

South Australia

Police Complaints and Discipline Regulations 2017

under the *Police Complaints and Discipline Act 2016*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Police Complaints and Discipline Regulations 2017*.

2—Commencement

These regulations will come into operation on the day on which Part 2 of the *Police Complaints and Discipline Act 2016* comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—
Act means the *Police Complaints and Discipline Act 2016*;
repealed Act means the *Police (Complaints and Disciplinary Proceedings) Act 1985*;
section 21(14) investigating officer—see regulation 5.

Part 2—Complaint management system

4—Information to be provided by resolution officers

For the purposes of section 19(1) of the Act, a report relating to a management resolution must include the information specified in item 1 column 3 of the table in Schedule 1.

5—Information to be provided by *section 21(14) investigating officers*

- (1) If a police officer has been required, under section 21(14) of the Act—
 - (a) to assist the IIS in conducting an investigation; or
 - (b) to conduct an investigation on behalf of the IIS,

the police officer (the *section 21(14) investigating officer*) must, subject to subregulation (2), provide the information specified in column 3 of the table in Schedule 1 to the IIS in the manner specified in column 5 of the table, for the purposes of enabling the IIS to record the information on the complaint management system under section 6 of the Act.

Note—

See items 2 to 4 (inclusive) of the table in Schedule 1.

- (2) Nothing in subregulation (1) requires a section 21(14) investigating officer who has been required only to assist the IIS in conducting an investigation to provide more information to the IIS than is reasonably ascertainable by the officer in that assisting role.

6—Information to be included by IIS

For the purposes of a section of the Act specified in column 2 of the table in Schedule 2, the information specified in column 3 of the table must be included on the complaint management system in the manner specified in column 4 of the table by—

- (a) the officer in charge of the IIS; or
- (b) a member of the IIS to whom that function is given by the officer in charge of the IIS.

Note—

See items 1 to 17 (inclusive) of the table in Schedule 2.

Part 3—Code of conduct

7—Code of conduct

- (1) For the purposes of section 7 of the Act, the code of conduct for the maintenance of professional standards by designated officers is set out in Schedule 3.
- (2) A designated officer who—
 - (a) contravenes or fails to comply with the code of conduct; or
 - (b) attempts, aids, abets, counsels or procures such a contravention,is taken to have breached the code of conduct.

Part 4—Miscellaneous

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

For the purposes of section 9(2) of the Act, the complainant and each designated officer must be kept informed of the progress and resolution of the complaint in writing on a regular basis at intervals not exceeding 90 days.

9—Making complaint about conduct of designated officer

For the purposes of section 10(5) of the Act, the information that must be recorded in writing about a complaint is—

- (a) the name and contact details of the complainant; and
- (b) details of the person recording the information under this regulation including their name, position and place of work; and
- (c) the date, time and location of the events the subject of the complaint; and
- (d) details of the designated officer or officers the subject of the complaint, including their name, badge ID, rank, posting, date of birth, whether or not uniformed and, if a vehicle was involved, any vehicle description or details; and
- (e) a description of the events comprising the complaint; and
- (f) names and contact details of any witnesses; and

- (g) the date, time and location (eg local service area or station) of the making of the complaint.

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

- (1) For the purposes of section 22(7) of the Act, a notice of allegation must be served on the designated officer in person.
- (2) For the purposes of service of a notice of allegation, the Commissioner may require the attendance of the designated officer before the Commissioner.

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

- (1) If a designated officer's appointment is suspended under section 23 of the Act and remuneration is to be provided to the person while on suspension, the Commissioner must determine the manner in which the remuneration is to be calculated.
- (2) For the purposes of section 23(6) of the Act—
 - (a) the Commissioner may determine that income received (from whatever source) by the designated officer during a period of suspension is to be deducted from any withheld remuneration that is to be paid to the designated officer on revocation of the suspension; and
 - (b) if the designated officer has been found guilty of an offence or a breach of discipline, the Commissioner must, unless the Commissioner believes that the special circumstances of the case require otherwise, determine that the designated officer is not entitled—
 - (i) to any remuneration or accrual of rights withheld in consequence of the suspension; or
 - (ii) to have the period of the suspension counted as service.

