

South Australia

# Police Regulations 2014

under the *Police Act 1998*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Police Regulations 2014*.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Police Act 1998*;

*approved* means approved by the Commissioner by general or special order under section 11 of the Act;

*Code of Conduct* or *Code*—see Part 5;

*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*;

*employee* means a member of SA Police or police cadet;

*employee in the department* means—

- (a) a member of SA Police; or
- (b) a police cadet, police medical officer or special constable; or
- (c) a person employed in or performing duties or functions in the department;

*previous regulations* means—

- (a) the *Police Regulations 1999* (see *Gazette 30.6.1999 p3312*) (disallowed); or
- (b) the regulations revoked by these regulations; or
- (c) any regulations made and revoked under the *Police Act 1952*;

*service* does not include leave without pay unless otherwise ordered by the Commissioner.

## Part 2—Command and structure of SA Police

### 4—Ranks

The ranks of officers and other members of SA Police in order of seniority (starting with the highest rank) are as follows:

- (a) Commissioner;
- (b) Deputy Commissioner;

- (c) Assistant Commissioner;
- (d) Commander;
- (e) Chief Superintendent;
- (f) Superintendent;
- (g) Chief Inspector;
- (h) Inspector;
- (i) Senior Sergeant;
- (j) Sergeant;
- (k) Senior Constable First Class;
- (l) Senior Constable;
- (m) Constable.

### **5—Relative seniority**

Except as otherwise determined by the Commissioner under section 40 of the Act or as otherwise provided in these regulations, the relative seniority of members of SA Police will be determined as follows:

- (a) as between 2 members holding different ranks—the senior member is the member who holds the higher rank;
- (b) as between 2 members holding the same rank—the senior member is the member who has been holding the rank continuously for the longer period of time;
- (c) as between 2 members holding the same rank who have held the rank for the same period of time—the senior member is the member who, by general or special order of the Commissioner, is the senior member.

### **6—Responsibility when members are on duty together**

- (1) If 2 or more members of SA Police are engaged on duty together—
  - (a) the senior member is responsible for the performance of the duty; and
  - (b) the junior member, regardless of the part of SA Police in which the member is serving, must comply with the orders given by the senior member.
- (2) For the purposes of subregulation (1), if a community constable is engaged on duty with a member of SA Police who is not a community constable, that other member is the senior and the community constable is the junior.
- (3) Despite subregulation (1)—
  - (a) if the Commissioner by general or special order, or any officer by order, directs that a specified member of SA Police is responsible for the performance of a particular duty, the other members of SA Police engaged on the duty, whether senior to the specified member or not, must comply with orders given by the member for the performance of the duty; and

- (b) if a member of SA Police is, in accordance with these regulations, transferred to a position of a lower rank without loss of rank or seniority, the member must comply with the orders of such other members, whether junior to the member or not, as the Commissioner may direct for the performance of the duties of the position.
- (4) A direction by an officer under subregulation (3)(a) may only be given in relation to, and is only binding on, a member of SA Police who is under the officer's direction and superintendence.

### **7—Responsibility of members on duty with other department employees**

If the Commissioner by general or special order directs that a specified employee in the department who is not a member of SA Police is responsible for the performance of a particular duty, all members of SA Police engaged on that duty must (subject to any general or special order of the Commissioner) comply with the orders given by that person for the performance of that duty.

## **Part 3—Initial appointments**

### **8—Selection processes and requirements for initial appointment**

- (1) An application for initial appointment as an employee or police medical officer must be made in a manner approved by the Commissioner.
- (2) Applications for initial appointment as an employee or police medical officer will be assessed, and selections for appointment made—
  - (a) in such manner; and
  - (b) according to such standards relating to physical and other requirements genuinely and reasonably required for that employment,as may be approved by the Commissioner.
- (3) Despite subregulation (2)(b), the Commissioner may determine that any standards do not apply, or apply with such modifications as are specified by the Commissioner, to a particular applicant or position, or an applicant or position of a specified class.
- (4) The Commissioner may appoint a selection panel to advise the Commissioner on the suitability, or relative suitability, of applicants.
- (5) An applicant must, if required, attend for an interview before such a selection panel.
- (6) This regulation does not apply to an appointment to a position in SA Police of or above the rank of senior constable.

