

South Australia

Police Complaints and Discipline Act 2016

An Act to provide for the resolution of complaints made in respect of police officers and certain other persons, to make provision in relation to disciplinary proceedings in respect of police officers and other persons, to repeal the *Police (Complaints and Disciplinary Proceedings) Act 1985*, to make related amendments to other Acts and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Application of Act
- 5 Separate Internal Investigation Section to be constituted
- 6 Complaint management system
- 7 Code of conduct
- 8 Functions of OPI under Act
- 9 Complainant and designated officer to be kept informed of progress of complaint

Part 2—Making complaints and reports

Division 1—Complaints and reports about conduct of designated officers

- 10 Making a complaint about conduct of designated officer
- 11 Right of persons in custody to make complaint
- 12 Designated officers to report certain conduct of other designated officers
- 13 Action to be taken on receipt of complaint or report

Division 2—Assessment of complaints and reports

- 14 Assessment of complaints and reports by IIS
- 15 Commissioner may decline to act in relation to certain complaints

Part 3—Certain matters to be resolved by management resolution

- 16 Application of Part
- 17 Further matters relating to operation of Part
- 18 Dealing with matters by way of management resolution
- 19 Reporting results of management resolution of matter
- 20 Monitoring of management resolutions under Part

Part 4—Formal proceedings for breach of discipline

- 21 Investigations of complaints and reports by IIS
- 22 Notice of allegation to be issued in respect of breaches of discipline

- 23 Suspension where charge of offence or alleged breach of discipline
- 24 Designated officer may admit or deny allegations
- 25 Allegations to be heard and determined by Tribunal
- 26 Commissioner may sanction designated officer following offence or breach of discipline

Part 5—Oversight of complaints and reports by OPI etc

- 27 OPI may direct Commissioner etc in relation to handling of complaints and reports
- 28 Reassessment of certain complaints and reports by OPI
- 29 OPI may refer complaints and reports to ICAC
- 30 ICAC may investigate matters under section
- 31 Annual report on sanctions imposed for breaches of discipline

Part 6—Appeals

- 32 Appeals

Part 7—Police Disciplinary Tribunal

- 33 Constitution of Police Disciplinary Tribunal
- 34 Registrar and deputy registrar
- 35 Proceedings before Tribunal
- 36 Powers of Tribunal
- 37 Protection of Tribunal, counsel and witnesses
- 38 Reference of question of law
- 39 Costs
- 40 Reasons for decision

Part 8—Miscellaneous

- 41 Obstruction of complaint or report
- 42 False or misleading statements
- 43 Use of evidence or information obtained under other Acts etc
- 44 Limitation on requirement to divulge information
- 45 Confidentiality
- 46 Publication of information and evidence
- 47 Service
- 48 Review of Act
- 49 Regulations

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Amendment of *Child Sex Offenders Registration Act 2006*

- 1 Amendment of section 63—Registrable offender's rights in relation to register
- 2 Amendment of section 67—Confidentiality of information
- 3 Amendment of Schedule 2—Information disclosure principles

Part 2—Amendment of *Correctional Services Act 1982*

- 4 Amendment of section 33—Prisoners' mail

Part 3—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

- 5 Amendment of section 45—Access to and use of DNA database system
- 6 Amendment of section 50—Confidentiality
- 7 Amendment of section 57—Compliance audits

Part 4—Amendment of *Freedom of Information Act 1991*

- 8 Amendment of section 39—External review
- 9 Amendment of section 40—Appeal to District Court
- 10 Amendment of section 53—Fees and charges
- 11 Amendment of section 54A—Training to be provided to agencies
- 12 Amendment of Schedule 2—Exempt agencies

Part 5—Amendment of *Independent Commissioner Against Corruption Act 2012*

- 13 Amendment of section 4—Interpretation
- 14 Amendment of section 17—Functions and objectives
- 15 Amendment of section 24—Action that may be taken
- 16 Amendment of section 45—Commissioner's annual report
- 17 Amendment of section 51—Arrangements for provision of information by Commissioner of Police

Part 6—Amendment of *Listening and Surveillance Devices Act 1972*

- 18 Amendment of section 3—Interpretation

Part 7—Amendment of *Parliamentary Committees Act 1991*

- 19 Amendment of section 15O—Functions of Committee

Part 8—Amendment of *Police Act 1998*

- 20 Amendment of section 3—Interpretation
- 21 Substitution of heading to Part 6
- 22 Repeal of Part 6 Division 1
- 23 Repeal of Part 6 Division 3
- 24 Amendment of section 70—Suspension or revocation of suspension under Act or regulations

Part 9—Amendment of *Protective Security Act 2007*

- 25 Amendment of section 3—Interpretation
- 26 Amendment of section 24—Report and investigation of breach of Code
- 27 Amendment of section 25—Charge for breach of Code
- 28 Amendment of section 28—Management resolution of minor breaches of Code
- 29 Amendment of section 29—Review of management resolution
- 30 Amendment of section 30—Commissioner to oversee inquiries
- 31 Insertion of section 31
 - 31 Office for Public Integrity may direct Commissioner etc in relation to handling of breaches of Code
- 32 Insertion of Part 5A

Part 5A—Protective Security Officers Disciplinary Tribunal

- 29 Constitution of Protective Security Officers Disciplinary Tribunal
- 30 Registrar and deputy registrar
- 31 Proceedings before Tribunal
- 32 Powers of Tribunal
- 33 Protection of Tribunal, counsel and witnesses
- 34 Reference of question of law
- 35 Costs
- 36 Reasons for decision

Part 10—Amendment of *Shop Theft (Alternative Enforcement) Act 2000*

33 Amendment of section 17—Confidentiality

Part 11—Amendment of *Telecommunications (Interception) Act 2012*

34 Amendment of section 3—Interpretation

Part 12—Amendment of *Terrorism (Preventative Detention) Act 2005*

35 Amendment of section 3—Interpretation

36 Amendment of section 10—Making of preventative detention order

37 Amendment of section 12—Extension of preventative detention order

38 Amendment of section 13—Prohibited contact order (person in relation to whom preventative detention order is being sought)

39 Amendment of section 14—Prohibited contact order (person in relation to whom preventative detention order is already in force)

40 Amendment of section 15—Revocation of preventative detention order or prohibited contact order

41 Substitution of section 36

36 Contacting Office for Public Integrity

42 Amendment of section 37—Contacting lawyer

43 Amendment of section 41—Disclosure offences

44 Amendment of section 42—Questioning of person prohibited while person is detained

45 Amendment of section 48—Annual report

46 Repeal of section 49

Part 13—Amendment of *Whistleblowers Protection Act 1993*

47 Amendment of section 5—Immunity for appropriate disclosures of public interest information

Part 14—Amendment of *Witness Protection Act 1996*

48 Amendment of section 10—Memorandum of understanding

49 Amendment of section 12—Access to register

50 Amendment of section 21—Offences

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

Part 15—Repeal of *Police (Complaints and Disciplinary Proceedings) Act 1985*

52 Repeal of *Police (Complaints and Disciplinary Proceedings) Act 1985*

Part 16—Transitional provisions

53 Certain orders of Commissioner etc under repealed Act taken to be valid

54 Complaints, reports and proceedings under *Police (Complaints and Disciplinary Proceedings) Act 1985*

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Police Complaints and Discipline Act 2016*.

2—Commencement

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

3—Interpretation

(1) In this Act, unless the contrary intention appears—

breach of discipline means conduct that contravenes this Act or breaches the code of conduct and that may be the subject of a notice of allegation under this Act;

close relative of a person means a spouse, domestic partner, parent or child of the person;

code of conduct or ***Code***—see section 7;

complaint means a complaint made under section 10;

complaint management system—means the complaint management system established under section 6;

corruption in public administration has the same meaning as in the *Independent Commissioner Against Corruption Act 2012*;

designated officer means a person who is—

- (a) a member of SA Police; or
- (b) a police cadet; or
- (c) a special constable;

Independent Commissioner Against Corruption or ***ICAC*** means the Commissioner under the *Independent Commissioner Against Corruption Act 2012*;

Internal Investigation Section or ***IIS*** means the section of the police force constituted in accordance with section 5;

maladministration in public administration has the same meaning as in the *Independent Commissioner Against Corruption Act 2012*;

misconduct in public administration has the same meaning as in the *Independent Commissioner Against Corruption Act 2012*;

notice of allegation—see section 22(1);

Office for Public Integrity or ***OPI*** means the Office for Public Integrity under the *Independent Commissioner Against Corruption Act 2012*;

police public servant means a person (not being a designated officer) employed or performing duties in an administrative unit of the Public Service of which the Commissioner is the Chief Executive;

party, to proceedings before the Tribunal, means the Commissioner and the designated officer to whom the proceedings relate;

report means a report made under section 12;

resolution officer—see section 18(1);

Tribunal means the Police Disciplinary Tribunal.