12—Designated officer may admit or deny allegations

- (1) For the purposes of section 24 of the Act, an admission or denial by the designated officer must be made to the registrar of the Tribunal within 21 days following the service of the notice of allegation on the officer.
- (2) The registrar of the Tribunal must forward an admission by the designated officer made in accordance with subregulation (1), any written statement or request made by the designated officer and all other relevant papers to—
 - (a) the Commissioner; and
 - (b) the IIS for the purposes of inclusion of the information on the complaint management system under section 6 of the Act.
- (3) On receipt of the admission, the Commissioner must consider any submissions in mitigation made by the designated officer—
 - (a) by written statement attached to the admission; or
 - (b) if the designated officer indicated in the admission a desire to appear before the Commissioner—by personal representation to the Commissioner,before making a decision as to any action to be taken to impose a punishment on the designated officer.

- (4) If the designated officer denies the allegation, or does not admit it in accordance with subregulation (1), the Tribunal must fix a time and place for hearing the allegation.

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

- (1) For the purposes of section 26(1)(h) of the Act, the prescribed amount is \$1 250.
- (2) For the purposes of section 26(1)(i) of the Act, the prescribed amount is \$1 250.
- (3) The Commissioner may, on imposing a fine under section 26 of the Act—
- (a) grant time for the payment of the fine or permit it to be paid in instalments;
 - (b) deduct the fine from the designated officer's pay or from any money due to the designated officer.

Schedule 1—Information to be provided by resolution officers and *section 21(14) investigating officers*

Police Complaints and Discipline Regulations 2017—29.8.2017 to 3.9.2017—uncommenced
 Schedule 1—Information to be provided by resolution officers and *section 21(14) investigating officers*

Item	Who must provide the information?	What information must be provided?	Who must the information be provided to?	Manner of providing information
Information to be provided by resolution officers (regulation 4)				
1	The resolution officer	A report, signed by the resolution officer, containing the following information: <ul style="list-style-type: none"> (a) the name, rank, badge ID and posting of the designated officer concerned; (b) the name, rank, badge ID and posting of the resolution officer; (c) the name and contact details of the complainant or person who made the report; (d) the details of any conciliation undertaken; (e) the details of the resolution including— <ul style="list-style-type: none"> (i) in the case of action taken under section 18(4)(a) or (b) of the Act— <ul style="list-style-type: none"> (A) the details of— <ul style="list-style-type: none"> • the restriction or conditions concerned; and • the nature of the remedial education or training to be undertaken and any competencies required to be demonstrated under section 18(6) of the Act; and • how the matter is intended to be resolved by the action; and (B) the resolution officer's opinion of the potential impact of the action on the designated officer concerned and the risks to other members of SA Police and the community of not taking the action; and (ii) in the case of action taken under section 18(4)(c) of the Act—the reasons for taking action under that provision and the details of the counselling arrangements including the dates and the outcomes of the counselling; and (iii) in the case of action taken under section 18(4)(d) of the Act—the reasons for taking action under that provision and the details of the reprimand; and 	IIS and the designated officer concerned (see section 19(2) of the Act)	As soon as reasonably practicable after the completion of the management resolution.

uncommenced—29.8.2017 to 3.9.2017—Police Complaints and Discipline Regulations 2017
Information to be provided by resolution officers and *section 21(14) investigating officers*—Schedule 1