### **9—Appointment to certain ranks for specified term under section 23**

Pursuant to section 23(2)(b) of the Act, a person who is not a member of SA Police may be appointed under section 23 to a position in SA Police of or above the rank of senior constable for a term specified under that section if applications for the position have been called for and an advisory committee formed to consider those applications has determined that there are no suitable applicants.

## **Part 4—Duties**

### **10—Duties of all members of SA Police**

Every member of SA Police must use all lawful means in his or her power—

- (a) to uphold the law, preserve the peace, prevent crime and carry out the other functions of SA Police; and
- (b) to ensure that all employees under his or her command perform their duties efficiently and in a proper manner.

## **Part 5—Code of Conduct**

### **11—Code of conduct**

- (1) For the purposes of section 37 of the Act, the provisions of this Part constitute a Code of Conduct for the maintenance of professional standards by employees.
- (2) An employee who contravenes or fails to comply with a provision of this Part (or attempts, aids, abets, counsels or procures such a contravention or failure) is guilty of a breach of the Code.

### **12—Interpretation of Code**

In the Code—

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

*duty*, in relation to an employee, means a duty of the employee under the Act, these regulations or any other Act or law;

*order*, in relation to an employee, 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 employee.

### **13—Honesty and integrity**

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

### **14—Conduct prejudicial to SA Police**

An employee 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.

### **15—Performance of orders and duties**

An employee 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.

## **16—Negligence**

An employee must not be negligent in carrying out a lawful order, direction or duty.

## **17—Proper exercise of authority**

An employee 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 employee by virtue of his or her employment, reasonably and for a proper purpose.

## **18—Conduct towards public, employees in the department**

An employee, in dealing with members of the public in the course of his or her employment, or in dealing at any time with employees 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.

## **19—Conflict of interest**

An employee—

- (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 an employee; and
- (b) must immediately report any such conflict (or likelihood of conflict) that arises to an officer senior to the employee.

## **20—Improperly obtaining benefit or advantage**

An employee 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 an employee.

## **21—Confidentiality of information**

An employee must treat information obtained by SA Police (or by the employee 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.

## **22—Responsibility for property**

An employee 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.



### **23—Improper complaint**

An employee must not make a false or frivolous complaint against an employee in the department.

### **24—Foreign law**

An employee 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.

## **Part 6—Discipline**

### **25—Charge for breach of Code**

- (1) A charge against an employee for a breach of the Code must—
  - (a) be reduced to writing and signed by the Commissioner;
  - (b) be forwarded to the registrar of the Police Disciplinary Tribunal.
- (2) The registrar of the Police Disciplinary Tribunal must cause a copy of the charge to be served on the alleged offender together with a notice in the form prescribed in Schedule 2.

### **26—Procedure where breach admitted**

- (1) If the employee charged admits the charge in writing and forwards the admission so as to reach the registrar of the Police Disciplinary Tribunal within 21 days after service of the written charge, the registrar must forward the admission, any written statement or request made by the employee and all other relevant papers to the Commissioner.
- (2) On receipt of the admission, the Commissioner must consider any submissions in mitigation made by the employee—
  - (a) by written statement attached to the admission;
  - (b) if the employee 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 employee.

### **27—Procedure where breach not admitted**

If the employee charged denies the charge or does not admit it in accordance with these regulations within 21 days after service of the written charge, the Police Disciplinary Tribunal must fix a time and place for hearing the charge.

### **28—Maximum reduction in remuneration, maximum fines**

- (1) For the purposes of section 40(1)(f) and (i) of the Act—
  - (a) if the remuneration of an employee is to be reduced for an offence or breach of the Code—the total amount forfeited by the employee must not exceed \$1 250;
  - (b) if a fine is to be imposed for an offence or breach of the Code—the fine must not exceed \$1 250.

- (2) The Commissioner may, on imposing a fine for an offence or breach of the Code—
- (a) grant time for the payment of the fine or permit it to be paid in instalments;
  - (b) deduct the fine from the employee's pay or from any money due to the employee.

