the Deputy Commissioner of Police appointed under Part 3;

**member of SA Police** means the Commissioner, the Deputy Commissioner or an Assistant Commissioner or any person appointed under Part 4, but does not include a police cadet, police medical officer or special constable;

**merit**, in relation to selection processes for filling positions, means—

- (a) the extent to which each of the applicants has a record of good conduct and integrity; and
- (b) the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience (including community experience), potential for development and personal qualities relevant to the carrying out of the duties in question; and
- (c) the manner in which each of the applicants carried out any previous employment or occupational duties or functions;

**minor misconduct** means conduct of a kind agreed or determined to constitute minor misconduct and set out in a notice tabled before both Houses of Parliament under section 3 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*;

**officer** means a member of SA Police of or above the rank of inspector;

**police cadet** means a person appointed under Part 5 to be a police cadet;

**Police Disciplinary Tribunal** means the Police Disciplinary Tribunal established under the *Police (Complaints and Disciplinary Proceedings) Act 1985*;

**Police Ombudsman** means the Police Ombudsman established under the *Police (Complaints and Disciplinary Proceedings) Act 1985*;

**Police Review Tribunal** means the Police Review Tribunal established under Schedule 1;

**SAET** means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

**South Australia Police** or **SA Police** see section 4;

**selection processes** means processes by which applications are sought and applicants selected for the purpose of filling a position;

**special constable** means a person appointed under Part 9 to be a special constable.

## **Part 2—General**

### **4—Composition of police**

*South Australia Police* (in this Act referred to as **SA Police**) consists of—

- (a) the Commissioner of Police; and
- (b) the Deputy Commissioner of Police; and
- (c) the Assistant Commissioners of Police; and
- (d) the other officers and members (including community constables) appointed under Part 4.

### **5—Purpose of police**

The purpose of SA Police is to reassure and protect the community in relation to crime and disorder by the provision of services to—

- (a) uphold the law; and
- (b) preserve the peace; and
- (c) prevent crime; and
- (d) assist the public in emergency situations; and
- (e) co-ordinate and manage responses to emergencies; and
- (f) regulate road use and prevent vehicle collisions.

### **6—Commissioner responsible for control and management of police**

Subject to this Act and any written directions of the Minister, the Commissioner is responsible for the control and management of SA Police.

### **7—Exclusion of directions in relation to employment of particular persons**

No Ministerial direction may be given to the Commissioner in relation to the appointment, transfer, remuneration, discipline or termination of a particular person.

### **8—Directions to Commissioner to be Gazetted and laid before Parliament**

The Minister must cause a copy of any direction given to the Commissioner to be—

- (a) published in the Gazette within eight days of the date of the direction; and
- (b) laid before each House of Parliament within six sitting days of the date of the direction if Parliament is then in session, or, if not, within six sitting days after the commencement of the next session of Parliament.

### **9—Commissioner also responsible for control and management of police cadets and police medical officers**

The Commissioner is also responsible for the control and management of the police cadets and police medical officers.

## 10—General management aims and standards

- (1) The Commissioner must ensure that management practices are followed with respect to SA Police and the police cadets and police medical officers that are directed towards—
  - (a) effective, responsive and efficient delivery of services; and
  - (b) maintenance of structures, systems and processes that are not excessively formal and can adapt quickly to changing demands; and
  - (c) development, encouragement and full utilisation of the abilities of all personnel through ongoing training and education and appropriate remuneration; and
  - (d) effective, prudent and fully accountable management of resources; and
  - (e) continuous improvement in the delivery of services.
- (2) With respect to personnel management, the Commissioner must ensure that practices are followed under which—
  - (a) selection processes for filling positions are based on a proper assessment of merit; and
  - (b) employees are treated fairly and consistently and are not subjected to arbitrary or capricious administrative decisions; and
  - (c) there is no unlawful discrimination against employees or persons seeking to become employees; and
  - (d) the diversity of personnel is used to advantage; and
  - (e) equal opportunities for promotion and advancement are afforded to all employees; and
  - (f) employees are afforded reasonable avenues of redress against improper or unreasonable administrative decisions; and
  - (g) working conditions are kept safe and healthy; and
  - (h) there is no nepotism or patronage.

## 11—Orders

- (1) The Commissioner may make or give general or special orders, not inconsistent with this Act, for the control and management of SA Police and the police cadets and police medical officers.
- (2) The orders may make provision concerning—
  - (a) the various duties to be performed; and
  - (b) the manner in which and the time and place at which the various duties are to be performed and any other matters relating to their performance; and
  - (c) the requirements or qualifications for appointment or promotion; and
  - (d) other matters that the Commissioner considers relevant to the control and management of SA Police and the police cadets and police medical officers.

- (3) The general or special orders of the Commissioner—
  - (a) may be varied or revoked by the Commissioner; and
  - (b) will not be taken to be a form of subordinate legislation to which the *Subordinate Legislation Act 1978* applies.
- (4) The power of the Commissioner to give binding orders or directions is not restricted by the provision for the making of general or special orders or the contents of any general or special orders.

## **Part 3—Commissioner, Deputy Commissioner and Assistant Commissioners**

### **12—Appointment of Commissioner of Police**

The Governor may appoint a person to be the Commissioner of Police.

### **13—Conditions of Commissioner's appointment**

- (1) The conditions of appointment of the Commissioner are to be subject to a contract between the Commissioner and the Premier.
- (2) The contract must specify—
  - (a) that the Commissioner is appointed for a term not exceeding five years specified in the contract and is eligible for reappointment; and
  - (b) that the Commissioner is to meet performance standards as set from time to time by the Minister (which must be consistent with the aims and requirements of this Act); and
  - (c) that the Commissioner is entitled to remuneration and other benefits specified in the contract; and
  - (d) the sums representing the values of the benefits (other than remuneration); and
  - (e) the total remuneration package value under the contract.
- (3) The decision whether to reappoint at the end of a term of appointment must be made and notified to the Commissioner not less than three months before the end of the term.
- (4) The remuneration and other monetary benefits under the contract are a charge on the Consolidated Account of the State which is appropriated to the necessary extent.
- (5) The Minister must, on setting or varying the performance standards to be met by the Commissioner, cause a statement of the standards or variation to be laid before each House of Parliament within six sitting days if Parliament is then in session or, if not, within six sitting days after the commencement of the next session of Parliament.
- (6) The Minister must, on notifying a person of a decision not to reappoint the person as the Commissioner at the end of a term of appointment, cause a statement of the reasons for that decision to be laid before each House of Parliament within six sitting days if Parliament is then in session or, if not, within six sitting days after the commencement of the next session of Parliament.

## **14—Deputy Commissioner**

- (1) The Governor may appoint a Deputy Commissioner of Police.
- (2) The Deputy Commissioner must exercise and perform such of the powers, authorities, duties and functions of the Commissioner as the Commissioner may direct (either generally or in a special case).
- (3) When the Commissioner is absent from duty because of illness or for any other reason, or during a vacancy in the position of the Commissioner, the Deputy Commissioner may exercise and perform all the powers, authorities, duties, and functions conferred or imposed on the Commissioner by or under this or another Act or any law.

## **15—Assistant Commissioners**

- (1) The Commissioner may appoint as many Assistant Commissioners of Police as the Commissioner thinks necessary.
- (2) When the Deputy Commissioner is absent from duty because of illness or for any other reason, or during a vacancy in the position of the Deputy Commissioner—
  - (a) the Assistant Commissioner nominated in writing by the Commissioner; or
  - (b) if that Assistant Commissioner is absent from duty for any reason, the Assistant Commissioner who is the most senior Assistant Commissioner on duty at the time,

may exercise and perform all the powers, authorities, duties and functions conferred or imposed on the Deputy Commissioner.

## **16—Conditions of appointment of Deputy and Assistant Commissioners**

- (1) The conditions of appointment of the Deputy Commissioner or an Assistant Commissioner are to be subject to a contract between the Deputy or Assistant Commissioner and the Commissioner.
- (2) The contract must specify—
  - (a) that the Deputy or Assistant Commissioner is appointed for a term not exceeding five years specified in the contract and is eligible for reappointment; and
  - (b) that the Deputy or Assistant Commissioner is to meet performance standards as set from time to time by the Commissioner and published in the Gazette; and
  - (c) that the Deputy or Assistant Commissioner is entitled to remuneration and other benefits specified in the contract; and
  - (d) the sums representing the values of the benefits (other than remuneration); and
  - (e) the total remuneration package value under the contract.
- (3) The decision whether to reappoint at the end of a term of appointment must be made and notified to the Deputy or Assistant Commissioner not less than three months before the end of the term.