(2) In this Act, the following terms or phrases have the same meaning as in the *Police Act 1998*:

- (a) *Commissioner*;
- (b) *member of SA Police*;
- (c) *police cadet*;
- (d) *SA Police*;
- (e) *special constable*.

(3) For the purposes of this Act, a reference to the investigation of a matter will be taken to include a reference to the further investigation of the matter.

4—Application of Act

(1) This Act is in addition to, and does not derogate from, the *Independent Commissioner Against Corruption Act 2012*.

(2) This Act is in addition to, and does not derogate from, the *Police Act 1998*.

5—Separate Internal Investigation Section to be constituted

(1) The Commissioner must ensure that a separate section (the *Internal Investigation Section* or *IIS*) is constituted within SA Police to carry out investigations under this Act in relation to the conduct of designated officers.

(2) In addition to carrying out investigations under this Act, the IIS may carry out such other investigations in relation to the conduct of designated officers as may be required by the Commissioner.

(3) The officer in charge of the IIS is entitled to report directly to the Commissioner on any matter relating to the IIS or the performance of its functions.

(4) If a member of SA Police serving in the IIS is able to perform duties unrelated to the operation of this Act without unduly interfering with the duties or functions of the IIS, he or she may be directed to do so by the Commissioner.

(5) For the purposes of this Act, a reference to a *member of the IIS* will be taken to be a reference to a member of SA Police serving in the IIS.

6—Complaint management system

(1) The Commissioner must establish a system to record information relating to making, assessment, investigation and resolution of complaints and reports made under this Act (the *complaint management system*).

(2) The complaint management system—

- (a) must, in relation to each complaint or report entered on the system, contain such information as may be required by or under this Act; and

- (b) must comply with any requirements set out in the regulations.
- (3) The Commissioner must ensure that the ICAC and the OPI have direct and unrestricted access to the complaint management system for the purposes of this Act and the *Independent Commissioner Against Corruption Act 2012*.
- (4) The regulations may make further provision in relation to the complaint management system (including, to avoid doubt, limiting access to the system by designated officers, the ICAC and the OPI).

7—Code of conduct

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

8—Functions of OPI under Act

The functions of the OPI under this Act are—

- (a) to oversee the assessment and investigation of complaints and reports relating to designated officers; and
- (b) to oversee the operation and enforcement of this Act; and
- (c) to refer certain complaints and reports to the ICAC in accordance with this Act and the *Independent Commissioner Against Corruption Act 2012*; and
- (d) such other functions as may be assigned to the OPI under this Act.

9—Complainant and designated officer to be kept informed of progress of complaint

- (1) Subject to this section, the Commissioner must, except in the case of a complaint that is investigated by the ICAC under section 30, cause—
 - (a) the complainant in relation to a complaint; and
 - (b) each designated officer who is the subject of a complaint,to be informed of the progress and resolution of the complaint.

- (2) Subject to this section, if a complaint is investigated by the ICAC under section 30, the ICAC must, in accordance with the requirements set out in the regulations, cause—
- (a) the complainant in relation to the complaint; and
 - (b) each designated officer who is the subject of the complaint,
- to be informed of the progress and resolution of the complaint.
- (3) However, the Commissioner or the ICAC need not keep a designated officer who is the subject of a complaint so informed if—
- (a) the complaint is a complaint referred to in section 15; or
 - (b) the Commissioner or the ICAC (as the case requires) believes on reasonable grounds that—
 - (i) so informing the designated officer would prejudice the investigation of the complaint; or
 - (ii) the complaint raises a potential issue of corruption in public administration that could be the subject of a prosecution.

Part 2—Making complaints and reports

Division 1—Complaints and reports about conduct of designated officers

10—Making a complaint about conduct of designated officer

- (1) A person may make a complaint about the conduct of a designated officer in accordance with this section.
- (2) However, a complaint cannot be made under this section in relation to the employment, or terms or conditions of employment, of designated officers.
- (3) A complaint may be made by, or on behalf of, an aggrieved person to—
- (a) a designated officer (not being an officer to whom the complaint relates); or
 - (b) a police public servant; or
 - (c) the OPI,
- and may, to avoid doubt, be made whether or not the designated officer to whom the complaint relates is identified by the complainant.
- (4) A person wishing to make a complaint—
- (a) must be advised by the person or body to whom the complaint is to be made that the complaint may be made in writing or orally; and
 - (b) if the complainant wishes to make the complaint in writing, must, at his or her request, be provided with the materials necessary to do so.
- (5) In the case of a complaint made orally, the person or body to whom the complaint is made must, as soon as is reasonably practicable (but in any event within 48 hours) after the complaint is made, reduce the complaint to writing in accordance with any requirements set out in the regulations for the purposes of this subsection.

- (6) Without limiting any other provision of this Act, the IIS or the OPI may require a complaint made orally to be verified by the complainant in writing.

11—Right of persons in custody to make complaint

- (1) If a person detained in custody wishes to make a complaint about the conduct of a designated officer, any person performing duties in connection with the detention of the person must, at the request of the person, take all reasonable steps to ensure that the person can make a complaint under section 10.
- (2) A request referred to in subsection (1) must be complied with as soon as is reasonably practicable (but without there being any obligation to interrupt the carrying out of any other lawful procedure or function).

12—Designated officers to report certain conduct of other designated officers

- (1) Without limiting any other provision of this or any other Act, a designated officer who reasonably suspects that another designated officer has engaged in conduct that constitutes corruption, misconduct or maladministration in public administration must report that suspicion in accordance with this section.
- (2) A report—
- (a) must be made to the IIS or the OPI as soon as is reasonably practicable (but in any event within 7 days) after the designated officer forms the suspicion; and
 - (b) must be made in a manner and form determined by the IIS or the OPI (as the case requires); and
 - (c) must comply with the requirements determined by the Commissioner and approved by the ICAC.
- (3) A designated officer who, without reasonable excuse, refuses or fails to comply with subsection (1) may be dealt with under this Act for a breach of discipline.

13—Action to be taken on receipt of complaint or report

- (1) A designated officer or police public servant to whom a complaint is made must, as soon as is reasonably practicable (but in any event within 3 days) after the complaint is made, refer the complaint to the IIS in accordance with this section.
- (2) Subject to this Act, the OPI must, as soon as is reasonably practicable (but in any event within 3 days) after receiving a complaint or report, refer the complaint or report to the IIS in accordance with this section.
- (3) The OPI need not refer a complaint or report to the IIS if the complaint or report is, or is to be, referred to the ICAC under section 29.
- (4) A referral under this section must comply with any requirements determined by the Commissioner and approved by the ICAC.
- (5) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after receiving a complaint or report under this section, cause the information required by the regulations in respect of the complaint or report to be recorded on the complaint management system.

Division 2—Assessment of complaints and reports

14—Assessment of complaints and reports by IIS

- (1) Each complaint or report received by or referred to the IIS under this Act must be assessed as to whether—
 - (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution; or
 - (b) it raises a potential issue of misconduct or maladministration in public administration; or
 - (c) it raises some other issue that should, in the opinion of the officer in charge of the IIS, be referred to the OPI.
- (2) Subsection (1) does not apply to a particular complaint or report if—
 - (a) the conduct that is the subject of the complaint or report is being, or has previously been, assessed by the IIS, the OPI or the ICAC; or
 - (b) the conduct that is the subject of the complaint or report has been previously dealt with under this Act, the *Police (Complaints and Disciplinary Proceedings) Act 1985* or the *Police Act 1998*; or
 - (c) the matter raised in the complaint or report is, in the opinion of the officer in charge of the IIS, trivial; or
 - (d) the complaint or report is, in the opinion of the officer in charge of the IIS, frivolous or vexatious or not made in good faith; or
 - (e) in the case of a complaint—having regard to all the circumstances of the case, an investigation of the complaint is unnecessary or unjustifiable.
- (3) Subject to this Act, an assessment under this section may be conducted in such manner as the officer in charge of the IIS thinks fit.
- (4) If a particular complaint is assessed as being a complaint referred to in subsection (1)(a) or (c), the officer in charge of the IIS must, in a manner and form determined by the OPI, notify the OPI of that fact.