## Part 7—Drug and alcohol testing

### Division 1—Preliminary

#### 29—Interpretation

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

**analyst** means—

- (a) a person appointed by the Minister as an analyst for the purposes of Part 6 Division 2 of the Act; or
- (b) a person holding an office of a class approved by the Minister for the purposes of Part 6 Division 2 of the Act;

**approved blood test kit** means a kit of a kind declared under the *Road Traffic Act 1961* to be an approved blood test kit;

**authorised member** of SA Police—see regulation 30(2);

**blood test information sheet** means an information sheet in an approved form that sets out, for the benefit of sample collectors, the procedures prescribed under regulation 39;

**high risk driving**—see section 41B(2)(b) of the Act;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

**observer** means a member of SA Police who performs the functions conferred on an observer under this Part in relation to the taking of a sample of blood;

**prescribed concentration of alcohol** means a concentration of 0.02 grams or more of alcohol in 100 millilitres of blood;

**prescribed drug** means—

- (a) delta-9-tetrahydrocannabinol;
- (b) methylamphetamine;
- (c) 3, 4-methylenedioxymethamphetamine (MDMA);

**registered nurse** means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession;

*sample collector* means—

- (a) in the case of a sample of blood—a medical practitioner or registered nurse; and
- (b) in the case of a sample of oral fluid or urine—an authorised member;

*test subject* means—

- (a) a member of SA Police or a police cadet required to undergo drug and alcohol testing under section 41B of the Act; or
- (b) an applicant to whom section 41C(1) of the Act applies required to undergo drug and alcohol testing;

*urine screening test* means a test of a kind approved by the Commissioner under regulation 30 for the conduct of urine screening tests.

- (2) For the purposes of this Part, a reference to a document being in an *approved form* means in a form approved by the Commissioner under regulation 30.

### **30—Commissioner may give approvals and authorisations for purposes of this Part**

- (1) The Commissioner may give such approvals as are necessary or contemplated for the purposes of this Part, including (for example) approving certificates and other forms, tests for the conduct of urine screening and courses of training.
- (2) Subject to subregulation (3), the Commissioner may, for the purposes of Part 6 Division 2 of the Act, authorise a member of SA Police to do any or all of the following:
  - (a) to operate a breath analysing instrument;
  - (b) to conduct oral fluid analyses;
  - (c) to take urine samples.
- (3) The Commissioner may not authorise a member of SA Police to take urine samples, or to conduct breath or oral fluid analyses, unless the Commissioner is satisfied that the member has completed to a satisfactory level a course of training approved by the Commissioner.

## **Division 2—Drug testing**

### **31—General requirements**

- (1) If a test subject is required to submit to drug testing under Part 6 Division 2 of the Act, any biological sample that is to be taken from the test subject for the purposes of testing for the presence of a prescribed drug may not be taken more than 8 hours after the subject has come off duty, or more than 8 hours following a critical incident or high risk driving occurrence, as the case may be.
- (2) The following applies to the taking of a biological sample from a test subject by an authorised member for the purposes of drug testing:
  - (a) if the authorised member considers that a sample of oral fluid can be taken—the authorised member must take a sample of oral fluid;

- (b) if the authorised member considers that a sample of oral fluid cannot be taken but that a sample of urine can—the authorised member must take a sample of urine;
- (c) if the authorised member considers that neither a sample of oral fluid nor a sample of urine can be taken—the authorised member must arrange for a medical practitioner or registered nurse to take a sample of blood.

### **32—Oral fluid sample processes**

- (1) The following are the procedures in accordance with which a sample of a test subject's oral fluid must be taken and dealt with for the purposes of drug testing:
  - (a) the authorised member must provide the test subject with the means by which the test subject can provide the sample of oral fluid;
  - (b) when the authorised member is satisfied that the test subject has provided a satisfactory sample of the test subject's oral fluid, the member may subject the sample to oral fluid analysis to determine whether the sample should be submitted for further analysis under regulation 35;
  - (c) if the authorised member does not subject the sample to oral fluid analysis, or an oral fluid analysis indicates that a prescribed drug may be present in the sample, the member must place the sample, in approximately equal proportions, in 2 containers suitable for the purpose;
  - (d) each container must contain a sufficient quantity of oral fluid to enable an analysis to be made of the presence of a prescribed drug in the oral fluid;
  - (e) the authorised member must then mark each container in a manner approved by the Commissioner and seal each container;
  - (f) it is the duty of the authorised member to take such measures as are reasonably practicable in the circumstances to ensure that the sample is not adulterated and does not deteriorate so as to prevent a proper analysis of the presence of a prescribed drug in the oral fluid;
  - (g) the authorised member must then complete a certificate in the approved form by inserting the particulars required by the form, which must then be signed by the member and the test subject;
  - (h) the original of the signed certificate must then be sent to or retained on behalf of the Commissioner;
  - (i) a copy of the signed certificate must be delivered to the test subject together with 1 of the sealed containers containing part of the oral fluid sample.
- (2) A test subject must comply with all reasonable directions of an authorised member in connection with the taking of an oral fluid sample and the signing of a certificate under this regulation.