- (4) If, immediately before a person was first appointed as an Assistant Commissioner, he or she held an appointment under this Act or the Act repealed by this Act (the person's *former appointment*), the person is, on not being reappointed at the end of a term of appointment, entitled to an appointment at the same rank as the person's former appointment.

## **17—Termination of appointment of Commissioner or Deputy or Assistant Commissioner**

- (1) The appointment of the Commissioner or Deputy Commissioner may be terminated by the Governor and the appointment of an Assistant Commissioner may be terminated by the Commissioner on the ground that the Commissioner or Deputy or Assistant Commissioner—
- (a) has been guilty of misconduct; or
  - (b) has been convicted of an offence punishable by imprisonment; or
  - (c) has engaged in any remunerative employment, occupation or business outside official duties without the consent of the Minister in the case of the Commissioner or the Deputy Commissioner, or the consent of the Commissioner in the case of an Assistant Commissioner; or
  - (d) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
  - (e) has, because of mental or physical incapacity, failed to carry out duties satisfactorily or to the performance standards set under the contract relating to his or her appointment; or
  - (f) has, for any other reason, failed to carry out duties in a manner that satisfies the performance standards set under the contract relating to his or her appointment.
- (2) The Minister must, on terminating the appointment of the Commissioner, cause a statement of the reasons for that decision to be laid before each House of Parliament within six sitting days if Parliament is then in session or, if not, within six sitting days after the commencement of the next session of Parliament.

## **18—Resignation**

- (1) The Commissioner or the Deputy Commissioner may resign by not less than three months notice in writing to the Minister (unless notice of a shorter period is accepted by the Minister).
- (2) An Assistant Commissioner may resign by not less than three months notice in writing to the Commissioner (unless notice of a shorter period is accepted by the Commissioner).

## **19—Delegation**

- (1) The Commissioner may, by instrument in writing, delegate any of the powers or functions conferred on, or assigned to, the Commissioner by or under this or any other Act—
- (a) to a particular person; or
  - (b) to the person for the time being occupying a particular position.

- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be subdelegated.
- (3) A delegation or subdelegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act personally in any matter; and
  - (c) is revocable at will by the delegator.
- (4) A copy of every instrument of delegation issued by the Commissioner under this section must be retained as part of the records of SA Police.

## **Part 4—Other members of SA Police**

### **Division 1—Appointment and resignation**

#### **20—Appointment of officers**

The Commissioner may appoint as many commanders, superintendents, inspectors and other officers of police as the Commissioner thinks necessary.

#### **21—Appointment of sergeants and constables**

The Commissioner may appoint as many sergeants and constables as the Commissioner thinks necessary.

#### **22—Further division of ranks**

The ranks of officers and other members of SA Police may be further divided or consolidated under the regulations.

#### **23—Term appointments for certain positions**

- (1) An appointment of a person who is not a member of SA Police to a position in SA Police of or above the rank of senior constable may be made (but is not required to be made)—
  - (a) for a term not exceeding five years specified in the instrument of appointment; and
  - (b) on such conditions as to remuneration or any other matter as the Commissioner considers appropriate.
- (2) A person must not be appointed for a term under this section except—
  - (a) where the person has special expertise that is required but not available within SA Police; or
  - (b) in other cases of a special kind prescribed by regulation.
- (3) The term of an appointment under this section may not be extended so that it exceeds five years and a person may not be reappointed under this section so that the terms in aggregate exceed five years.

## **24—Appointment of community police**

- (1) The Commissioner may appoint as many community constables as the Commissioner thinks necessary.
- (2) A community constable will be appointed for the whole of the State or an area of the State specified in the instrument of appointment.
- (3) The Commissioner may, by written notice to a community constable, vary the area in relation to which the appointment is effective.
- (4) The Commissioner may give a community constable position and its occupant a title that reflects an area limitation or other characteristic of the position, and may vary such a title.
- (5) Division 2 of this Part contains other special provisions relating to community police.

## **25—Police oath or affirmation**

A person's appointment as a member of SA Police (including appointment as the Commissioner, the Deputy Commissioner or an Assistant Commissioner) is rendered void if the person does not on appointment make an oath or affirmation in the form prescribed by regulation.

## **26—Effect of appointment and oath or affirmation**

- (1) A person who is appointed as a member of SA Police and makes the prescribed oath or affirmation will be taken to have entered into an agreement to serve in SA Police in each position that the person may hold until he or she lawfully ceases to be a member of SA Police.
- (2) No such agreement is void for want of consideration.

## **27—Probationary appointment**

- (1) Subject to this section, a person's appointment to a position in SA Police will be on probation for a period determined by the Commissioner not exceeding—
  - (a) in the case of a person who, immediately before appointment, was not a member of SA Police—two years; or
  - (b) in any other case—one year.
- (2) For the purposes of subsection (1), the period of probationary service of a member of SA Police does not include—
  - (a) if the Commissioner so determines—the whole or a part of any period during which the member, while on full or reduced pay—
    - (i) is absent from duty (other than on recreation leave); or
    - (ii) performs duties that have been limited or varied by reason of physical or mental disability or illness of the member; or
  - (b) except where the Commissioner determines to the contrary—
    - (i) any period during which the member is absent from duty without pay; or
    - (ii) any period during which the member's appointment is suspended.

- (3) The Commissioner may at any time during the period of probation of a member, having regard to the person's suitability for permanent appointment—
- (a) confirm the appointment; or
  - (b) extend or further extend the period of the probation for such period as the Commissioner determines, but not so that the total period of probation exceeds the maximum period allowed in relation to the person under this section; or
  - (c) terminate the appointment.
- (5) An appointment on probation will be taken to have been confirmed if, at the end of the period of probation, the appointment has not previously been confirmed or terminated.
- (6) If—
- (a) a person's appointment is terminated under this section; and
  - (b) the person's appointment constituted a promotion from another position in SA Police of a lower rank,
- the person will, on the termination, revert to a position in SA Police approved by the Commissioner at that lower rank.
- (7) This section does not apply to the following appointments:
- (a) appointment as the Commissioner, the Deputy Commissioner or an Assistant Commissioner;
  - (b) appointment for a term under this Division;
  - (c) subject to subsection (8)—appointment of a member of SA Police to another position of the same rank as that held by the member immediately before the appointment to the other position;
  - (d) appointment as a community constable.
- (8) If the appointment of a member of SA Police to a position is on probation and the member is, during the probationary period, appointed to another position of the same rank, the period of probation carries over to that other appointment (and the provisions of this section (other than subsection (7)(c)) apply accordingly).

## **28—Performance standards for officers**

It is a condition of appointment as an officer below the rank of Assistant Commissioner that the officer is to meet performance standards as set from time to time by the Commissioner.

## **29—Resignation and relinquishment of official duties**

- (1) A member of SA Police (other than the Commissioner, the Deputy Commissioner or an Assistant Commissioner) may resign by not less than 14 days notice in writing to the Commissioner (unless notice of a shorter period is accepted by the Commissioner).
- (2) A member of SA Police (other than the Commissioner, the Deputy Commissioner or an Assistant Commissioner) must not relinquish official duties unless the member—
- (a) is expressly authorised in writing by the Commissioner to do so; or

- (b) is incapacitated by physical or mental disability or illness from performing official duties.

Maximum penalty: \$1 250 or three months imprisonment.

## **Division 2—Special provisions relating to community police**

### **30—Powers, responsibilities and immunities of community police**

- (1) A community constable's powers, responsibilities and immunities as a member of SA Police are subject to any limitation imposed by the Commissioner.
- (2) The Commissioner—
  - (a) may impose a limitation on the powers, responsibilities or immunities of a community constable by—
    - (i) instrument of appointment of the community constable; or
    - (ii) notice in writing to the community constable; and
  - (b) may vary or revoke such a limitation by notice in writing to the community constable.
- (3) Limitations imposed under this section may vary from one community constable to another.

### **31—Suspension or termination of appointment of community police**

- (1) Subject to subsection (2), the Commissioner may, at the Commissioner's discretion, suspend or terminate the appointment of a community constable.
- (2) The Commissioner must not take action against a community constable under this section because of any incapacity of the community constable to perform duties that results from physical or mental disability or illness of the community constable without first complying with the requirements of the *Police Superannuation Act 1990*.