15—Commissioner may decline to act in relation to certain complaints

The Commissioner may decline to take further action in respect of a particular complaint or report if—

- (a) the conduct that is the subject of the complaint or report has been previously dealt with under this Act, the *Police (Complaints and Disciplinary Proceedings) Act 1985*, the *Police Act 1998* or the *Independent Commissioner Against Corruption Act 2012*; or
- (b) the matter raised in the complaint or report is, in the opinion of the Commissioner, trivial; or
- (c) the complaint or report is, in the opinion of the Commissioner, frivolous or vexatious or not made in good faith; or

- (d) in the case of a complaint—having regard to all the circumstances of the case, the Commissioner is of the opinion that an investigation of the complaint is unnecessary or unjustifiable (including, to avoid doubt, where the alleged conduct of the designated officer concerned is not sufficiently related to the exercise, performance or discharge (or purported exercise, performance or discharge) of his or her official powers, functions or duties).

Part 3—Certain matters to be resolved by management resolution

16—Application of Part

- (1) This Part applies to matters of the following kinds:
 - (a) a complaint or report determined by the Commissioner to be a complaint or report that may be dealt with under this Part;
 - (b) an allegation relating to conduct of a designated officer of a kind determined by the Commissioner to be conduct that may be dealt with under this Part.
- (2) The Commissioner may vary or revoke a determination under this section.
- (3) On making or varying a determination under this section, the Commissioner must submit the determination or variation (as the case requires) to the OPI for approval.
- (4) A determination, or variation of a determination, has effect from the day on which it is approved by the OPI.
- (5) The Minister must cause notice of each determination, and each variation of a determination, to be tabled before both Houses of Parliament within 15 sitting days after the day on which it is approved.

17—Further matters relating to operation of Part

- (1) The Governor may, by regulation—
 - (a) specify the kinds of complaints, reports and conduct that should, or should not, be the subject of a determination under section 16; and
 - (b) set out procedures for dealing with matters under this Part (including, to avoid doubt, making provision for the conciliation of complaints); and
 - (c) make further provisions relating to the operation of this Part.
- (2) The Commissioner must, in respect of the operation of this Part, have regard to, and seek to give effect to, the following principles:
 - (a) the purpose of a management resolution under this Part is to avoid formal disciplinary proceedings by dealing with the matter as a question of educating, and improving the future conduct of, the designated officer concerned;
 - (b) management resolution of matters under this Part is to be conducted as expeditiously as possible and without undue formality.

18—Dealing with matters by way of management resolution

- (1) A matter to which this Part applies is to be dealt with by the Commissioner causing the matter to be referred to a suitable member of SA Police (the *resolution officer*) for resolution in accordance with this Part.
- (2) Without limiting subsection (1), the resolution officer must ensure that—
 - (a) the designated officer concerned is informed of the complaint, report or allegation made against him or her; and
 - (b) the designated officer is given the opportunity to inform the resolution officer of any information the designated officer thinks relevant in respect of the matter; and
 - (c) he or she contacts the person who made the complaint, report or allegation and—
 - (i) explains to the person that the matter is to be resolved under this Part (including an explanation of the processes involved and possible outcomes); and
 - (ii) gives him or her the opportunity to inform the resolution officer of any further information he or she thinks relevant in respect of the matter.
- (3) If—
 - (a) the resolution officer is of the opinion that there would be a benefit in undertaking conciliation between the person who made the relevant complaint or allegation and SA Police; and
 - (b) the person agrees to undertake conciliation,the resolution officer must attempt to resolve the matter by way of conciliation.
- (4) In the course of a management resolution under this Part, the Commissioner may take action, or order the taking of action, of 1 or more of the following kinds in respect of the designated officer:
 - (a) impose a restriction on the ability of the designated officer to work in a specified position, or to perform specified duties, within SA Police;
 - (b) remove, or impose conditions on, any accreditation, permit or authority granted by SA Police to the designated officer;
 - (c) provide the designated officer with counselling;
 - (d) issue the designated officer with a reprimand.
- (5) However, the Commissioner may only take action of the kind referred to in subsection (4)(a) or (b) if he or she is satisfied that—
 - (a) the action is appropriate in order to—
 - (i) provide an opportunity for the designated officer to undertake remedial education or training; or
 - (ii) establish that the designated officer is competent and capable of carrying out specified duties; and

- (b) it is appropriate in all of the circumstances to take the action, having considered—
 - (i) the potential impact of the action on the designated officer concerned; and
 - (ii) the risks to other members of SA Police and the community of not taking such action.
- (6) If the Commissioner takes action of the kind referred to in subsection (4)(a) or (b), the Commissioner must—
 - (a) advise the designated officer of the remedial education or training to be undertaken, and the competencies (if any) required to be demonstrated before the relevant action will be revoked; and
 - (b) provide remedial education or training, and an opportunity to demonstrate the required competencies, to the designated officer as soon as may be reasonably practicable.
- (7) The Commissioner must revoke any action taken under subsection (4)(a) or (b) if—
 - (a) the designated officer successfully completes the required remedial education or training and has demonstrated to the Commissioner that the designated officer is competent and capable of carrying out specified duties; or
 - (b) a period of 3 months has elapsed since the action was taken,whichever occurs first.
- (8) Information obtained in the course of a management resolution under this Part is not to be used in relation to a prescribed determination relating to the designated officer concerned.
- (9) However, subsection (8) does not apply to information referred to in that subsection if the Commissioner is of the opinion that—
 - (a) the designated officer has engaged in a pattern of unsatisfactory conduct (whether the conduct is of the same kind or of different kinds) or unsatisfactory performance (as contemplated by section 46 of the *Police Act 1998*); and
 - (b) it is appropriate for the information to be used in relation to a prescribed determination relating to the designated officer, having first sought and considered any views of the designated officer as to the use of the information.
- (10) On completion of a management resolution under this Part, the resolution officer must inform the designated officer concerned and the person who made the relevant complaint, report or allegation of the outcome of the management resolution.
- (11) In this section—

prescribed determination means—

 - (a) a determination relating to the promotion or transfer of a designated officer (whether on application or otherwise); and
 - (b) a determination relating to an award of a medal or other accolade (however described); and

- (c) any other determination prescribed by the regulations for the purposes of this definition.

19—Reporting results of management resolution of matter

- (1) The resolution officer must, in accordance with any requirements set out in the regulations, prepare a report in relation to each matter dealt with by way of management resolution under this Part.
- (2) The resolution officer must cause a copy of a report under subsection (1) to be provided to—
 - (a) the IIS; and
 - (b) the designated officer concerned.
- (3) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after receiving a report under subsection (2), cause the information required by the regulations in respect of each matter dealt with by way of management resolution under this Part to be recorded on the complaint management system.

20—Monitoring of management resolutions under Part

The Commissioner must cause all matters dealt with under this Part to be monitored and reviewed with a view to maintaining proper and consistent practices.