### **33—Urine sample processes**

- (1) The following are the procedures in accordance with which a sample of a test subject's urine must be taken and dealt with for the purposes of drug testing:
  - (a) the authorised member must provide the test subject with a urine collection container and allow the test subject to provide the sample in private;

- (b) the test subject must provide a sufficient sample of his or her urine in the container and then deliver the container to the authorised member immediately;
- (c) the authorised member—
  - (i) must, within 4 minutes of receiving the sample, test the temperature, and conduct a visual examination, of the sample; and
  - (ii) may conduct any other test designed to determine whether or not the sample is a sample of the test subject's urine and is otherwise suitable for analysis;
- (d) if the authorised member has reasonable cause to suspect that the sample—
  - (i) is not a sample of the test subject's urine or has been diluted or tampered with in any way; or
  - (ii) is not suitable for analysis for some other reason,the member—
  - (iii) must require another sample to be provided in accordance with this regulation; and
  - (iv) may require the test subject to submit to a search before the additional sample is provided;
- (e) if the authorised member requires the test subject to submit to a search, the search—
  - (i) may only be conducted by, and in the presence of, a person of the same sex as the test subject; and
  - (ii) must be carried out in private; and
  - (iii) must not be witnessed by any more persons than is reasonably necessary;
- (f) if the test subject provides 2 samples that, in the opinion of the authorised member, are not samples of the test subject's urine or are otherwise unsuitable for analysis, the test subject will be taken to have failed to comply with a direction under section 41B or 41C of the Act (as the case requires);
- (g) when the authorised member is satisfied that the test subject has provided a satisfactory sample of the test subject's urine, the member may subject the sample to a urine screening test to determine whether the sample should be submitted for analysis;
- (h) if the authorised member does not subject the sample to a urine screening test, or a urine screening test indicates that a prescribed drug may be present in the sample, the member must, in the presence of the test subject place the sample, in approximately equal proportions, in 2 containers suitable for the purpose;
- (i) each container referred to in paragraph (h) must contain a sufficient quantity of urine to enable an analysis to be made of the presence of a prescribed drug in the urine;
- (j) the authorised member must then mark each container in a manner approved by the Commissioner and seal each container;

- (k) it is the duty of the authorised member to take such measures as are reasonably practicable in the circumstances to ensure that the urine is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of any prescribed drug present in the urine of the test subject;
  - (l) the authorised member must then complete a certificate in the approved form by inserting the particulars required by the form, which must then be signed by the member and the test subject;
  - (m) the original of the signed certificate must then be sent to or retained on behalf of the Commissioner;
  - (n) a copy of the signed certificate must be delivered to the test subject together with 1 of the sealed containers containing part of the urine sample.
- (2) A test subject must comply with all reasonable directions of an authorised member in connection with the taking of a urine sample and the signing of a certificate under this regulation.

### **34—Blood sample processes**

- (1) The following are the procedures in accordance with which a sample of a test subject's blood must be taken and dealt with for the purposes of drug testing:
- (a) the sample must be taken by a medical practitioner or registered nurse in the presence of an observer;
  - (b) the sample collector must place the sample, in approximately equal proportions, in 2 containers suitable for the purpose;
  - (c) each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made of any concentration of any prescribed drug present in the blood and the sample of blood taken by the sample collector must be such as to furnish 2 such quantities of blood;
  - (d) the sample collector must then mark each container in a manner approved by the Commissioner and seal each container;
  - (e) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of any prescribed drug present in the blood of the test subject;
  - (f) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form, which must then be signed by the sample collector, the observer in whose presence the sample has been taken and the test subject;
  - (g) the original of the signed certificate must then be sent to or retained on behalf of the Commissioner;
  - (h) a copy of the signed certificate must be delivered to the test subject together with 1 of the sealed containers containing part of the blood sample;
  - (i) a copy of the signed certificate must be delivered by the sample collector together with the other sealed container containing part of the blood sample to the observer;

- (j) the blood sample container and copy of the certificate referred to in paragraph (i) must not be delivered into the possession of the test subject.
- (2) A test subject must comply with all reasonable directions of a sample collector or observer in connection with the taking of a blood sample and the signing of a certificate under this regulation.