### **32—Conditions of appointment of community police**

- (1) The conditions of appointment of a community constable may be determined by the Commissioner.
- (2) A determination by the Commissioner must provide for the payment of remuneration, allowances and expenses in accordance with a specified scale.
- (3) A determination under this section may relate to community police generally, a class of community police or a particular community constable.

## **Part 5—Police cadets and police medical officers**

### **33—Police cadets**

- (1) The Commissioner may appoint as many police cadets as the Commissioner thinks necessary.
- (2) A police cadet is not a member of SA Police and is not a public service employee.

### **34—Suspension or termination of appointment of police cadets**

The Commissioner may, at the Commissioner's discretion, suspend or terminate the appointment of a police cadet.

### **35—Resignation and relinquishment of official duties**

- (1) A police cadet may resign by not less than 14 days notice in writing to the Commissioner (unless notice of a shorter period is accepted by the Commissioner).
- (2) A police cadet must not relinquish official duties unless the police cadet—
  - (a) is expressly authorised in writing by the Commissioner to do so; or
  - (b) is incapacitated by physical or mental disability or illness from performing official duties.

Maximum penalty: \$1 250 or three months imprisonment.

### **36—Police medical officers**

- (1) The Commissioner may appoint a legally qualified medical practitioner to be a police medical officer.
- (2) The appointment of a police medical officer will be on terms and conditions fixed by the Commissioner.
- (3) A police medical officer is not a member of SA Police and is not a public service employee.
- (4) A police medical officer must perform such duties as are arranged between the Commissioner and the officer.

## **Part 6—Conduct and discipline of police and police cadets**

### **Division 1—Code of Conduct**

#### **37—Code of conduct**

- (1) The Governor may, by regulation, establish a Code of Conduct for the maintenance of professional standards by members of SA Police and police cadets.
- (2) Without limiting the generality of subsection (1), the Code may include provisions relating to—
  - (a) the performance of duties; and
  - (b) corrupt, improper or discreditable behaviour (including criminal conduct under foreign law); and
  - (ba) drug and alcohol testing of members of SA Police and police cadets; and
  - (c) conduct towards other members of SA Police, police cadets or police medical officers; and
  - (d) standards of personal behaviour or dress; and
  - (e) relations with the public or particular groups or organisations; and
  - (f) the use of official information or resources; and

- (g) public comment; and
- (h) any other matter that the Governor considers relevant to the maintenance of professional standards.

### **38—Report and investigation of breach of Code**

- (1) A member of SA Police or police cadet who becomes aware of circumstances in which it is reasonable to suspect the commission of a breach of the Code must report the matter to the Commissioner or as directed by the Commissioner.
- (1a) The Commissioner must provide the Police Ombudsman with details of each report as soon as practicable after it is made.
- (2) If the Commissioner suspects that a member of SA Police or a police cadet has committed a breach of the Code, the Commissioner may, subject to a determination of the Police Ombudsman under section 23 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*, cause the matter to be investigated.

### **39—Charge for breach of Code**

- (1) The Commissioner may, in accordance with the procedures prescribed by regulation, charge a member of SA Police or police cadet with a breach of the Code.
- (2) A person charged may, within the period and in the manner prescribed by regulation, admit or deny the charge.
- (3) If a charge is not admitted, the charge must be heard and determined by the Police Disciplinary Tribunal in accordance with the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

### **40—Orders for punishment following offence or charge of breach of Code**

- (1) If a member of SA Police or police cadet—
  - (a) is found guilty of an offence under a law of this State, the Commonwealth or another State or a Territory of the Commonwealth; or
  - (b) admits in accordance with this Act a breach of the Code with which he or she has been charged; or
  - (c) is found guilty of a breach of the Code in proceedings before the Police Disciplinary Tribunal,

the Commissioner may take action, or order the taking of action, of one or more of the following kinds in relation to the person:

- (d) termination of the person's appointment;
- (e) suspension of the person's appointment for a specified period;
- (f) reduction of the person's remuneration by a specified amount for a specified period (but not so that the total amount forfeited exceeds the amount prescribed by regulation);
- (g) where the person is a member of SA Police, transfer of the member to another position in SA Police for a specified period (whether with or without a reduction in rank, seniority or remuneration);

- (h) where the person is a member of SA Police, reduction in the member's seniority;
  - (i) imposition of a fine not exceeding the amount prescribed by regulation;
  - (j) where the person is a police cadet, withdrawal of specified rights or privileges for a specified period;
  - (k) a reprimand recorded in the person's conduct and service history kept under the regulations;
  - (l) an unrecorded reprimand;
  - (m) counselling;
  - (n) education or training;
  - (o) action of any other kind prescribed by regulation.
- (2) If the period for which a member of SA Police is transferred under subsection (1)(g) is less than 12 months, the member is entitled, on the expiration of the specified period, to return to the position occupied by the member before being so transferred.

#### **41—Suspension where charge of offence or breach of Code**

- (1) If a member of SA Police or police cadet is charged with an offence (whether under the law of this State, the Commonwealth or another State or a Territory of the Commonwealth) or a breach of the Code, the Commissioner may suspend the person's appointment.
- (2) The Commissioner may, if the Commissioner considers it appropriate to do so in the circumstances, suspend the person's appointment after deciding that the person be charged but before the charge is actually laid.
- (3) A suspension under subsection (2) is to be taken to have been revoked by the Commissioner if the charge is not laid within 24 hours (excluding a Saturday, Sunday or a public holiday falling on a Monday or Friday).
- (4) A suspension under this section must be revoked by the Commissioner if—
  - (a) the person is found not guilty of the offence or breach charged or the charge is dismissed, lapses or is withdrawn; and
  - (b) the person does not stand charged of any other offence or breach.
- (5) If the suspension under this section of a person's appointment is revoked by the Commissioner, then, subject to any determination of the Commissioner under the regulations, the person is entitled to any remuneration or accrual of rights withheld in consequence of the suspension and the period of the suspension will count as service.

### **Division 2—Drug and alcohol testing of police, police cadets etc**

#### **41A—Interpretation**

- (1) In this Division—

*alcotest* means a test by means of an apparatus of a kind approved for the conduct of alcotests under the *Road Traffic Act 1961*;

*biological sample* means a sample of blood, urine or oral fluid;



***breath analysing instrument*** means an apparatus of a kind approved as a breath analysing instrument under the *Road Traffic Act 1961*;

***breath analysis*** means an analysis of breath by a breath analysing instrument;

***classified appointment or position*** means an appointment or position in respect of which it is an essential requirement that an applicant for the appointment or position undergo a medical or psychological assessment as part of the application process;

***critical incident*** means an incident where a person is killed or suffers serious bodily injury—

- (a) while detained by a member of SA Police; or
- (b) as a result of the discharge of a firearm or an electronic control device; or
- (c) in circumstances involving a police aircraft, motor vehicle, vessel or other mode of transport; or
- (d) as a result of alleged police action;

***drug*** means a substance that is a controlled drug under the *Controlled Substances Act 1984*;

***drug and alcohol testing***—see section 41B(1);

***forensic material*** means any human material from which the person from whom the material was taken could be identified;

***oral fluid*** includes saliva;

***oral fluid analysis*** means an analysis of oral fluid by means of an apparatus of a kind approved under the *Road Traffic Act 1961* for the purpose of conducting oral fluid analyses.

- (2) For the purposes of this Division, a person ***uses a drug*** if the person—
  - (a) consumes, smokes or administers to himself or herself the drug; or
  - (b) permits another person to administer the drug to him or her.

#### **41B—Drug and alcohol testing of members and cadets**

- (1) A member of SA Police or a police cadet may, in accordance with this section, be required to do any of the following:
  - (a) to submit to an alcotest or breath analysis, or both, for the purpose of testing for the presence of alcohol;
  - (b) to provide a biological sample for the purpose of a blood test, urinalysis or an oral fluid analysis to test for the presence of alcohol or drugs,

***(drug and alcohol testing)***.
- (2) A member of SA Police or a police cadet may be required to undergo drug and alcohol testing, in accordance with orders or directions of the Commissioner, in any of the following circumstances:
  - (a) if the member or police cadet has, while on duty, been involved in a critical incident;
  - (b) if the member or police cadet has, while on duty, engaged in driving that is classified by the Commissioner in orders as high risk;

- (c) if there is a reasonable cause to believe that the member or police cadet has recently consumed alcohol or used a drug;
- (d) if the member or police cadet is applying for a classified appointment or position.