Part 4—Formal proceedings for breach of discipline

21—Investigations of complaints and reports by IIS

- (1) Subject to this Act, each complaint or report referred to the IIS under this Act must be investigated by the IIS.
- (2) Subsection (1) does not apply to a particular complaint or report if—
 - (a) the complaint or report is dealt with, or is to be dealt with, under Part 3; or
 - (b) the complaint or report is, or is to be, referred to the ICAC under section 29; or
 - (c) the conduct that is the subject of the complaint or report is being, or has previously been, assessed by the IIS, the OPI or the ICAC; or
 - (d) the conduct that is the subject of the complaint or report has been previously dealt with under this Act or the *Police (Complaints and Disciplinary Proceedings) Act 1985*; or
 - (e) the matter raised in the complaint or report is, in the opinion of the officer in charge of the IIS, trivial; or
 - (f) the complaint or report is, in the opinion of the officer in charge of the IIS, frivolous or vexatious or not made in good faith; or

-
- (g) in the case of a complaint—having regard to all the circumstances of the case, the officer in charge of the IIS is of the opinion that an investigation of the complaint or report is unnecessary or unjustifiable (including, to avoid doubt, where the alleged conduct of the designated officer concerned is not sufficiently related to the exercise, performance or discharge (or purported exercise, performance or discharge) of his or her official powers, functions or duties).
- (3) Subject to this Act, an investigation may be conducted in such manner as the officer in charge of the IIS thinks fit.
- (4) A member of the IIS may, for the purposes of an investigation, make inquiries and obtain information, property, documents or other records relevant to the investigation, as he or she thinks fit.
- (5) A member of the IIS may, for the purposes of the investigation, direct a designated officer to furnish information, produce property, a document or other record, or answer a question, that is relevant to the investigation.
- (6) For the purposes of this Act and the *Police Act 1998*, a direction given by a member of the IIS under subsection (5) has effect as if it had been given by the Commissioner.
- (7) A member of the IIS must, before giving any direction under subsection (5) to the designated officer whose conduct is under investigation, inform the officer of—
- (a) the time and place at which the conduct is alleged to have occurred; and
 - (b) the nature of the alleged conduct.
- (8) Subsection (7)(a) does not apply if the time and place at which the conduct is alleged to have occurred is not known.
- (9) Subsection (7) does not apply if the member of IIS believes on reasonable grounds that so informing the designated officer may prejudice the investigation.
- (10) Without limiting any other provision of this or any other Act, a designated officer who—
- (a) without reasonable excuse, refuses or fails to furnish information, produce property, a document or other record or answer a question when so required under this section; or
 - (b) furnishes information or makes a statement to a member of the IIS knowing that it is false or misleading in a material particular,
- may be dealt with under this Act for a breach of discipline.
- (11) If a designated officer is directed under subsection (5) to furnish information, produce property, a document or record or answer a question, the officer is not excused from complying with the direction on the ground—
- (a) that the furnishing of the information, the production of the property, 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 property, the document or record or the answer to the question might tend to show that he or she has committed a breach of discipline.
- (12) A designated officer may refuse to furnish information, produce property, a document or record or answer a question if the information, the property, the document or record or the answer to the question might tend to incriminate him or her or a close relative of his or hers, but a designated officer who does so refuse may be dealt with under this Act for a breach of discipline.
- (13) A designated officer who furnishes information, produces property, 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 IIS under this section.
- (14) The officer in charge of the IIS may, subject to any directions of the Commissioner, require a police officer not serving in the IIS to assist the IIS in conducting investigations under this section or to conduct investigations on behalf of the IIS, and, in that event, the provisions of this section apply as if the police officer were a member of the IIS.
- (15) This section does not limit or affect the powers or duties that a police officer would have apart from this Act in connection with the investigation of an offence.

22—Notice of allegation to be issued in respect of breaches of discipline

- (1) For the purposes of this Act, the Commissioner commences proceedings for a breach of discipline by presenting a *notice of allegation* to the Tribunal.
- (2) However, the Commissioner must not present a notice of allegation to the Tribunal unless he or she has advised the OPI that he or she intends to present the notice of allegation and has had regard to any submission made by the OPI relating to the matter (however a failure to comply with this subsection will not, of itself, invalidate a notice of allegation).
- (3) The Commissioner need not comply with subsection (2) where the Commissioner is satisfied that to do so would unduly delay any action to be taken in respect of the matter.
- (4) The Commissioner must, on commencing proceedings for a breach of discipline, provide to the designated officer concerned a written notice indicating the punishment that the Commissioner would be likely to impose if the breach of discipline were proved on the basis of the facts as known to the Commissioner at the time the notice of allegation is presented.
- (5) The notice referred to in subsection (4) must not be provided to the Tribunal in any proceedings under this Part.
- (6) A notice of allegation must comply with any requirements set out in the regulations.
- (7) A notice of allegation must be served on the designated officer in accordance with the regulations.

23—Suspension where charge of offence or alleged breach of discipline

- (1) If—
 - (a) a designated officer is charged with an offence (whether under the law of this State, the Commonwealth or another State or Territory); or
 - (b) a notice of allegation is, or is to be, served on a designated officer under this Act,the Commissioner may suspend the designated officer's appointment.
- (2) Subject to subsection (3), a suspension will be with remuneration.
- (3) The Commissioner may determine that a suspension will be without remuneration if the Commissioner believes on reasonable grounds that a failure to do so would bring SA Police into disrepute.
- (4) A suspension in relation to a notice of allegation that has yet to be served on a designated officer will be taken to have been revoked by the Commissioner if the notice of allegation is not so served within 24 hours (excluding a Saturday, Sunday or a public holiday falling on a Monday or Friday).
- (5) A suspension under this section must be revoked by the Commissioner if—
 - (a) the designated officer is found not guilty of the offence, or is found not to have committed the alleged breach of discipline, or the charge or allegation is dismissed, lapses or is withdrawn; and
 - (b) the designated officer does not stand charged of any other offence and no other breach of discipline is alleged.
- (6) If the suspension under this section of a designated officer's appointment is revoked by the Commissioner, then, subject to any determination of the Commissioner under the regulations, he or she 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.

24—Designated officer may admit or deny allegations

On a notice of allegation being served on a designated officer, he or she may, within the period and in the manner prescribed by the regulations, admit or deny the allegation or allegations.

25—Allegations to be heard and determined by Tribunal

- (1) If an allegation contained in a notice of allegation is not admitted in accordance with section 24, the allegation is to be heard and determined by the Tribunal.
- (2) If the Tribunal is satisfied, on the balance of probabilities, that a designated officer committed a breach of discipline, the Tribunal must—
 - (a) make a finding that the designated officer committed the breach of discipline; and
 - (b) remit the proceedings to the Commissioner for the imposition of sanctions in accordance with section 26; and
 - (c) as soon as is reasonably practicable, notify the IIS of the matters referred to in a preceding paragraph.

- (3) When remitting proceedings to the Commissioner, the Tribunal may indicate to the Commissioner the Tribunal's assessment of the seriousness or otherwise of the breach of discipline committed by the designated officer and, in that event, the Commissioner must, when making his or her determination as to the imposition of sanctions, have due regard to the Tribunal's assessment.
- (4) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after receiving a notification under subsection (2)(c), cause the prescribed information in respect of the findings of the Tribunal, the remission of the proceedings to the Commissioner and any assessment of the Tribunal under subsection (3) to be recorded on the complaint management system.

26—Commissioner may sanction designated officer following offence or breach of discipline

- (1) If a designated officer—
 - (a) is found guilty of an offence under a law of this State, the Commonwealth or another State or Territory; or
 - (b) admits an alleged breach of discipline in accordance with section 24; or
 - (c) is found to have committed a breach of discipline in proceedings before the Tribunal,

the Commissioner may take action, or order the taking of action, of 1 or more of the following kinds in relation to the designated officer:

- (d) termination of his or her appointment;
- (e) suspension of his or her appointment for a specified period;
- (f) if he or she is a member of SA Police—
 - (i) transfer of the member to another position in SA Police for a specified period; or
 - (ii) reduction in the member's rank (whether or not the loss of income resulting from the reduction exceeds the amount prescribed for the purposes of paragraph (h)); or
 - (iii) reduction in the member's seniority;
- (g) if he or she is a police cadet—withdrawal of specified rights or privileges for a specified period;
- (h) reduction of his or her remuneration by a specified amount for a specified period (but not so that the total amount forfeited exceeds the amount prescribed by regulation for the purposes of this paragraph);
- (i) imposition of a fine not exceeding the amount prescribed by regulation;
- (j) a reprimand recorded in his or her conduct and service history kept under the regulations;
- (k) an unrecorded reprimand;
- (l) counselling;
- (m) education or training;

- (n) action of any other kind prescribed by regulation.
- (2) If the period for which a member of SA Police is transferred under subsection (1)(f) is less than 12 months, he or she is entitled, on the expiration of the specified period, to return to the position he or she occupied before being so transferred.
- (3) The Commissioner must, as soon as is reasonably practicable after action is taken under subsection (1) in respect of a designated officer, notify the officer in charge of the IIS of the action taken.
- (4) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after receiving a notification under subsection (3), cause the information required by the regulations in respect of the action taken in relation to the designated officer to be recorded on the complaint management system.