### **35—Analysis of biological sample**

- (1) If—
  - (a) an authorised member takes a urine or oral fluid sample and completes a certificate in relation to the sample; or
  - (b) an observer is given a blood sample and a certificate in relation to the sample, in accordance with this Division, the authorised member or observer (as the case may be) must cause the sample and certificate to be delivered to Forensic Science SA as soon as is reasonably practicable after the relevant taking or giving of the sample or certificate.
- (2) The Director of Forensic Science SA must, as soon as possible following the delivery of a sample under subregulation (1), ensure that the sample is analysed by or under the supervision of an analyst to determine the presence of any prescribed drug in the sample.
- (3) The analyst must then complete and sign a certificate certifying as to the following matters:
  - (a) the date of receipt at Forensic Science SA of the sample container and the certificate accompanying the sample container;
  - (b) the details of the mark on the sample container and the manner in which it was sealed;
  - (c) the name and professional qualifications of the analyst;
  - (d) the presence of any prescribed drug found to be present in the sample;
  - (e) any factors relating to the sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
  - (f) any other information relating to the sample or analysis (or both) that the analyst thinks fit to include.
- (4) The analyst's certificate must be sent by post to the test subject at the address shown as the test subject's address on the certificate accompanying the sample container.
- (5) A copy of the analyst's certificate must be sent to the Commissioner.
- (6) A biological sample delivered to Forensic Science SA under this regulation must be held by Forensic Science SA for a period of not less than 6 months following the delivery.

## **Division 3—Alcohol testing**

### **36—Alcotesting and breath analyses**

- (1) An alcotest or breath analysis to which a test subject has been required to submit under Part 6 Division 2 of the Act may not be commenced more than 8 hours after the test subject has come off duty, or more than 8 hours following a critical incident or high risk driving occurrence, as the case may be.
- (2) The following persons may carry out breath testing of a test subject under this Division:
  - (a) in the case of an alcotest—a member of SA Police;
  - (b) in the case of a breath analysis—an authorised member.
- (3) The performance of an alcotest or breath analysis commences when a direction is first given to the test subject to exhale into the alcotest apparatus or breath analysing instrument to be used for the test.
- (4) If an alcotest conducted indicates that the prescribed concentration of alcohol may be present in the blood of the test subject, a member of SA Police may require the test subject to submit to a breath analysis by means of a breath analysing instrument.

### **37—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood**

If a test subject submits to a breath analysis and the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Part, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

### **38—Conduct of alcotest and breath analysis**

- (1) A test subject required under the Act to submit to an alcotest or breath analysis must not refuse or fail to comply with all reasonable directions of the person operating the alcotest apparatus or breath analysing instrument in relation to the requirement and, in particular, must not refuse or fail to exhale into the apparatus or instrument by which the alcotest or breath analysis is conducted in accordance with the directions of the person operating the apparatus or instrument.
- (2) If a test subject submits to a breath analysis, the breath analysis must be conducted in the following manner:
  - (a) the test subject must provide 2 separate samples of breath for analysis;
  - (b) each sample must be provided in accordance with the directions of the authorised member conducting the analysis and must consist of not less than 1 litre of breath;
  - (c) there must be an interval of not less than 2 minutes and not more than 10 minutes between the provision of the samples.
- (3) Despite subregulation (2)—
  - (a) if, on analysing a sample of breath, the breath analysing instrument indicates an error in the analysis of the sample—



- (i) that sample, or, if that sample was the second sample provided, both samples, must be disregarded; and
    - (ii) the test subject may be required to provide 2 further samples of breath for analysis using a different instrument (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
  - (b) if, on analysing a sample of breath, the breath analysing instrument indicates the presence of alcohol in the mouth of the test subject—
    - (i) that sample, or, if that sample was the second sample provided, both samples, must be disregarded; and
    - (ii) the test subject may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
  - (c) if, on analysing 2 samples of breath, the breath analysing instrument indicates that the reading obtained on analysis of the second sample was more than 15% higher or lower than the reading obtained on analysis of the first sample—
    - (i) those samples must be disregarded; and
    - (ii) the test subject may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
  - (d) if, for any reason, a second sample of breath is not provided within 10 minutes of the provision of the first sample—
    - (i) the first sample is to be disregarded; and
    - (ii) the test subject may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)).
- (4) If a test subject submits to a breath analysis, the result of the breath analysis will, for the purposes of Part 6 Division 2 of the Act, be taken to be the reading produced by the breath analysing instrument, on analysis of the samples of breath provided by the test subject in accordance with this regulation, that indicates the lower concentration of alcohol in the test subject's breath (not taking into account any samples that, in accordance with this regulation, are to be disregarded).