Item	Who must provide the information?	What information must be provided?	Who must the information be provided to?	Manner of providing information
		(iv) in the case of a resolution of no further action—the reasons.		
Information to be provided by <i>section 21(14) investigating officers</i> (regulation 5)				
2	The section 21(14) investigating officer	Initial details of the assistance or investigation, including the following: (a) the name, badge ID, rank and posting of the section 21(14) investigating officer; (b) a summary of the complaint or report; (c) the scope and objectives of the investigation; (d) the risks, strategies, contingencies and resources relating to the investigation; (e) the officer's reporting obligations (internal and external); (f) the projected time-frame for the investigation.	IIS	Within 2 weeks following the commencement of the assistance, or the allocation of the investigation, (as the case may require) under section 21(14) of the Act.
3	The section 21(14) investigating officer	An update of the progress of an investigation, including the following: (a) the progress that was intended to be achieved by the time of the update; (b) the progress that was actually achieved by that time; (c) the reasons for any shortfall in the progress; (d) a summary of the action taken by the section 21(14) investigating officer; (e) the progress intended to be achieved by the time of the next update.	IIS	Once per fortnight after the initial details in item 2 of this table have been provided.
4	The section 21(14) investigating officer	The following information: (a) a copy of the investigation report; (b) a summary of the recommendations from the report; (c) the determination by the IIS on the recommendations.	IIS	As soon as reasonably practicable after the completion of the investigation.

**Schedule 2—Information to be included on complaint
management system by IIS (regulation 6)**

Item	Section of Act	What information must be included?	Manner of including information
Action to be taken on receipt of complaint or report (section 13 of the Act)			
1	Section 13(5)	<p>The following information if known:</p> <ul style="list-style-type: none"> (a) the name, date of birth and contact details of the complainant; (b) the details of the complaint including— <ul style="list-style-type: none"> (i) the date, time and location of the events the subject of the complaint; and (ii) details of the designated officer or officers the subject of the complaint, including their name, badge ID, rank, posting, date of birth, whether or not uniformed and, if a vehicle was involved, any vehicle description or details; and (iii) a description of the events comprising the complaint; (c) details of any complaint made by the complainant under the repealed Act; (d) the names and contact details of any witnesses; (e) details given by any witnesses, including— <ul style="list-style-type: none"> (i) their description of the events; and (ii) their degree of involvement in the events; (f) details of the designated officer or police public servant to whom the complaint was made, including their name, badge ID, rank and posting; (g) method by which the complaint was made, eg by telephone, in person, by email or by mail and the date, time and location (eg local service area or station) of the making of the complaint; (h) any supporting documentation. 	As soon as reasonably practicable (but in any event within 7 days) after the IIS receives a complaint.
2	Section 13(5)	<p>The following information if known:</p> <ul style="list-style-type: none"> (a) details of the designated officer who made the report, including their name, badge ID, rank, posting and contact details; (b) the details of the report including— <ul style="list-style-type: none"> (i) the date, time and location of the events the subject of the report; and 	As soon as reasonably practicable (but in any event within 7 days) after the IIS receives a report.

Police Complaints and Discipline Regulations 2017—29.8.2017 to 3.9.2017—uncommenced
 Schedule 2—Information to be included on complaint management system by IIS (regulation 6)

Item	Section of Act	What information must be included?	Manner of including information
Action to be taken on receipt of complaint or report (section 13 of the Act)			
		<ul style="list-style-type: none"> (ii) details of the designated officer or officers the subject of the report, including their name, badge ID, rank, posting, date of birth, whether or not uniformed and, if a vehicle was involved, any vehicle description or details; and (iii) a description of the events comprising the report; (c) the names and contact details of any witnesses; (d) details given by any witnesses, including— <ul style="list-style-type: none"> (i) their description of the events; (ii) their degree of involvement in the events; (e) method by which the report was made, eg by telephone, in person, by email or by mail and the date, time and location (eg local service area or station) of the making of the report; (f) any supporting documentation 	
Assessment of complaints and reports by IIS (section 14 of the Act)			
3	Sections 14 and 28(1)	The following information: <ul style="list-style-type: none"> (a) the name and position of the officer to whom assessment of the matter has been allocated (the <i>assessing officer</i>); (b) whether the matter has been assessed as sensitive or urgent (or both); (c) a summary of the assessment by the assessing officer, including— <ul style="list-style-type: none"> (i) the assessment of each of the issues against the criteria under section 14(1) of the Act and the code of conduct; and (ii) the reasons for the assessment; and (iii) the date and time of the assessment; and (iv) the action recommended by the assessing officer as a result of the assessment (for example, management resolution, further investigation, referral to the OPI, no further action or other); 	As soon as reasonably practicable after a complaint or report is assessed by the IIS.