Part 5—Oversight of complaints and reports by OPI etc

27—OPI may direct Commissioner etc in relation to handling of complaints and reports

- (1) Without limiting any other power or function of the OPI, the OPI may, in relation to a complaint or report, give such directions to the Commissioner, the IIS or to a police officer assisting in an investigation or conducting an investigation on behalf of the IIS as the OPI thinks fit.
- (2) Without limiting the generality of subsection (1), a direction may include—
 - (a) a requirement that the IIS or a specified person provide specified information relating to a specified complaint or report; or
 - (b) a requirement that the IIS or a specified person produce to the OPI a specified document or record relating to a specified complaint or report that is under the control of SA Police; or
 - (c) the methods to be employed, the matters to be investigated or the evidence to be obtained in relation to a specified investigation or class of investigations.
- (3) A direction—
 - (a) must be by notice in writing; and
 - (b) may only be given after consultation with the officer in charge of the IIS.
- (4) The OPI may, by notice in writing, vary or revoke a direction.
- (5) The Commissioner must ensure that any direction under this section is complied with without undue delay.

28—Reassessment of certain complaints and reports by OPI

- (1) The OPI may, within 3 business days after the information required by the regulations relating to an assessment of a complaint or report by the IIS is entered in the complaints management system, do 1 or both of the following:
 - (a) reassess the complaint or report;

- (b) substitute its assessment of the complaint or report for that entered in the complaints management system (and the substituted assessment will, for the purposes of this Act, be taken to be the assessment of the IIS in respect of the complaint or report).
- (2) The OPI may only take action under subsection (1) after consultation with the officer in charge of the IIS.
- (3) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after becoming aware of a substituted assessment under subsection (1)(b), cause the information required by the regulations in respect of the substituted assessment to be recorded on the complaint management system.

29—OPI may refer complaints and reports to ICAC

- (1) The OPI may refer a complaint or report to the ICAC if the OPI is satisfied that the complaint or report relates to matters that should be dealt with by the ICAC under this Act or the *Independent Commissioner Against Corruption Act 2012*.
- (2) For the purposes of the *Independent Commissioner Against Corruption Act 2012*, a complaint or report referred under this section will be taken to be a complaint or report received under that Act.
- (3) The ICAC may give such directions as he or she thinks fit to the Commissioner in relation to a complaint or report referred under this section or a related complaint or report (including, to avoid doubt, a direction that the Commissioner not take, or stop taking, specified actions in respect of the complaint or report).

30—ICAC may investigate matters under section

- (1) The ICAC may investigate under this section a complaint or report referred to the ICAC under section 29 if the ICAC is satisfied that it is appropriate to do so.
- (2) The ICAC may, on its own initiative, investigate under this section any other complaint or report if the ICAC is satisfied that it is appropriate to do so.
- (3) If the ICAC investigates a complaint or report under this section, the ICAC must (unless the ICAC is of the opinion that to do so may prejudice the investigation) notify the Commissioner, by writing, of the matter to be investigated and furnish him or her with particulars of the matter.
- (4) In investigating a complaint or report under this section, the ICAC will be taken to have all the powers of a member of the IIS.

31—Annual report on sanctions imposed for breaches of discipline

- (1) The ICAC must, before 30 September in each year, prepare a report on the number and general nature of sanctions imposed under section 26 in relation to breaches of discipline in the preceding financial year.
- (2) Without limiting any other power or function of the ICAC, the ICAC may require the Commissioner to provide the ICAC with such information as the ICAC reasonably requires for the purposes of preparing a report under subsection (1).
- (3) A copy of the report must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.

- (4) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.
- (5) A report under this section may be combined with another report prepared by the ICAC under the *Independent Commissioner Against Corruption Act 2012*.

Part 6—Appeals

32—Appeals

- (1) A party to proceedings before the Tribunal may appeal to the Court against a decision made by the Tribunal in those proceedings.
- (2) An appeal may not be made under subsection (1) in respect of a preliminary, interlocutory or procedural matter unless—
 - (a) the appeal relates to a decision by the Tribunal to grant a stay of proceedings or to refuse to grant a stay of proceedings; or
 - (b) the Court is satisfied that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before the commencement or completion of the trial and grants its permission for an appeal.
- (3) A designated officer may appeal to the Court against an order of the Commissioner imposing a sanction on the designated officer under section 26.
- (4) Subsection (3) applies—
 - (a) whether or not the order resulted from an investigation under this Act;
 - (b) whether the order was made on the designated officer being found to have committed a breach of discipline by the Tribunal or on the officer admitting a breach of discipline to the Commissioner or otherwise.
- (5) An appeal under this section must be instituted within 1 month of the making of the decision or order appealed against.
- (6) In this section—

Court means the Administrative and Disciplinary Division of the District Court.

Part 7—Police Disciplinary Tribunal

33—Constitution of Police Disciplinary Tribunal

- (1) There will be a *Police Disciplinary Tribunal*.
- (2) The Tribunal will be constituted of a magistrate appointed by the Governor.
- (3) The magistrate appointed to constitute the Tribunal will be appointed for such term of office, not exceeding 3 years, as the Governor may determine, and on the expiration of his or her term of office is not 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 will, for any period for which the magistrate appointed to constitute the Tribunal is absent or unavailable, be constituted of that other magistrate.

- (5) The Governor may appoint 3 or more magistrates to a panel and, if at any time the magistrate appointed under subsection (4) is absent or unavailable, the Chief Magistrate may appoint a magistrate from the panel to act in his or her place.

34—Registrar and deputy registrar

- (1) The registrar and deputy registrar of the Tribunal are to be Public Service employees.
- (2) The positions of registrar and deputy registrar of the Tribunal may be held in conjunction with any other position in the Public Service.
- (3) The registrar and deputy registrar of the Tribunal will have such duties and functions as are prescribed and such other duties and functions as may be directed by the Tribunal.

35—Proceedings before Tribunal

- (1) The Tribunal must, in relation to any proceedings to be heard by the Tribunal—
 - (a) give the Commissioner and the designated officer concerned 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; and
 - (b) give the OPI notice of the time and place at which the proceedings are to be heard.
- (2) If a person 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 or her absence.
- (3) The Commissioner may be represented at proceedings by counsel or a police officer.
- (4) A party to proceedings before the Tribunal (other than the Commissioner) is entitled to appear—
 - (a) personally or by counsel; or
 - (b) with the permission of the Tribunal—by some other representative.
- (5) Subject to subsection (6), the proceedings of the Tribunal are to be heard in private.
- (6) The Tribunal must permit a member of the staff of the OPI nominated by the ICAC, and a member of SA Police nominated by the Commissioner, to be present at proceedings of the Tribunal and may, in its discretion, permit any other person to be present.
- (7) The Tribunal must, unless of the opinion that to do so would prejudice the orderly conduct of the proceedings, permit a person nominated by the designated officer concerned and a person nominated by the OPI or the ICAC to be present at proceedings of the Tribunal.
- (8) The Tribunal must cause proceedings under this Act to be conducted as expeditiously as is reasonably possible.
- (9) Subject to this Act, the Tribunal will 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.

36—Powers of Tribunal

- (1) The Tribunal may—
 - (a) by summons signed by the Tribunal or by the registrar or deputy registrar of the Tribunal, require the attendance before the Tribunal of any person; or
 - (b) by summons signed by the Tribunal or by the registrar or deputy registrar of the Tribunal, require the production of any books, documents or other things; or
 - (c) inspect any book, document or thing produced before the Tribunal and retain them for such reasonable period as the Tribunal thinks fit and make copies of any of them or any of their contents; or
 - (d) require any person to make an oath or affirmation that he or she will truly answer all questions put to him or her 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 to answer any relevant questions put to him or her by the Tribunal or by any person appearing before the Tribunal.
- (2) A person who—
 - (a) having been served with a summons to attend before the Tribunal, fails without reasonable excuse (proof of which lies on him or her) to do so; or
 - (b) having been served with a summons to produce books, documents or things, fails without reasonable excuse (proof of which lies on him or her) to do so; or
 - (c) misbehaves himself or herself before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (3) However, a person is not required to produce any books, documents or things, or to answer a question, if to do so might tend to incriminate him or her or, in the case of a designated officer, to prove that he or she has committed a breach of discipline.
- (4) The Tribunal may, on being satisfied that a person has failed to appear before the Tribunal in obedience to a summons served on him or her under this section, issue a warrant authorising a police officer to arrest the person and bring him or her 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.