### **39—Procedures for voluntary blood test**

The following are the procedures in accordance with which a sample of a test subject's blood must be taken and dealt with for the purposes of testing for the presence of alcohol:

- (a) the test subject must cause the sample to be taken by a medical practitioner or registered nurse of the test subject's choice and must deliver to the sample collector—
  - (i) the blood test kit supplied to the test subject under regulation 41(4)(b) for use for that purpose; and
  - (ii) the blood test information sheet supplied to the test subject under regulation 40;

- (b) the sample must be taken by the sample collector as soon as is reasonably practicable but, in any event, within 4 hours of the test subject having submitted to the breath analysis indicating, for the purposes of the Act, the presence of alcohol in the test subject's blood;
- (c) the sample collector must place the sample, in approximately equal proportions, in 2 containers (being the containers provided as part of the blood test kit);
- (d) each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made of any concentration of alcohol present in the blood and the sample of blood taken by the sample collector must be such as to furnish 2 such quantities of blood;
- (e) the sample collector must seal each container by application of the adhesive seal bearing an identifying number provided as part of the blood test kit;
- (f) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of alcohol present in the blood of the test subject;
- (g) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form;
- (h) the certificate must be signed by the sample collector certifying as to the matters set out in the form;
- (i) the certificate must also bear the signature of the test subject, attested to by the signature of the sample collector;
- (j) the original of the signed certificate must then be delivered to the test subject together with 1 of the sealed containers containing part of the blood sample;
- (k) a copy of the signed certificate must be delivered by the sample collector together with the other sealed container containing part of the blood sample to a member of SA Police who must, in turn, deliver that copy of the certificate and the blood sample container to Forensic Science SA;
- (l) the blood sample container and copy of the certificate referred to in paragraph (k) must not be delivered into the possession of the test subject;
- (m) on receipt of the blood sample container and certificate at Forensic Science SA, the blood in the container must be analysed as soon as is reasonably practicable by or under the supervision of an analyst to determine the concentration of alcohol present in the blood expressed in grams in 100 millilitres of blood;
- (n) the analyst must then complete and sign a certificate certifying as to the following matters:
  - (i) the date of receipt at Forensic Science SA of the blood sample container and the certificate accompanying the blood sample container;
  - (ii) the identifying number appearing on the adhesive seal used to seal the blood sample container;
  - (iii) the name and professional qualifications of the analyst;

- (iv) the concentration of alcohol found to be present in the blood expressed in grams in 100 millilitres of blood;
  - (v) any factors relating to the blood sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
  - (vi) any other information relating to the blood sample or analysis or both that the analyst thinks fit to include;
- (o) the analyst's certificate must be sent by post to the test subject at the address shown as the test subject's address on the certificate accompanying the blood sample container;
  - (p) a copy of the analyst's certificate must be sent to or retained on behalf of the Minister;
  - (q) a copy of the analyst's certificate must also be sent to the Commissioner.

#### **40—Request for approved blood test kit**

- (1) For the purposes of regulation 41(4)(b), a request for an approved blood test kit must be made in accordance with the following provisions:
  - (a) the request may, in the first instance, be made orally to the authorised member conducting the breath analysis;
  - (b) on such a request having been made by the test subject, the authorised member or any other member of SA Police present must complete a written request in an approved form by inserting the particulars required by the form;
  - (c) the test subject making the request must then sign the request form in the presence of the authorised member or other member of SA Police and the test subject's signature must be attested to by the signature of the authorised member or other officer;
  - (d) the original of the signed request form may be retained by the test subject making the request;
  - (e) a copy of the signed request form must be delivered to the authorised member or other member of SA Police.
- (2) The copy of the request form delivered to the authorised member or other member of SA Police must be delivered to the Commissioner or retained on the Commissioner's behalf for 12 months from the day on which the request form was signed by the test subject making the request.
- (3) If a test subject requests an approved blood test kit, the authorised member or any other member of SA Police must provide the test subject with a blood test information sheet.