uncommenced—29.8.2017 to 3.9.2017—Police Complaints and Discipline Regulations 2017
Information to be included on complaint management system by IIS (regulation 6)—Schedule 2

Item	Section of Act	What information must be included?	Manner of including information
Action to be taken on receipt of complaint or report (section 13 of the Act)			
		<p>(d) details of the determination and recommendation by the officer in charge of the IIS on the assessment, including—</p> <ul style="list-style-type: none"> (i) the name of the officer in charge of the IIS; and (ii) whether or not the officer agrees with the determination and recommendation by the assessing officer; and (iii) reasons for any disagreement with the determination or recommendation by the assessing officer; and (iv) the date of the determination and recommendation by the officer in charge of the IIS; <p>(e) details of any notification to OPI under section 14(4) of the Act, including—</p> <ul style="list-style-type: none"> (i) the date and time of the notification; and (ii) the name of the person notified; <p>(f) details of any further allocation or referral of the complaint or report, including—</p> <ul style="list-style-type: none"> (i) the date and time of the allocation or referral; and (ii) the name of the person to whom the matter has been allocated or referred and their rank, position and place of work. 	
Reporting results of management resolution of matter (section 19 of the Act)			
4	Section 19(3)	The details of the report provided to the IIS under section 19(2) of the Act (see item 1 of the table in Schedule 1)	As soon as reasonably practicable (but in any event within 7 days) after the IIS receives a report relating to a management resolution.
Investigations of complaints and reports by section 21(14) investigating officers (section 21 of the Act)			
5	Section 6	The information received from the section 21(14) investigating officer (see item 2 of the table in Schedule 1).	Within 48 hours of receipt of the information from the section 21(14) investigating officer.
6	Section 6	The information received from the section 21(14) investigating officer (see item 3 of the table in	Within 48 hours of receipt of the

Police Complaints and Discipline Regulations 2017—29.8.2017 to 3.9.2017—uncommenced

Schedule 2—Information to be included on complaint management system by IIS (regulation 6)

Item	Section of Act	What information must be included?	Manner of including information
Action to be taken on receipt of complaint or report (section 13 of the Act)			
		Schedule 1).	information from the section 21(14) investigating officer.
7	Section 6	The information received from the section 21(14) investigating officer (see item 4 of the table in Schedule 1).	Within 48 hours of receipt of the information from the section 21(14) investigating officer.
Investigations of complaints and reports by officers other than <i>section 21(14) investigating officers</i> (section 21 of the Act)			
8	Section 6	Initial details of the investigation including the following: <ul style="list-style-type: none"> (a) the name, badge ID, rank and posting of the investigating officer; (b) a summary of the complaint or report; (c) the scope and objectives of the investigation; (d) the risks, strategies, contingencies and resources relating to the investigation; (e) the officer's reporting obligations (internal and external); (f) the projected time-frame for the investigation. 	Within 2 weeks following the allocation of the investigation under section 21 of the Act to the investigating officer.
9	Section 6	Details of the actions undertaken or followed up during the course of an investigation including— <ul style="list-style-type: none"> (a) the dates and times of each action; and (b) the outcomes of each action. 	During the course of an investigation under section 21 of the Act (within 48 hours of completing or following up each action).
10	Section 6	A monthly update of the progress of the investigation, including the following: <ul style="list-style-type: none"> (a) the progress that was intended to be achieved by the time of the update; (b) the progress that was actually achieved by that time; (c) the reasons for any shortfall in the progress; (d) the progress intended to be achieved by the time of the next update. 	Once per month during the course of an investigation under section 21 of the Act (following the inclusion of the initial details in item 8 of this table).
11	Section 6	The following information: <ul style="list-style-type: none"> (a) a copy of the investigation report; 	As soon as reasonably practicable after the completion of an investigation under section 21 of the

uncommenced—29.8.2017 to 3.9.2017—Police Complaints and Discipline Regulations 2017
Information to be included on complaint management system by IIS (regulation 6)—Schedule 2