37—Protection of Tribunal, counsel and witnesses

- (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.

38—Reference of question of law

The Tribunal may refer a question of law for the opinion of the Supreme Court.

39—Costs

- (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 are to be recoverable summarily.

40—Reasons for decision

The Tribunal must, at the request of a party, the ICAC or the OPI made within 7 days after the Tribunal has made a decision in proceedings, give reasons in writing for the decision.

Part 8—Miscellaneous

41—Obstruction of complaint or report

A person must not—

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

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

42—False or misleading statements

A person must not—

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

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

43—Use of evidence or information obtained under other Acts etc

- (1) Despite any other Act or law, evidence or information obtained (whether before or after the commencement of this section) by the lawful exercise of powers under this Act or any other Act—
 - (a) is not inadmissible in proceedings before the Tribunal merely because the evidence or information was obtained by the exercise of powers under the relevant Act and not for the purposes of those proceedings; and
 - (b) may be used for the purposes of a matter dealt with, or to be dealt with, by way of management resolution under Part 3 or by formal proceedings under Part 4 if—
 - (i) to do so would be consistent with the principles of equity and good conscience; and
 - (ii) to do so would be appropriate in all of the circumstances of the matter; and
 - (c) may be so used whether the exercise of powers by which the evidence or information was obtained relates to the same matter or a different matter.
- (2) No civil or criminal liability lies against a person in respect of any use of evidence or information permitted by this section.

44—Limitation on requirement to divulge information

Despite any other Act or law, a person who is, or who has been, engaged in the administration or enforcement of this Act or the repealed Act cannot be required to divulge information disclosed or obtained in the course of an investigation under this Act or the repealed Act except where such a requirement is made—

- (a) in proceedings before a court or the Tribunal in respect of—
 - (i) an offence; or
 - (ii) a breach of discipline,relating to a matter the subject of the investigation; or
- (b) in proceedings under the *Royal Commissions Act 1917*; or
- (c) by the ICAC or the OPI; or
- (d) by order of a court, the court being satisfied that there are special reasons requiring the making of such an order and that the interests of justice cannot adequately be served except by the making of such an order.

45—Confidentiality

- (1) Except as required or authorised by this Act or by the Commissioner, the ICAC or the OPI, a person who is or has been engaged in the administration of this Act must not, directly or indirectly, disclose information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment or investigation under this Act.

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

- (2) Despite subsection (1), a person engaged in the administration of this Act may disclose information—
- (a) for the purposes of the administration or enforcement of this Act; or
 - (b) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
 - (c) for the performance of the functions of the Commissioner, the ICAC or the OPI under another Act; or
 - (d) in accordance with an order of a court; or
 - (e) if the information relates to the person and is disclosed by the person to a close family member of the person; or
 - (f) as otherwise required or authorised by this or another Act.
- (3) A person who receives information knowing that the information is connected with a matter that forms or is the subject of a complaint, report, assessment or investigation under this Act must not disclose that information unless—
- (a) the person is authorised in writing by the Commissioner, the ICAC or the OPI, or by a person approved by the Commissioner, the ICAC or the OPI, under this section to give an authorisation; or
 - (b) the disclosure of that information is for the purpose of—
 - (i) dealing with a matter under this Act by the Commissioner, or under this or the *Independent Commissioner Against Corruption Act 2012* by the ICAC or the OPI; or
 - (ii) a criminal proceeding, a proceeding for the imposition of a penalty or disciplinary action; or
 - (iii) a person obtaining legal advice or legal representation or for the purposes of determining whether a person is entitled to an indemnity for legal costs; or
 - (iv) a person obtaining medical or psychological assistance from a medical practitioner or psychologist.

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

- (4) For the purposes of subsection (2)(e), a person is a **close family member** of another person if—
- (a) 1 is a spouse of the other or is in a close personal relationship with the other; or
 - (b) 1 is a parent or grandparent of the other (whether by blood or by marriage); or
 - (c) 1 is a brother or sister of the other (whether by blood or by marriage); or
 - (d) 1 is a guardian or carer of the other.

46—Publication of information and evidence

- (1) A person must not, except as authorised by the Commissioner, the ICAC, the OPI or a court hearing proceedings for an offence against this Act, publish, or cause to be published—
- (a) information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment or investigation under this Act; or
 - (b) information that might enable a person who has made a complaint or report to be identified or located; or
 - (c) the fact that a person has made or may be about to make a complaint or report; or
 - (d) information that might enable a person who has given or may be about to give information or other evidence under this Act to be identified or located; or
 - (e) the fact that a person has given or may be about to give information or other evidence under this Act; or
 - (f) any other information or evidence publication of which is prohibited by the Commissioner, the ICAC or the OPI.

Maximum penalty:

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

publish means publish by—

- (a) newspaper, radio or television; or
- (b) internet or other electronic means of creating and sharing content with the public or participating in social networking with the public; or
- (c) any similar means of communication to the public.

47—Service

Subject to this Act, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission).

48—Review of Act

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.

- (2) The review and the report must be completed before the third anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

49—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) Without limiting the generality of subsection (1), the regulations may—
 - (a) prescribe fines (not exceeding \$5 000) for offences against the regulations; and
 - (b) be of general application or vary in their application according to prescribed factors; and
 - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Commissioner or a specified person or body; and
 - (d) make provisions facilitating the proof of matters in proceedings under this Act; and
 - (e) make provisions of a saving or transitional nature consequent on the enactment of this Act.

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Amendment of *Child Sex Offenders Registration Act 2006*

1—Amendment of section 63—Registrable offender's rights in relation to register

- (1) Section 63(5)—delete "Police"
- (2) Section 63(6)—delete "Police"

2—Amendment of section 67—Confidentiality of information

Section 67(3)(f)—delete "Police Ombudsman, or the branch of South Australia Police established under Part 3 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*, for the purposes of an investigation under that Act or under this Act" and substitute:

Independent Commissioner Against Corruption, the Office for Public Integrity, the Ombudsman or the Internal Investigation Section of South Australia Police for the purposes of an investigation under the *Independent Commissioner Against Corruption Act 2012*, the *Police Complaints and Discipline Act 2016* or this Act

3—Amendment of Schedule 2—Information disclosure principles

Schedule 2 clause 4(f)—delete "Police Ombudsman, or the branch of South Australia Police established under Part 3 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*, for the purposes of an investigation under that Act or under this Act" and substitute:

Independent Commissioner Against Corruption, the Office for Public Integrity, the Ombudsman or the Internal Investigation Section of South Australia Police for the purposes of an investigation under the *Independent Commissioner Against Corruption Act 2012*, the *Police Complaints and Discipline Act 2016* or this Act

Part 2—Amendment of *Correctional Services Act 1982*

4—Amendment of section 33—Prisoners' mail

- (1) Section 33(7)(aa)—delete paragraph (aa)
- (2) Section 33(8)—delete "the Police Ombudsman,"

Part 3—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

5—Amendment of section 45—Access to and use of DNA database system

- (1) Section 45(2)(i)—delete "or the Police Ombudsman"
- (2) Section 45(2)—after paragraph (i) insert:
 - (ia) for the purpose of an investigation under the *Police Complaints and Discipline Act 2016*;

6—Amendment of section 50—Confidentiality

- (1) Section 50(1)(i)—delete "or the Police Ombudsman"
- (2) Section 50(1)—after paragraph (i) insert:
 - (ia) the disclosure is necessary for the purpose of an investigation under the *Police Complaints and Discipline Act 2016*;

7—Amendment of section 57—Compliance audits

- (1) Section 57(1)—delete "Police"
- (2) Section 57(2)—delete "Police" second occurring

Part 4—Amendment of *Freedom of Information Act 1991*

8—Amendment of section 39—External review

Section 39(1), definition of *relevant review authority*—delete the definition and substitute:

relevant review authority, in relation to a determination, means the Ombudsman;

9—Amendment of section 40—Appeal to District Court

Section 40(6)—delete "Neither the Ombudsman nor the Police Ombudsman can" and substitute:

The Ombudsman cannot

10—Amendment of section 53—Fees and charges

- (1) Section 53(4)—delete "or Police Ombudsman for a further review, and the Ombudsman or Police Ombudsman" and substitute:

for a further review and the Ombudsman

- (2) Section 53(4a)—delete subsection (4a)