#### **41C—Drug and alcohol testing of applicants to SA Police**

- (1) A person to whom this subsection applies will, in accordance with orders or directions of the Commissioner, be required to do any of the following:
  - (a) to submit to an alcotest or breath analysis, or both, for the purpose of testing for the presence of alcohol;
  - (b) to provide a biological sample for the purpose of a blood test, urinalysis or an oral fluid analysis to test for the presence of alcohol or drugs.
- (2) Subsection (1) applies to—
  - (a) a person applying to be a police cadet; and
  - (b) a person who is not either a member of SA Police or a police cadet applying for appointment to SA Police.

#### **41D—Procedures for drug and alcohol testing**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Division.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) prescribe procedures for drug and alcohol testing; and
  - (b) provide for the authorisation of persons to conduct drug and alcohol testing and operate equipment for that purpose; and
  - (c) regulate the collection of biological samples taken from persons for the purposes of drug and alcohol testing under this Division; and
  - (d) provide for the analysis of test results, including the accreditation of persons conducting the analysis; and
  - (e) provide for the approval of devices used in carrying out drug and alcohol testing and analysis; and
  - (f) provide for the use of results from any testing or analysis, or the steps that may be taken on account of any testing or any evidence or information produced as a result of testing; and
  - (g) prescribe the circumstances that amount to a defence to a breach of the Code or the regulations, including where the consumption of alcohol or drugs occurs after police work has been carried out; and
  - (h) prescribe evidentiary provisions to facilitate proof of contraventions of the Code or the regulations for the purposes of proceedings relating to those contraventions; and
  - (i) provide for the confidentiality of test results; and
  - (j) regulate the destruction of biological samples collected for testing; and

- (k) provide for the protection of persons involved in taking or conducting testing from liability for acts or omissions done in good faith and in accordance with this Division.

#### **41E—Biological samples, test results etc not to be used for other purposes**

- (1) A biological sample (and any other forensic material taken incidentally in the course of testing a person for the presence of drugs or alcohol) taken under this Division must not be used for any purpose other than—
  - (a) for a purpose contemplated by this Division; or
  - (b) in connection with the control and management of SA Police; or
  - (c) for the purpose of disciplinary proceedings under this Act.
- (2) The results of any drug and alcohol testing or analysis conducted under this Division, or an admission or a statement made by a person relating to such drug and alcohol testing, is not admissible in any proceedings other than disciplinary proceedings under this Act.

### **Division 3—Minor misconduct**

#### **42—Minor misconduct**

- (1) Subject to the *Police (Complaints and Disciplinary Proceedings) Act 1985*, the Commissioner may determine that a suspected breach of the Code involves minor misconduct only on the part of a member of SA Police or police cadet.
  - (1a) The Commissioner must inform the member of SA Police or police cadet concerned—
    - (a) of the nature of the suspected breach of the Code and the particulars of the breach; and
    - (b) that the Commissioner has determined that the matter involves minor misconduct; and
    - (c) that the member or police cadet is entitled to require that the matter—
      - (i) be dealt with as an alleged breach of the Code under Division 1; or
      - (ii) be referred to a member of SA Police determined in accordance with the orders and directions of the Commissioner for an informal inquiry under this section.
- (2) A member to whom a matter is referred for an informal inquiry under this section or under section 21A of the *Police (Complaints and Disciplinary Proceedings) Act 1985*—
  - (a) must cause the matter to be inquired into (subject to this Act and any orders or directions of the Commissioner); and
  - (b) must determine, or cause a determination to be made, on the balance of probabilities, whether the subject matter of the inquiry involves a breach of the Code by the member or police cadet concerned; and
  - (c) must ensure that the member or police cadet concerned is afforded an opportunity—

- (i) to admit any breach of the Code that he or she is alleged to have committed; and
    - (ii) if such a breach is not admitted, to make submissions either orally or in writing in relation to the alleged breach; and
  - (d) if the breach is admitted or is found to have been committed, may, subject to any order or directions of the Commissioner, determine that action be taken under subsection (3) in relation to the member or police cadet concerned; and
  - (e) must ensure that a written report of the results of the inquiry and any action that it has been determined should be taken in relation to the member or police cadet concerned is prepared and delivered to the Commissioner; and
  - (f) must ensure that particulars of the results of the inquiry and the action (if any) that it has been determined should be taken in relation to the member or police cadet concerned are furnished to the member or police cadet.
- (3) Action of one or more of the following kinds may, subject to any orders or directions of the Commissioner, be taken in relation to a member or police cadet for a breach of the Code that the member or police cadet has admitted, or been found to have committed, under this section:
- (a) in the case of a member, transfer of the member for not more than four months to another position in SA Police (not involving a reduction in rank or seniority or, without the member's consent, relocation to a place beyond reasonable commuting distance from the member's current place of employment);
  - (b) recorded or unrecorded advice;
  - (c) counselling;
  - (d) education or training.
- (4) No information obtained in relation to the subject matter of an inquiry under this section during the inquiry may be used in proceedings in respect of a breach of the Code before the Police Disciplinary Tribunal unless the proceedings are against a member of SA Police or police cadet who has allegedly provided false information with the intention of obstructing the inquiry.

#### **43—Right to apply for review of informal inquiry etc**

- (1) If a member of SA Police or police cadet is found on an informal inquiry to have committed a breach of the Code, the member or police cadet may apply for a review under this section on the ground that he or she did not commit the breach concerned or that there was a serious irregularity in the processes followed in the informal inquiry.
- (2) If a determination is made on an informal inquiry that action should be taken in relation to the member of SA Police or police cadet concerned for a breach of the Code, the member or police cadet may apply for a review under this section on the ground that the action is not warranted by the nature of the breach or in the circumstances of the case.
- (3) An application for review under this section must be made to a member of SA Police determined under the regulations within the period and in the manner prescribed by the regulations.

- (4) The member to whom an application for review under this section must be made—
- (a) must be the occupant of a position specified in the regulations or determined according to factors specified in the regulations;
  - (b) must not be selected according to the discretion of the Commissioner or any other person;
  - (c) must not have been involved in the informal inquiry or investigations leading up to the informal inquiry.
- (5) A member to whom an application is made under this section—
- (a) must, as soon as is practicable, conduct a review (subject to this Act and any order or direction of the Commissioner) of the processes followed in the informal inquiry, or the finding or determination made on the informal inquiry, as the case may require; and
  - (b) must afford the applicant an opportunity to make submissions either orally or in writing in support of his or her application; and
  - (c) may, according to the nature of the case—
    - (i) order that a new informal inquiry be conducted or that the processes involved in the inquiry be recommenced from some specified stage;
    - (ii) affirm or quash any finding or determination reviewed;
    - (iii) make a determination that should have been made in the first instance; and
  - (d) must ensure that a written report of the results of the review is prepared and delivered to the Commissioner; and
  - (e) must ensure that particulars of the results of the review are furnished to the member or police cadet concerned.
- (6) This section applies to the exclusion of any right of appeal under Part 7 of the *Police (Complaints and Disciplinary Proceedings) Act 1995*.

#### **44—Monitoring of informal inquiries etc**

- (1) The Commissioner must cause all informal inquiries and findings and determinations made with respect to minor misconduct to be monitored and reviewed with a view to maintaining proper and consistent practices.
- (2) The Commissioner may intervene in a particular case if the Commissioner considers it appropriate to do so (whether before or after review of the case under subsection (1) or a review on the application of the member of SA Police or police cadet concerned)—
- (a) by ordering that a new informal inquiry be conducted or that the processes involved in the informal inquiry be recommenced from some specified stage;
  - (b) by quashing a finding that the member of SA Police or police cadet has committed a breach of the Code;
  - (c) by making a determination that no action or less severe action be taken in relation to the member of SA Police or police cadet for a breach of the Code.

## Part 7—Termination and transfer of police

### 45—Physical or mental disability or illness

- (1) If the Commissioner is satisfied after due inquiry that the appointment of a member of SA Police should be terminated because of the member's incapacity to perform duties as a member by reason of physical or mental disability or illness, the Commissioner may terminate the appointment of the member.
- (2) The Commissioner must not terminate the appointment of a police officer under subsection (1) without first complying with—
  - (a) if the officer is a contributor in relation to the scheme of superannuation established by the *Police Superannuation Act 1990*—the requirements of that Act; or
  - (b) if the officer is a member of the Southern State Superannuation Scheme established by the *Southern State Superannuation Act 1994*—the requirements of that Act.
- (3) This section does not apply in relation to an officer appointed under Part 3.