Item	Section of Act	What information must be included?	Manner of including information
Action to be taken on receipt of complaint or report (section 13 of the Act)			
		(b) a summary of the recommendations from the report; (c) determination by the Commissioner on the recommendations.	Act.
Designated officer may admit or deny allegations (section 24 of the Act)			
12	Section 6	The details of any admission or denial of the allegations under section 24 of the Act.	As soon as reasonably practicable (but in any event within 7 days) after the IIS receives the information referred to in regulation 12(2)(b) from the registrar of the Tribunal.
Allegations to be heard and determined by Tribunal (section 25 of the Act)			
13	Section 25(4)	The following information: (a) the name, badge ID, rank and posting of the designated officer concerned; (b) details of the notice of allegation under section 22(1) of the Act; (c) details of OPI's submission under section 22(2) of the Act and the Commissioner's response to the submission; (d) details of the written notice of likely punishment provided under section 22(4) of the Act; (e) details of the findings of the Tribunal; (f) whether the proceedings were remitted to the Commissioner under section 25(2) of the Act; (g) details of any indication made by the Tribunal to the Commissioner under section 25(3) of the Act.	As soon as reasonably practicable (but in any event within 7 days) after the IIS receives a notification from the Tribunal under section 25(2)(c) of the Act.
Commissioner may sanction designated officer following offence or breach of discipline (section 26 of the Act)			

Police Complaints and Discipline Regulations 2017—29.8.2017 to 3.9.2017—uncommenced
 Schedule 2—Information to be included on complaint management system by IIS (regulation 6)

Item	Section of Act	What information must be included?	Manner of including information
Action to be taken on receipt of complaint or report (section 13 of the Act)			
14	Section 26(4)	The following information: <ul style="list-style-type: none"> (a) the name, badge ID, rank and posting of the designated officer concerned; (b) details of the notice of allegation under section 22(1) of the Act; (c) details of OPI's submission under section 22(2) of the Act and the Commissioner's response to the submission; (d) details of the written notice of likely punishment provided under section 22(4) of the Act; (e) details of the findings of the Tribunal; (f) whether the proceedings were remitted to the Commissioner under section 25(2) of the Act; (g) details of any indication made by the Tribunal to the Commissioner under section 25(3) of the Act; (h) details of the action taken against the designated officer under section 26 of the Act; (i) whether the designated officer concerned has appealed to the Court under section 32(3) of the Act. 	As soon as reasonably practicable (but in any event within 7 days) after the IIS receives a notification from the Commissioner under section 26(3) of the Act.
Reassessment of certain complaints and reports by OPI (section 28 of the Act)			
15	Section 28(3)	The following information: <ul style="list-style-type: none"> (a) the name and position of the officer who conducted the reassessment of the complaint or report; (b) details of the substituted assessment including— <ul style="list-style-type: none"> (i) the reassessment of each of the issues against the criteria in section 14(1) of the Act and the code of conduct; and (ii) the reasons for the reassessment; and (iii) the date and time of the reassessment; (c) the action recommended as a result of the reassessment (for example, management resolution, further investigation, no further action or other); 	As soon as reasonably practicable (but in any event within 7 days) after becoming aware of a substituted assessment.

uncommenced—29.8.2017 to 3.9.2017—Police Complaints and Discipline Regulations 2017
Information to be included on complaint management system by IIS (regulation 6)—Schedule 2