11—Amendment of section 54A—Training to be provided to agencies

Section 54A—delete "and the Police Ombudsman"

12—Amendment of Schedule 2—Exempt agencies

Schedule 2 paragraph (i)—delete "and the Police Ombudsman"

Part 5—Amendment of *Independent Commissioner Against Corruption Act 2012*

13—Amendment of section 4—Interpretation

- (1) Section 4, definition of *inquiry agency*, (b)—delete paragraph (b)
(2) Section 4, definition of *law enforcement agency*, (e)—delete paragraph (e)

14—Amendment of section 17—Functions and objectives

Section 17(d)—after "the Commissioner" insert:

or another Act

15—Amendment of section 24—Action that may be taken

Section 24(1)(b)—delete ", the Police Ombudsman (if the issue concerns a police officer or special constable)"

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

Section 45(2)(b)(vi)—delete ", the Police Ombudsman"

17—Amendment of section 51—Arrangements for provision of information by Commissioner of Police

Section 51(1)(b)—delete "and the Police Ombudsman are" and substitute:

is

Part 6—Amendment of *Listening and Surveillance Devices Act 1972*

18—Amendment of section 3—Interpretation

Section 3, definition of *review agency*, (a)—delete "the Police Ombudsman" and substitute:

the reviewer under Schedule 4 of the *Independent Commissioner Against Corruption Act 2012*

Part 7—Amendment of *Parliamentary Committees Act 1991*

19—Amendment of section 150—Functions of Committee

Section 150(1)(a)(i)—delete ", the Ombudsman or the Police Ombudsman" and substitute:

or the Ombudsman

Part 8—Amendment of *Police Act 1998*

20—Amendment of section 3—Interpretation

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

Code means the code of conduct prepared under the *Police Complaints and Discipline Act 2016*, as in force from time to time;

- (2) Section 3, definition of *minor misconduct*—delete the definition
(3) Section 3, definition of *Police Disciplinary Tribunal*—delete the definition
(4) Section 3, definition of *Police Ombudsman*—delete the definition

21—Substitution of heading to Part 6

Heading to Part 6—delete the heading and substitute:

Part 6—Drug and alcohol testing

22—Repeal of Part 6 Division 1

Part 6 Division 1—delete Division 1

23—Repeal of Part 6 Division 3

Part 6 Division 3—delete Division 3

24—Amendment of section 70—Suspension or revocation of suspension under Act or regulations

Section 70(1)—after "this Act" insert:

, the *Police Complaints and Discipline Act 2016*

Part 9—Amendment of *Protective Security Act 2007*

25—Amendment of section 3—Interpretation

- (1) Section 3, definition of *minor misconduct*—delete the definition

- (2) Section 3, definition of *Police Ombudsman*—delete the definition
- (3) Section 3, definition of *Tribunal*—delete "the *Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

Part 5A

26—Amendment of section 24—Report and investigation of breach of Code

Section 24(2)—delete ", subject to a determination of the Police Ombudsman under section 23 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*,"

27—Amendment of section 25—Charge for breach of Code

Section 25(3)—delete "the *Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

this Act

28—Amendment of section 28—Management resolution of minor breaches of Code

- (1) Section 28(1)—delete subsection (1) and substitute:
 - (1) The Commissioner may determine that a suspected breach of the Code is to be dealt with under this section.
 - (1a) However, the following kinds of breaches of the Code must not be dealt with under this section:
 - (a) a breach that, if proved, would be likely to result in—
 - (i) termination of the officer's appointment; or
 - (ii) suspension of the officer's appointment for a specified period; or
 - (iii) reduction of the officer's rank, seniority or remuneration;
 - (b) any other breach of a kind prescribed by the regulations for the purposes of this paragraph.
 - (1b) If the Commissioner makes a determination under subsection (1), he or she must refer the matter to a person determined in accordance with the orders and directions of the Commissioner (the *resolution officer*) for management resolution under this section.
- (2) Section 28(2)—delete "A person to whom a matter is referred for an informal inquiry under subsection (1) or under section 21A of the *Police (Complaints and Disciplinary Proceedings) Act 1985*—" and substitute:

The resolution officer—
- (3) Section 28—after subsection (2) insert:
 - (2a) The resolution officer is to perform his or her functions under this section as expeditiously as possible and without undue formality.

29—Amendment of section 29—Review of management resolution

- (1) Section 29(1)—delete "informal inquiry" first occurring and substitute:
inquiry under section 28
- (2) Section 29(1)—delete "informal" second occurring
- (3) Section 29(2)—delete "informal inquiry" and substitute:
inquiry under section 28
- (4) Section 29(4)(a)—delete "informal inquiry" first occurring and substitute:
inquiry under section 28
- (5) Section 29(4)(a)—delete "informal" second occurring
- (6) Section 29(4)(c)(i)—delete "informal"
- (7) Section 29(5)—delete subsection (5)

30—Amendment of section 30—Commissioner to oversee inquiries

- (1) Section 30(1)—delete "informal inquiries and findings and determinations made with respect to minor misconduct" and substitute:
inquiries under section 28 and related findings and determinations
- (2) Section 30(2)(a)—delete "informal" wherever occurring

31—Insertion of section 31

After section 30 insert:

31—Office for Public Integrity may direct Commissioner etc in relation to handling of breaches of Code

- (1) Without limiting any other power or function of the Office for Public Integrity, the Office for Public Integrity may, in relation to a suspected breach of the Code, give such directions to the Commissioner or a resolution officer as the Office for Public Integrity thinks fit.
- (2) A direction—
 - (a) must be by notice in writing; and
 - (b) may only be given after consultation with the officer in charge of the IIS.
- (3) The Office for Public Integrity may, by notice in writing, vary or revoke a direction.
- (4) The Commissioner must ensure that a direction of the Office for Public Integrity is complied with without undue delay.

32—Insertion of Part 5A

After Part 5 insert:

Part 5A—Protective Security Officers Disciplinary Tribunal

29—Constitution of Protective Security Officers Disciplinary Tribunal

- (1) There will be a *Protective Security Officers Disciplinary Tribunal*.
- (2) The Tribunal will be constituted of a magistrate appointed by the Governor.
- (3) The magistrate appointed to constitute the Tribunal will be appointed for such term of office, not exceeding 3 years, as the Governor may determine, and on the expiration of his or her term of office will not 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 will, for any period for which the magistrate appointed to constitute the Tribunal is absent or unavailable, be constituted of that other magistrate.
- (5) The Governor may appoint 3 or more magistrates to a panel and, if at any time the magistrate appointed under subsection (4) is absent or unavailable, the Chief Magistrate may appoint a magistrate from the panel to act in his or her place.

30—Registrar and deputy registrar

- (1) The registrar and deputy registrar of the Tribunal are to be Public Service employees.
- (2) The positions of registrar and deputy registrar of the Tribunal may be held in conjunction with any other position in the Public Service.
- (3) The registrar and deputy registrar of the Tribunal will have such duties and functions as are prescribed and such other duties and functions as may be directed by the Tribunal.

31—Proceedings before Tribunal

- (1) The Tribunal must, in relation to any proceedings to be heard by the Tribunal—
 - (a) give the Commissioner and the protective security officer concerned 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; and
 - (b) give the Office for Public Integrity notice of the time and place at which the proceedings are to be heard.

- (2) If a person 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 or her absence.
- (3) The Commissioner may be represented at proceedings by counsel or a police officer.
- (4) A party to proceedings before the Tribunal (other than the Commissioner) is entitled to appear—
 - (a) personally or by counsel; or
 - (b) with the permission of the Tribunal—by some other representative.
- (5) Subject to subsection (6), the proceedings of the Tribunal are to be heard in private.
- (6) The Tribunal must permit a member of the staff of the Office for Public Integrity nominated by the Independent Commissioner Against Corruption to be present at proceedings of the Tribunal and may, in its discretion, permit any other person to be present.
- (7) The Tribunal must, unless of the opinion that to do so would prejudice the orderly conduct of the proceedings, permit a person nominated by the Office for Public Integrity or the Independent Commissioner Against Corruption to be present at proceedings of the Tribunal.
- (8) The Tribunal will 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 hearing charges of summary offences.