### 46—Unsatisfactory performance

- (1) If the Commissioner is satisfied that—
  - (a) a member of SA Police is not performing duties of his or her position satisfactorily or to applicable performance standards; and
  - (b) it is not practicable to transfer the member to another position of the same rank with duties suited to the member's capabilities or qualifications,the Commissioner may, if it is practicable to do so, transfer the member to a position of a lower rank with duties suited to the member's capabilities or qualifications.
- (2) If it is not practicable to transfer the member to a position of the same or a lower rank, the Commissioner may terminate the appointment of the member.
- (3) This section does not apply in relation to an officer appointed under Part 3.
- (4) This section does not apply if a member's unsatisfactory performance is due to—
  - (a) physical or mental disability or illness of the member; or
  - (b) lack of necessary resources or training or other organisational factors beyond the member's control.
- (5) The Commissioner must not take action under this section unless—
  - (a) the member has first been advised of his or her unsatisfactory performance and given specific details of the areas of his or her underperformance, the performance standards to be attained and the measures to be taken for improvement; and
  - (b) the member has been allowed a period of not less than three months and not more than six months for improvement to the specified standards; and

- (c) a panel of persons has been convened, and has made a decision, in accordance with the regulations, confirming that the processes followed and assessments made in relation to the member and his or her underperformance conformed to the requirements of this section and were reasonable in the circumstances.

#### **47—Power to transfer**

- (1) The Commissioner may, without conducting selection processes, transfer a member of SA Police from the member's current position to another position (and such transfer may be for an indefinite period or for a specified term).
- (2) Except as authorised under the regulations, a member may not be transferred to a position of a higher rank.
- (3) Except as authorised under this Act or the regulations or with the member's consent, a member may not be transferred to a position of a lower rank.
- (4) A member of SA Police aggrieved by a transfer of that member under this section may apply to have his or her grievance dealt with in accordance with a process specified in the regulations.

### **Part 8—Review of certain termination, transfer and promotion decisions**

#### **Division 1—Termination reviews**

##### **48—Right of review**

- (1) A member of SA Police or former member may apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of a decision to terminate the member's appointment—
  - (a) during a period of probation; or
  - (b) on a ground for termination under Part 7.
- (2) An application for review of the decision must be made to SAET within the period prescribed by regulation.
- (3) SAET may in an appropriate case dispense with the requirement that the application be made within the prescribed period.

#### **Division 2—Transfer reviews**

##### **52—Review of certain transfers**

- (1) If—
  - (a) a decision is made to transfer a member of SA Police to another position (other than under Part 6 or section 46); and
  - (b) the member believes that he or she is being punished for particular conduct,the member may apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the decision.

- (2) An application for review of the decision must be made to SAET within the period prescribed by regulation.
- (3) SAET may in an appropriate case dispense with the requirement that the application be made within the prescribed period.
- (4) If, on an application for review of a decision under this Division, SAET is satisfied that the transfer is in the nature of a punishment, SAET may do one or more of the following:
  - (a) quash the decision;
  - (b) remit the matter to the Commissioner for reconsideration;
  - (c) make recommendations for settlement of the matter.

## **Division 3—Promotion reviews**

### **53—Interpretation and application**

- (1) In this Division—

*prescribed promotional position* means a position in SA Police of or above the rank of senior constable but not above the rank of inspector.
- (2) Nothing in this Division applies in relation to a transfer under this Act from one position in SA Police to another.

### **54—Processes for appointment or nomination for prescribed promotional positions**

An appointment to a prescribed promotional position may not be made unless selection processes have been conducted in accordance with the regulations for the purpose of filling the position.

### **55—Right of review**

- (1) After a selection process has been conducted in relation to a prescribed promotional position, the Commissioner must publish in the Police Gazette—
  - (a) notice of the selection decision; or
  - (b) if no person has been selected for appointment to the position—notice of that fact.
- (2) Subject to subsection (3), when such a notice is given, a member of SA Police who was an unsuccessful applicant and is eligible for appointment to the position may apply to the Police Review Tribunal for a review of the selection decision.
- (3) A member may not make an application under subsection (2) unless the person has first made application to have his or her grievance in respect of the selection decision dealt with in accordance with a process specified in the regulations and that process has been completed.
- (4) An application to the Tribunal for review of the decision must be made to the Secretary to the Tribunal within the period and in the manner prescribed by regulation.
- (5) The Tribunal may in an appropriate case dispense with the requirement that the application be made within the prescribed period.



### **56—Grounds for application for review**

- (1) An application for a review of a selection decision under this Division may only be made on one or more of the following grounds:
  - (a) that the member selected is not eligible for appointment to the position; or
  - (b) that the applicant for the review should have been selected based on a proper assessment of the respective merits of the applicants; or
  - (c) that the selection processes leading to the decision were affected by nepotism or patronage or were otherwise not properly based on assessment of the respective merits of the applicants; or
  - (d) that there was some other serious irregularity in the selection processes.
- (2) In proceedings on an application for a review of a selection decision under this Division—
  - (a) no evidence may be given or submissions made as to the qualifications or merits of an applicant for the position other than by a party to the proceedings or representative of a party to the proceedings; and
  - (b) no documentary material may be produced as evidence of the qualifications or merits of an applicant for the position other than material that was made available to the panel of persons who made the selection decision.

### **57—Determination of application**

- (1) On an application for a review of a selection decision under this Division, the Police Review Tribunal may do one or more of the following:
  - (a) confirm the decision;
  - (b) quash the decision;
  - (c) order that the applicant for the review be appointed to the position;
  - (d) order that the selection processes be recommenced from the beginning or some other later stage specified by the Tribunal.
- (2) The Tribunal must hear and determine an application for a review of a selection decision under this Division within the period prescribed by regulation.

### **58—Determination of question of eligibility for appointment**

For the purposes of this Division—

- (a) a person is not eligible for appointment to a prescribed promotional position if the person does not have qualifications determined by the Commissioner to be essential in respect of the position; and
- (b) a determination by the Commissioner that specific qualifications, experience or other attributes are essential or desirable for appointment to a prescribed promotional position is binding on the Police Review Tribunal.

## Part 9—Special constables

### 59—Appointment of special constables

- (1) Subject to subsection (2), the Commissioner may appoint a person to be a special constable for the whole or a part of the State.
- (2) The Commissioner may only appoint a police cadet to be a special constable for the whole or a part of the State if a declaration has been made under Part 4 Division 3 of the *Emergency Management Act 2004* (and the term of any such appointment will be for the period specified in the declaration under that Act and, if the period of the declaration is extended under that Act, for such further periods).
- (3) An appointment under this section may be made—
  - (a) if a declaration has been made under Part 4 Division 3 of the *Emergency Management Act 2004*—orally; or
  - (b) in any other case—by instrument in writing.
- (4) If the appointment is made orally, the Commissioner must, as soon as practicable, confirm the appointment by instrument in writing.
- (5) An instrument of appointment or confirming the appointment of a special constable must specify the term and conditions of the appointment, including—
  - (a) if the appointment is for the whole of the State—that fact; and
  - (b) in any other case—the part of the State for which the special constable is appointed.

### 60—Oath or affirmation by special constables

A person's appointment as a special constable is rendered void if he or she does not on appointment make an oath or affirmation in the form prescribed by regulation.

### 61—Duties and powers of special constables

- (1) A special constable—
  - (a) has any duties imposed by the Commissioner; and
  - (b) has, while holding appointment as a special constable, the same powers, responsibilities and immunities as a member of SA Police subject to any limitation imposed by the Commissioner.
- (2) The Commissioner may, when appointing a special constable, impose limitations on his or her powers, responsibilities or immunities—
  - (a) if the appointment is made orally under section 59(3)(a)—orally; or
  - (b) if the appointment is made by instrument in writing—by the instrument of appointment.
- (3) If a limitation is imposed orally, the instrument confirming the appointment of the special constable under section 59(4) must specify the limitation.
- (4) The Commissioner may, by notice in writing to a special constable, vary or revoke a limitation imposed under this section.