Item	Section of Act	What information must be included?	Manner of including information
Action to be taken on receipt of complaint or report (section 13 of the Act)			
		(d) details of any further allocation or referral of the complaint or report, including— <ul style="list-style-type: none"> (i) the date and time of the allocation or referral; and (ii) the name of the person to whom the matter has been allocated or referred and their rank, position and place of work. 	
Appeals (section 32 of the Act)			
16	Section 6	The following details: <ul style="list-style-type: none"> (a) the date on which the appeal was instituted; (b) the name, badge ID, rank and posting of the appellant; (c) the grounds of the appeal; (d) a copy of the notice of appeal. 	As soon as reasonably practicable after the officer in charge of the IIS becomes aware of the institution of the appeal.
17	Section 6	The following details: <ul style="list-style-type: none"> (a) the name, badge ID, rank and posting of the designated officer concerned; (b) a link (by reference to the file number of the matter) to the historical records on the CMS relating to the matter; (c) the outcome of the appeal, or, if the appeal was discontinued, that fact and the reasons for the discontinuation. 	As soon as reasonably practicable after the officer in charge of the IIS becomes aware of the completion or discontinuation of the appeal.

Schedule 3—Code of conduct

1—Interpretation

In this Schedule—

behave includes any form of behaviour, whether by word, conduct or omission;

department means the administrative unit of the Public Service of which the Commissioner is chief executive, or in relation to which the Commissioner has the powers and functions of chief executive, under the *Public Sector Act 2009*;

duty, in relation to a designated officer, means a duty of the designated officer under the Act, these regulations or any other Act or law;

order, in relation to a designated officer, means—

- (a) a general or special order made or given by the Commissioner; or
- (b) an order given by a person with authority under the Act or these regulations to give such an order to the designated officer.

2—Honesty and integrity

A designated officer must at all times act with honesty and integrity, whether in the course of his or her employment or otherwise.

3—Conduct prejudicial to SA Police

A designated officer must not, in the course of his or her employment or otherwise, behave in a manner that—

- (a) reflects or is likely to reflect adversely on SA Police; or
- (b) is prejudicial to good order and discipline in SA Police.

4—Performance of orders and duties

A designated officer must not, without good and sufficient cause, disobey a lawful order or direction or fail to carry out a lawful order, direction or duty promptly and diligently.

5—Negligence

A designated officer must not be negligent in carrying out a lawful order, direction or duty.

6—Proper exercise of authority

A designated officer must—

- (a) use only such force as is reasonably necessary in the execution of his or her duties; and
- (b) exercise his or her powers of arrest and search, and any other power or authority conferred on the designated officer by virtue of his or her employment, reasonably and for a proper purpose.

7—Conduct towards public, designated officers in the department

A designated officer, in dealing with members of the public in the course of his or her employment, or in dealing at any time with designated officers, police medical officers or other persons employed in or performing duties or functions in the department—

- (a) must not unlawfully discriminate against any person; and
- (b) must not behave in an oppressive, offensive, abusive or insulting manner; and
- (c) must be impartial and respectful.

8—Conflict of interest

A designated officer—

- (a) must not knowingly place himself or herself in a position that creates or is likely to create a conflict of interest with his or her position as a designated officer; and
- (b) must immediately report any such conflict (or likelihood of conflict) that arises to an officer senior to the designated officer.

9—Improperly obtaining benefit or advantage

A designated officer must not improperly obtain or seek to obtain a benefit or advantage for himself or herself or another person from his or her position as a designated officer.

10—Confidentiality of information

A designated officer must treat information obtained by SA Police (or by the designated officer by virtue of his or her employment) as confidential and must not—

- (a) seek to obtain access to such information except in the proper execution of his or her duties; or
- (b) improperly use or disclose such information.

11—Responsibility for property

A designated officer must not lose, damage, waste or misuse SA Police property or property in the custody of SA Police and must do everything within his or her authority to prevent, and report in accordance with general or special orders, the loss, damage, waste or misuse of such property.

12—Improper complaint

A designated officer must not make a false or frivolous complaint against—

- (a) another designated officer; or
- (b) a police medical officer; or
- (c) a person employed in or performing duties or functions in the department.

13—Foreign law

A designated officer must not be found guilty of an offence under foreign law in respect of conduct that would have constituted an offence if it had occurred in this State.

Legislative history

Notes

- 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 regulations

Year	No	Reference	Commencement
2017	261	<i>Gazette</i> 29.8.2017 p3796	4.9.2017: r 2