32—Powers of Tribunal

- (1) The Tribunal may—
 - (a) by summons signed by the Tribunal or by the registrar or deputy registrar of the Tribunal, require the attendance before the Tribunal of any person; or
 - (b) by summons signed by the Tribunal or by the registrar or deputy registrar of the Tribunal, require the production of any books, documents or other things; or
 - (c) inspect any book, document or thing produced before the Tribunal and retain them for such reasonable period as the Tribunal thinks fit and make copies of any of them or any of their contents; or
 - (d) require any person to make an oath or affirmation that he or she will truly answer all questions put to him or her 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 to answer any relevant questions put to him or her by the Tribunal or by any person appearing before the Tribunal.
- (2) A person who—
- (a) having been served with a summons to attend before the Tribunal, fails without reasonable excuse (proof of which lies on him or her) to do so; or
 - (b) having been served with a summons to produce books, documents or things, fails without reasonable excuse (proof of which lies on him or her) to do so; or
 - (c) misbehaves himself or herself before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,
- is guilty of an offence.
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- (3) However, a person is not required to produce any books, documents or things, or to answer a question, if to do so might tend to incriminate him or her or, in the case of a protective security officer, to prove that he or she has been guilty of a breach of discipline.
- (4) The Tribunal may, on being satisfied that a person has failed to appear before the Tribunal in obedience to a summons served on him or her under this section, issue a warrant authorising a police officer to arrest the person and bring him or her 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.

33—Protection of Tribunal, counsel and witnesses

- (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.

34—Reference of question of law

The Tribunal may refer a question of law for the opinion of the Supreme Court.

35—Costs

- (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 are to be recoverable summarily.

36—Reasons for decision

The Tribunal must, at the request of a party, the Office for Public Integrity or the Independent Commissioner Against Corruption made within 7 days after the Tribunal has made a decision in proceedings, give reasons in writing for the decision.

Part 10—Amendment of *Shop Theft (Alternative Enforcement) Act 2000*

33—Amendment of section 17—Confidentiality

Section 17(1)(d)—delete "to the Police Ombudsman" and substitute:

as required for the purposes of the *Police Complaints and Discipline Act 2016*

Part 11—Amendment of *Telecommunications (Interception) Act 2012*

34—Amendment of section 3—Interpretation

Section 3, definition of *review agency*, (a)—delete "the Police Ombudsman" and substitute:

the reviewer under Schedule 4 of the *Independent Commissioner Against Corruption Act 2012*

Part 12—Amendment of *Terrorism (Preventative Detention) Act 2005*

35—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *ordinary search* insert:

Office for Public Integrity means the Office for Public Integrity under the *Independent Commissioner Against Corruption Act 2012*;

36—Amendment of section 10—Making of preventative detention order

Section 10(8)—delete "Police Ombudsman" wherever occurring and substitute in each case:

Office for Public Integrity

37—Amendment of section 12—Extension of preventative detention order

Section 12(7)—delete "Police Ombudsman" wherever occurring and substitute in each case:

Office for Public Integrity

38—Amendment of section 13—Prohibited contact order (person in relation to whom preventative detention order is being sought)

Section 13(6)—delete "Police Ombudsman" wherever occurring and substitute in each case:

Office for Public Integrity

39—Amendment of section 14—Prohibited contact order (person in relation to whom preventative detention order is already in force)

Section 14(4)—delete "Police Ombudsman" wherever occurring and substitute in each case:

Office for Public Integrity

40—Amendment of section 15—Revocation of preventative detention order or prohibited contact order

Section 15(6)—delete "Police Ombudsman" and substitute:

Office for Public Integrity

41—Substitution of section 36

Section 36—delete the section and substitute:

36—Contacting Office for Public Integrity

The person being detained is entitled to contact the Office for Public Integrity in accordance with the *Police Complaints and Discipline Act 2016* or the *Independent Commissioner Against Corruption Act 2012*.

42—Amendment of section 37—Contacting lawyer

Section 37(1)(d)—delete "Police Ombudsman under the *Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

Office for Public Integrity under the *Police Complaints and Discipline Act 2016*

43—Amendment of section 41—Disclosure offences

- (1) Section 41(2)(d)(iii)—delete "Police Ombudsman under the *Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

Office for Public Integrity under the *Police Complaints and Discipline Act 2016*

- (2) Section 41(3)(e)(i)—delete "Police Ombudsman under the *Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

Office for Public Integrity under the *Police Complaints and Discipline Act 2016*

44—Amendment of section 42—Questioning of person prohibited while person is detained

Section 42(9)(a)—delete "Police Ombudsman" and substitute:

Office for Public Integrity

45—Amendment of section 48—Annual report

- (1) Section 48(2)(c)(i)—delete "Police Ombudsman" and substitute:

Office for Public Integrity

- (2) Section 48(2)(c)(i)—delete "internal investigation division of the police force" and substitute:

Internal Investigation Section of South Australia Police

46—Repeal of section 49

Section 49—delete the section

Part 13—Amendment of *Whistleblowers Protection Act 1993*

47—Amendment of section 5—Immunity for appropriate disclosures of public interest information

- (1) Section 5(4)(b)—delete "Police Ombudsman" and substitute:

a member of the police force or the Office for Public Integrity

- (2) Section 5(5)(a)—delete "Police Ombudsman" and substitute:

Office for Public Integrity

Part 14—Amendment of *Witness Protection Act 1996*

48—Amendment of section 10—Memorandum of understanding

Section 10(3)—delete "Police Ombudsman" and substitute:

Office for Public Integrity under the *Independent Commissioner Against Corruption Act 2012*

49—Amendment of section 12—Access to register

Section 12(2)—delete subsection (2)

50—Amendment of section 21—Offences

- (1) Section 21(3)(b)—delete "by the Police Ombudsman under Part 4 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

under the *Police Complaints and Discipline Act 2016*

- (2) Section 21(4)(b)(ii)—delete "by the Police Ombudsman under Part 4 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*" and substitute:

under the *Police Complaints and Discipline Act 2016*

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

Section 23(2)—delete "Police Ombudsman" and substitute:

Office for Public Integrity or the Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012*

Part 15—Repeal of *Police (Complaints and Disciplinary Proceedings) Act 1985*

52—Repeal of *Police (Complaints and Disciplinary Proceedings) Act 1985*

The *Police (Complaints and Disciplinary Proceedings) Act 1985* is repealed.

Part 16—Transitional provisions

53—Certain orders of Commissioner etc under repealed Act taken to be valid

For the purposes of the law of the State, the following actions purportedly ordered or taken under section 40 of the *Police Act 1998* or a corresponding previous enactment in respect of a member of SA Police will be taken to be valid, and always to have been valid:

- (a) a reduction in rank of the member;
- (b) a reduction in the seniority of the member.

54—Complaints, reports and proceedings under *Police (Complaints and Disciplinary Proceedings) Act 1985*

- (1) A complaint or report made under the *Police (Complaints and Disciplinary Proceedings) Act 1985* before the commencement of this clause (being a complaint or report relating to the conduct of a police officer, police cadet or special constable that is not, immediately before the commencement of this clause, the subject of proceedings before the Police Disciplinary Tribunal) will be taken to be a complaint or report under this Act.
- (2) A complaint or report made under the *Police (Complaints and Disciplinary Proceedings) Act 1985* before the commencement of this clause (being a complaint or report relating to the conduct of a protective security officer that is not, immediately before the commencement of this clause, the subject of proceedings before the Protective Security Officers Disciplinary Tribunal) will be taken to be a complaint or report under the *Protective Security Act 2007* (as amended by this Act).
- (3) To avoid doubt, section 16 of the *Acts Interpretation Act 1915* applies in relation to proceedings before the Police Disciplinary Tribunal or the Protective Security Officers Disciplinary Tribunal commenced before the commencement of this clause.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2016	60	<i>Police Complaints and Discipline Act 2016</i>	8.12.2016	19.4.2017 (<i>Gazette 19.4.2017 p1101</i>) except ss 3—49, Sch 1 cl 2—6 & 9—54—4.9.2017 (<i>Gazette 29.8.2017 p3794</i>)
2021	5	<i>Statutes Amendment and Repeal (Budget Measures) Act 2021</i>	25.2.2021	Pt 10 (ss 40 to 48) & Pt 15 (ss 65 to 68)—uncommenced: s 2(2)