## 62—Suspension or termination of appointment of special constables

The Commissioner may, at the Commissioner's discretion, suspend or terminate the appointment of a special constable.

## 63—Allowances and equipment for special constables

The Commissioner may—

- (a) pay such reasonable remuneration and allowances as the Commissioner thinks proper to a special constable or person who has been a special constable; and
- (b) provide such clothing, arms, and equipment for a special constable as the Commissioner thinks necessary.

## Part 10—Miscellaneous

### 64—Appointment and promotion procedures

Members of SA Police, police cadets and police medical officers must be appointed and promoted in accordance with the procedures prescribed by the regulations.

### 65—Protection from liability for members of SA Police

- (1) A member of SA Police does not incur any civil or criminal liability for an honest act or omission in the exercise or discharge, or the purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act or any other Act or law.
- (2) A liability that would, but for subsection (1), lie against a member of SA Police lies instead against the Crown.
- (3) A person (the *injured person*) who suffers injury, loss or damage as a result of the act or omission of a member of SA Police may not sue the member personally unless—
  - (a) it is clear from the circumstances of the case that the immunity conferred by subsection (1) does not extend to the case; or
  - (b) the injured person brings an action in the first instance against the Crown but the Crown then disputes, in a defence filed to the action, that it is liable for the act or omission of the member.
- (4) Where a question arises as to whether the immunity conferred by subsection (1) extends to the case and the member of SA Police claims to come within the immunity so conferred, the burden of proving that the act or omission was dishonest lies on the party seeking to establish the personal liability of the member.
- (5) If a member of SA Police is sued personally for an act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act or any other Act or law—
  - (a) unless the Crown is alleging that the member is personally liable for the act or omission—the Crown must represent the member; or

- (b) if the Crown does not represent the member and the member is found by the court not to have acted dishonestly—the Crown must indemnify the member for legal costs properly incurred by the member (but not exceeding 80% of the Supreme Court scale of costs applying at the time the case is determined).

### **66—Members subject to duty in or outside State**

- (1) A member of SA Police is, if so ordered by the Commissioner or by another member with requisite authority, liable to perform police duties in any place within or outside the State.
- (2) A member of SA Police, while performing duties outside the State, is required to obey orders of other members of SA Police and is liable for breaches of the Code in the same way as if he or she were performing duties within the State.

### **67—Divestment or suspension of powers**

- (1) If a person ceases for any reason to be a member of SA Police, all powers and authorities vested in the person by or under this or another Act or any law as a member of SA Police or constable are divested from the person.
- (2) If a person's appointment as a member of SA Police is suspended, all powers and authorities vested in the person by or under this or another Act or any law as a member of SA Police or constable are suspended for the period of the suspension.
- (3) Unless the Commissioner otherwise authorises by instrument in writing, if a person who is a member of SA Police or a special constable is seconded to a position outside SA Police, all powers and authorities vested in the person by or under this or another Act or any law as a member of SA Police or constable are suspended for the period of secondment.
- (4) If the Commissioner grants leave to a member of SA Police for an extended period, the Commissioner may, by instrument in writing, suspend for the period of the leave all powers and authorities vested in the member by or under this or another Act or any law as a member of SA Police or constable.
- (5) If the Commissioner grants leave to a member of SA Police on account of physical or mental disability or illness of the member, the Commissioner may, by instrument in writing, suspend all powers and authorities vested in the member by or under this or another Act or any law as a member of SA Police or constable.
- (6) An instrument in writing under subsection (5) must include reasons for the Commissioner's decision.
- (7) A suspension under subsection (5) remains in force until it is revoked by the Commissioner by further instrument in writing.

### **68—Duty to deliver up equipment etc**

- (1) If a person's appointment is terminated or suspended under this Act, the person must immediately deliver up to the Commissioner, or to a person appointed by the Commissioner to receive property under this section, all property that belongs to the Crown and was supplied to the person for official purposes.

Maximum penalty: \$2 500 or six months imprisonment.

- (2) A justice may issue a warrant authorising the persons named or indicated in the warrant to search any place and seize any property which has not been delivered up as required by this section.

### **69—False statements in applications for appointment**

- (1) A person must not make a false statement in connection with an application for appointment under this Act.  
Maximum penalty: \$2 500 or six months imprisonment.
- (2) In a prosecution for an offence against subsection (1), it is not necessary for the prosecution to prove that the false statement was made wilfully or negligently, but it is a defence to prove that the defendant believed on reasonable grounds that the statement was true.
- (3) If a person who has contravened subsection (1) is appointed to SA Police or as a police cadet, the contravention will be taken to constitute a breach of the Code and may be dealt with as such—
  - (a) despite the fact that the person was not a member of SA Police or a police cadet at the time of the contravention; and
  - (b) whether or not the person is prosecuted for an offence against subsection (1).

### **70—Suspension or revocation of suspension under Act or regulations**

- (1) A power of the Commissioner under this Act or the regulations to suspend a person's appointment, or to order such a suspension, includes power to determine, subject to the regulations, that the period of suspension will—
  - (a) be without any remuneration and accrual of any rights; and
  - (b) not count as service.
- (2) Despite subsection (1), remuneration may only be withheld under that subsection for more than 3 months if—
  - (a) the person has been committed for trial for a serious offence; or
  - (b) the person has been found guilty of a serious offence; or
  - (c) the person has admitted or been found guilty of a breach of the Code in respect of which the most probable outcome is termination of the person's appointment.
- (3) The Commissioner may at any time revoke the suspension under this Act or the regulations of a person's appointment.
- (4) Subject to subsection (5), if, during a period of suspension of a person's appointment, the person resigns or retires or his or her appointment is terminated under Part 6—
  - (a) the person will not be entitled to any remuneration or accrual of any rights in respect of the period of suspension (and any remuneration paid to him or her in respect of the period will be recoverable); and
  - (b) the period of the suspension will not count as service.

- (5) The Commissioner may, if the Commissioner considers it appropriate to do so in particular circumstances, order—
- (a) that a person is entitled to all or part of any remuneration or accrual of rights withheld in consequence of a suspension; and
  - (b) that all or part of the period of the suspension will count as service.
- (6) In this section—
- serious offence* means an offence that is punishable by imprisonment for 2 years or more.

### **71—Evidence of appointment**

- (1) Common reputation that a person is a member of SA Police, or holds a particular position or rank in SA Police, is proof of that matter in the absence of evidence to the contrary.
- (2) An apparently genuine document purporting to be signed by the Commissioner certifying that a specified person was at a specified time a member of SA Police, or the holder of a specified position or rank in SA Police, will be accepted as proof, in the absence of proof to the contrary, of the matter so certified.

### **72—Execution of process**

- (1) A member of SA Police must execute every process directed to the member for levying the amount of—
- (a) any recognisance forfeited to the Crown;
  - (b) any fine lawfully imposed on a person.
- (2) Any process, order, warrant or command of a court or justice directed, delivered or given to a member of SA Police may be executed and enforced by another member of SA Police or the member's assistants.
- (3) The other member or assistant has all the rights, powers and authorities for and in the execution of that process, order, warrant or command as if named in the warrant as the person to whom it is directed.

### **73—Allowances**

Members of SA Police and police cadets are entitled to receive allowances in respect of such matters and at such rates as are approved from time to time by the Commissioner.

### **74—Impersonating police and unlawful possession of police property**

- (1) A person who, without lawful excuse—
- (a) wears what is or appears to be a police uniform; or
  - (b) represents himself or herself by word or conduct to be a police officer,
- is guilty of an offence.
- Maximum penalty: \$2 500 or imprisonment for six months.

- (2) A person who, without lawful excuse, has possession of a police uniform or police property is guilty of an offence.

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

- (3) This section does not prevent a person engaged in a theatrical performance or social entertainment from wearing what appears to be a police uniform in the course of, and for the purpose of, the performance or entertainment.

- (4) In this section—

***police officer*** means a member of SA Police or any other police service or force in Australia or any other country, and includes a police cadet;

***police property*** means property supplied, or to be supplied, to a police officer for official purposes;

***police uniform*** means all or part of the uniform of a police officer.

#### **74A—Special provisions relating to criminal intelligence**

- (1) The Commissioner must establish guidelines in relation to the assessment of information that is being considered for classification as criminal intelligence and the management of criminal intelligence.
- (2) The Commissioner must ensure that records are kept in relation to the use of criminal intelligence.
- (3) The Commissioner must ensure that records referred to in subsection (2) would enable the following information to be determined for each period in relation to which a review is conducted under this section:
- (a) the number of matters in relation to which criminal intelligence was used during the period;
  - (b) the number of individual pieces of criminal intelligence used in relation to each such matter;
  - (c) the relevant statutory provision for each such matter.
- (4) The Attorney-General must, before 1 July in each year (other than the calendar year in which this section comes into operation), appoint a retired judicial officer to conduct a review on—
- (a) the effectiveness of the guidelines established under subsection (1); and
  - (b) the use of criminal intelligence,
- during the period of 12 months preceding that 1 July.
- (5) The Commissioner must ensure that a person appointed to conduct a review is provided with such information as he or she may require for the purpose of conducting the review.
- (6) A person conducting a review has, in so doing, the powers of a commission of inquiry under the *Royal Commissions Act 1917* (and any obligations under an Act to maintain the confidentiality of information do not apply with respect to the provision of such information to the person conducting the review).
- (7) A person conducting a review must maintain the confidentiality of criminal intelligence provided to the person.

- (8) A report on a review must be presented to the Attorney-General on or before 30 September in each year.
- (9) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.
- (10) In this section—

*criminal intelligence* means information classified by the Commissioner, in accordance with the provisions of any other Act, as criminal intelligence;

*judicial officer* means a person appointed as a judge of the Supreme Court or the District Court or a person appointed as judge of another State or Territory or of the Commonwealth.

## **75—Annual reports by Commissioner**

- (1) The Commissioner must, on or before 30 September in each year, deliver to the Minister a report on SA Police and its operations during the period of 12 months that ended on the preceding 30 June.
- (2) The Commissioner must include in the report any information required under the regulations or by the Minister.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days after his or her receipt of the report.

## **76—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) A regulation—
  - (a) may be of general or limited application and may vary in operation according to factors stated in the regulation; and
  - (b) may leave a matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or the Commissioner, either generally or in a particular case or class of cases; and
  - (ba) may fix fees and provide for the payment, recovery, refund, waiver or reduction of such fees; and
  - (c) may impose a penalty not exceeding \$1 250 for contravention of, or non-compliance with, the regulation.

## **Schedule 1—Police Review Tribunal**

### **1—Constitution of Tribunal**

- (1) The Police Review Tribunal is established.

### **1B—Constitution of Tribunal for purposes of proceedings under Part 8 Division 3**

- (1) The Tribunal will, for the purposes of proceedings under Part 8 Division 3, consist of a person appointed by the Minister under subclause (2) or, if that person is unable to act, a person appointed as a deputy under subclause (3).



- (2) The Minister may appoint a person to the Tribunal for a term of 3 years and on conditions determined by the Minister.
- (3) The Minister may appoint a deputy of a person appointed to the Tribunal under subclause (2).
- (4) The appointment of a deputy will be for a term of 3 years and on conditions determined by the Minister.
- (5) A person appointed under subclause (2) or (3)—
  - (a) must be a legal practitioner of at least 5 years standing; and
  - (b) is eligible for reappointment at the end of a term of office; and
  - (c) may be removed from office by the Minister—
    - (i) for breach of, or non-compliance with, a condition of appointment; or
    - (ii) for misconduct; or
    - (iii) for failure or incapacity to carry out official duties satisfactorily.
- (6) The office of a person appointed under subclause (2) or (3) becomes vacant if the person—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) ceases to satisfy the qualification by virtue of which the person was eligible for appointment; or
  - (e) is removed from office under subclause (5).

## **2—Secretary to Tribunal**

- (1) There will be a Secretary to the Tribunal.
- (2) The Secretary will be a member of SA Police or a Public Service employee.
- (3) The position of Secretary may be held in conjunction with any other position in SA Police or the Public Service.
- (4) The Secretary will have the duties and functions conferred by this Act or any other Act and such other duties and functions as may be directed by the Tribunal.

## **3—Proceedings before Tribunal**

- (1) The Tribunal must in relation to any proceedings before the Tribunal give the Commissioner and the applicant (the *parties* to the proceedings) reasonable notice of the time and place at which the proceedings are to be heard and must afford them a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.
- (2) Subject to subclause (3), a party to proceedings before the Tribunal is entitled to appear personally, or by representative, in the proceedings.
- (3) A party is not entitled to be represented by a legal practitioner in proceedings under Division 3 of Part 8.

- (4) If a party to whom notice has been given under subclause (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed in the absence of the party.
- (5) In its proceedings under this Act, the Tribunal—
  - (a) will act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
  - (b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.
- (6) The Tribunal must keep a record of any evidence taken during proceedings.
- (7) The Tribunal may decline to hear or determine proceedings that appear to be trivial, frivolous or vexatious.

#### **4—Powers of Tribunal**

- (1) The Tribunal may, for the purposes of its proceedings—
  - (a) by summons signed by the Tribunal or the Secretary to the Tribunal, require the attendance before the Tribunal of any person; and
  - (b) by summons signed by the Tribunal or the Secretary to the Tribunal, require the production of any document, object or material; and
  - (c) require a person to make an oath or affirmation truly to answer all questions put by the Tribunal or a person appearing before the Tribunal; and
  - (d) require a person appearing before the Tribunal to answer any relevant questions put by the Tribunal or a person appearing before the Tribunal.
- (2) Subject to subclause (3), if a person—
  - (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons; or
  - (b) who has been served with a summons to produce any document, object or material fails without reasonable excuse to comply with the summons; or
  - (c) misbehaves 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 a relevant question, when required to do so by the Tribunal,the person is guilty of an offence and liable to a penalty not exceeding \$2 500.
- (3) A person is not obliged to answer a question under this clause if the answer to the question would tend to incriminate the person of an offence, or to produce any document, object or material if it or its contents would tend to incriminate the person of an offence.

#### **5—Practice and procedure**

Subject to this Act and the regulations, the practice and procedure of the Tribunal are to be as determined by the Tribunal.

## Schedule 2—Transitional provisions

### 2—Transitional provisions

- (1) Subject to this clause, a person holding a position or employed under the repealed Act immediately before the commencement of this Act continues, subject to this Act, in the position or employment as if appointed under the corresponding provision of this Act.
- (2) For the purposes of subclause (1), a police aide is to be taken to continue as a community constable.
- (3) Sections 16, 17 and 18 do not apply to the holder of a position of Assistant Commissioner appointed to the position before the commencement of the *Police (Contract Appointments) Amendment Act 1996* (19 December 1996) and instead the provisions of this Act relating to conditions of appointment, performance standards and termination of appointment (including subclause (4)) apply to the holder of such a position in the same way as to an officer below the rank of Assistant Commissioner.
- (4) The provisions of Part 4 relating to performance standards apply to an officer below the rank of Assistant Commissioner appointed to his or her position before the commencement of this Act as well as to a person appointed to a position as an officer after that commencement.
- (5) General and special orders given by the Commissioner and in force under the repealed Act immediately before the commencement of this Act continue in force subject to this Act as if given under Part 2 of this Act.
- (6) A direction, determination, limitation, delegation or decision of any kind given, imposed or made by the Commissioner and in force under the repealed Act immediately before the commencement of this Act continues in force subject to this Act as if given, imposed or made under the corresponding provision of this Act.
- (7) A reference in another Act or in an instrument (whether of a legislative nature or not) to a police aide is to be read as a reference to a community constable.
- (8) The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this Schedule, to the repeal effected by this Schedule.
- (9) In this clause—  
**repealed Act** means the *Police Act 1952* repealed by this Schedule.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Police Act 1998* repealed the following:

*Police Act 1952*

### Legislation amended by principal Act

The *Police Act 1998* amended the following:

*Acts Interpretation Act 1915*

*Police Superannuation Act 1990*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1998	55	<i>Police Act 1998</i>	3.9.1998	1.7.1999 ( <i>Gazette 30.6.1999 p3310</i> )
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 31)—1.6.2000 ( <i>Gazette 18.5.2000 p2554</i> )
2004	51	<i>Statutes Amendment (Miscellaneous Superannuation Measures No 2) Act 2004</i>	16.12.2004	Pt 3 (s 9)—13.1.2005 ( <i>Gazette 13.1.2005 p69</i> )
2012	19	<i>Statutes Amendment (Criminal Intelligence) Act 2012</i>	24.5.2012	Pt 6 (s 10)—12.7.2012 ( <i>Gazette 12.7.2012 p3110</i> )
2012	52	<i>Independent Commissioner Against Corruption Act 2012</i>	6.12.2012	Sch 3 (cll 60—62)—20.12.2012 ( <i>Gazette 20.12.2012 p5742</i> )
2013	27	<i>Police (GST Exemption) Amendment Act 2013</i>	27.6.2013	27.6.2013
2013	49	<i>Statutes Amendment (Police) Act 2013</i>	24.10.2013	Pt 2 (s 15)—1.7.2014; ss 4—14, 16—18 & Sch 1—1.9.2014 ( <i>Gazette 26.6.2014 p3021</i> )
2016	60	<i>Police Complaints and Discipline Act 2016</i>	8.12.2016	Sch 1 (cll 20—24 & 53)—4.9.2017 ( <i>Gazette 29.8.2017 p3794</i> )

**2016 63** *Statutes Amendment (South Australian Employment Tribunal Act 2016)* **8.12.2016** **Pt 17 (ss 122—127)—1.7.2017 (Gazette 16.5.2017 p1221)**

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	13.1.2005
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>13.1.2005</i>
s 3		
Code	substituted by 60/2016 Sch 1 cl 20(1)	uncommenced—not incorporated
minor misconduct	deleted by 60/2016 Sch 1 cl 20(2)	uncommenced—not incorporated
Police Ombudsman	Police Complaints Authority amended to read Police Ombudsman by 52/2012 Sch 3 cl 60	20.12.2012
Police Disciplinary Tribunal	deleted by 60/2016 Sch 1 cl 20(3)	uncommenced—not incorporated
Police Ombudsman	deleted by 60/2016 Sch 1 cl 20(4)	uncommenced—not incorporated
<b>SAET</b>	<b>inserted by 63/2016 s 122</b>	<b>1.7.2017</b>
Pt 4		
s 27		
s 27(2)	substituted by 49/2013 s 4(1)	1.9.2014
s 27(3)	amended by 49/2013 s 4(2)	1.9.2014
<i>s 27(4)</i>	<i>deleted by 49/2013 s 4(3)</i>	<i>1.9.2014</i>
s 27(7) and (8)	inserted by 49/2013 s 4(4)	1.9.2014
Pt 6		
heading	amended by 49/2013 s 5	1.9.2014
	substituted by 60/2016 Sch 1 cl 21	uncommenced—not incorporated
Pt 6 Div 1		
heading	inserted by 49/2013 s 6	1.9.2014
s 37		
s 37(2)	amended by 49/2013 s 7(1)—(3)	1.9.2014
s 38		
s 38(1a)	inserted by 52/2012 Sch 3 cl 61	20.12.2012
s 38(2)	amended by 52/2012 Sch 3 cl 60	20.12.2012
s 40		
s 40(1)	amended by 49/2013 s 8(1)	1.9.2014
s 40(2)	inserted by 49/2013 s 8(2)	1.9.2014
Pt 6 Div 1	deleted by 60/2016 Sch 1 cl 22	uncommenced—not incorporated
Pt 6 Div 2	inserted by 49/2013 s 9	1.9.2014
Pt 6 Div 3		

**Police Act 1998—1.7.2017 to 3.9.2017**

Legislative history

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heading	inserted by 49/2013 s 10	1.9.2014
s 42		
s 42(1)	amended by 49/2013 s 11(1)	1.9.2014
s 42(1a)	inserted by 49/2013 s 11(2)	1.9.2014
s 42(2)	amended by 49/2013 s 11(3)	1.9.2014
Pt 6 Div 3	deleted by 60/2016 Sch 1 cl 23	uncommenced—not incorporated
Pt 7		
s 45		
s 45(2)	substituted by 51/2004 s 9	13.1.2005
Pt 8		
<b>s 48</b>		
<b>s 48(1)</b>	<b>amended by 63/2016 s 123(1)</b>	<b>1.7.2017</b>
<b>s 48(2)</b>	<b>substituted by 63/2016 s 123(2)</b>	<b>1.7.2017</b>
<b>s 48(3)</b>	<b>amended by 63/2016 s 123(3)</b>	<b>1.7.2017</b>
<b>ss 49 and 50</b>	<b>deleted by 63/2016 s 124</b>	<b>1.7.2017</b>
<i>s 51 before deletion by 63/2016</i>		
<i>s 51(2)</i>	<i>amended by 4/2000 s 9(1) (Sch 1 cl 31(a))</i>	<i>1.6.2000</i>
<i>s 51(3)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 31(b))</i>	<i>1.6.2000</i>
<b>s 51</b>	<b>deleted by 63/2016 s 124</b>	<b>1.7.2017</b>
<b>s 52</b>		
<b>s 52(1)</b>	<b>amended by 63/2016 s 125(1)</b>	<b>1.7.2017</b>
<b>s 52(2)</b>	<b>substituted by 63/2016 s 125(2)</b>	<b>1.7.2017</b>
<b>s 52(3)</b>	<b>amended by 63/2016 s 125(3)</b>	<b>1.7.2017</b>
<b>s 52(4)</b>	<b>amended by 63/2016 s 125(4)</b>	<b>1.7.2017</b>
s 55		
s 55(1)	substituted by 49/2013 s 12	1.9.2014
Pt 9		
s 59	substituted by 49/2013 s 13	1.9.2014
s 61		
s 61(2)	substituted by 49/2013 s 14	1.9.2014
s 61(3) and (4)	inserted by 49/2013 s 14	1.9.2014
Pt 10		
s 65	substituted by 49/2013 s 15	1.7.2014
s 67		
s 67(3)	amended by 52/2012 Sch 3 cl 62	20.12.2012
s 67(4)—(7)	inserted by 49/2013 s 16	1.9.2014
s 70		
s 70(1)	amended by 60/2016 Sch 1 cl 24	uncommenced—not incorporated
s 70(2)	substituted by 49/2013 s 17(1)	1.9.2014
s 70(4)	amended by 49/2013 s 17(2)	1.9.2014
s 70(5)	amended by 49/2013 s 17(3)	1.9.2014
s 70(6)	inserted by 49/2013 s 17(4)	1.9.2014

s 74A	inserted by 19/2012 s 10	12.7.2012
s 76		
s 76(2)	amended by 27/2013 s 3	27.6.2013
Sch 1		
cl 1		
cl 1(2)—(7)	<i>deleted by 49/2013 s 18(1)</i>	1.9.2014
cl 1A	<i>inserted by 49/2013 s 18(2)</i> <i>deleted by 63/2016 s 126</i>	1.9.2014 1.7.2017
cl 1B	inserted by 49/2013 s 18(2)	1.9.2014
cl 2	substituted by 49/2013 s 18(2)	1.9.2014
Sch 2		
cl 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	13.1.2005
Sch 3	<i>omitted under Legislation Revision and Publication Act 2002</i>	13.1.2005

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Police) Act 2013, Sch 1*

#### 1—Transitional provisions

- (1) Section 27 of the *Police Act 1998*, as amended by Part 2 of this Act, applies to an appointment—
  - (a) made on or after the commencement of this clause; or
  - (b) made prior to the commencement of this clause if the period of probation for the appointment has not ended before that commencement.
- (2) Section 55 of the *Police Act 1998*, as amended by Part 2 of this Act, applies to a selection process conducted after the commencement of this clause.

### *Statutes Amendment (South Australian Employment Tribunal) Act 2016*

#### 127—Transitional provisions

- (1) In this section—
 

*principal Act* means the *Police Act 1998*;

*relevant day* means the day on which this Part comes into operation;

*SAET* means the South Australian Employment Tribunal.
- (2) A decision, direction or order of the Police Review Tribunal under Part 8 Division 1 or 2 of the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of SAET.
- (3) A right to apply to the Police Review Tribunal under Part 8 Division 1 or 2 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before SAET rather than the Police Review Tribunal.

- (4) Any proceedings before the Police Review Tribunal under Part 8 Division 1 or 2 of the principal Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where they may proceed as if they had been commenced before SAET.
- (5) SAET may—
  - (a) receive in evidence any transcript of evidence in proceedings before the Police Review Tribunal, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of the Police Review Tribunal that may be relevant to proceedings before SAET; and
  - (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Police Review Tribunal before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## **Historical versions**

Reprint No 1—1.6.2000

13.1.2005

12.7.2012

20.12.2012

27.6.2013

1.7.2014

1.9.2014