## Division 4—Evidence etc

### 41—Evidence etc

- (1) If the requirements and procedures in relation to breath analysing instruments and breath analysis under this Part, including subregulations (3) and (4), have been complied with, it must be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the test subject at the time of the analysis.
- (2) No evidence can be adduced in rebuttal of the presumption created by subregulation (1) except—
  - (a) evidence of the concentration of alcohol in the blood of the test subject as indicated by analysis of a sample of blood taken and dealt with in accordance with the procedures set out in this Part; and
  - (b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave a false reading of the concentration of alcohol present in the blood of the test subject.
- (3) As soon as is practicable after a test subject has submitted to an analysis of breath by means of a breath analysing instrument, the authorised member who conducted the analysis must deliver to the test subject a statement in writing specifying—
  - (a) the reading produced by the breath analysing instrument; and
  - (b) the date and time of the analysis.
- (4) If a test subject has submitted to an analysis of breath by means of a breath analysing instrument and any concentration of alcohol is indicated as being present in the blood of that test subject by the breath analysing instrument, the authorised member who conducted the analysis must immediately—
  - (a) give the person the oral advice determined by the Commissioner and deliver to the person the written notice determined by the Commissioner as to the operation of this Act in relation to the results of the breath analysis and as to the procedures set out in this Part for the taking and analysis of a sample of the person's blood; and
  - (b) at the request of the person made in accordance with regulation 40, deliver an approved blood test kit to the person.
- (5) A certificate purporting to be signed by an authorised member in relation to a breath analysing instrument and to certify that—
  - (a) the apparatus used by the authorised member was a breath analysing instrument within the meaning of Part 6 Division 2 of the Act; and
  - (b) the breath analysing instrument was in proper order and was properly operated; and
  - (c) the provisions of Part 6 Division 2 of the Act and this Part with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with is, in the absence of proof to the contrary, proof of the matters so certified.

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- (6) A certificate purporting to be signed by a member of SA Police and to certify that an apparatus referred to in the certificate is or was of a kind approved under the *Road Traffic Act 1961* for the purpose of performing alcotests is, in the absence of proof to the contrary, proof of the matter so certified.
- (7) A certificate purporting to be signed by a member of SA Police and to certify that a person named in the certificate submitted to an alcotest on a specified day and at a specified time and that the alcotest indicated that any concentration of alcohol may then have been present in the blood of that person is, in the absence of proof to the contrary, proof of the matters so certified.
- (8) A certificate purporting to be signed by an analyst, certifying as to the concentration of alcohol, or any prescribed drug, found in a specimen of blood identified in the certificate expressed in grams in 100 millilitres of blood is, in the absence of proof to the contrary, proof of the matters so certified.
- (9) A certificate purporting to be signed by an authorised member and to certify that—
- (a) a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument on a day and at a time specified in the certificate; and
  - (b) the breath analysing instrument produced a reading specified in the certificate; and
  - (c) a statement in writing required by subregulation (3) was delivered in accordance with that subregulation,
- is, in the absence of proof to the contrary, proof of the matters so certified.
- (10) A certificate purporting to be signed by an authorised member and to certify—
- (a) that, on a date and at a time specified in the certificate, a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument; and
  - (b) that the relevant oral advice and the relevant written notice were given and delivered to the person in accordance with subregulation (4)(a); and
  - (c) that—
    - (i) the person did not make a request for an approved blood test kit in accordance with this Part; or
    - (ii) at the request of the person, a kit that, from an examination of its markings, appeared to the person signing the certificate to be an approved blood test kit was delivered to the person in accordance with subregulation (4)(b),
- is, in the absence of proof to the contrary, proof that the requirements of subregulation (4) were complied with in relation to the person.
- (11) A certificate purporting to be signed by a member of SA Police and to certify that a person named in the certificate was required under Part 6 Division 2 of the Act and this Part to submit to an alcotest or breath analysis and refused or failed to comply with all reasonable directions of a member of SA Police in relation to the requirement is, in the absence of proof to the contrary, proof of the matter so certified.

- (12) A certificate purporting to be signed by the Commissioner and to certify that a person named in the certificate is an authorised member is, in the absence of proof to the contrary, proof of the matter so certified.
- (13) In any proceeding under the Act, and in the absence of proof to the contrary, any of the following certificates is evidence of the matters certified in the certificate:
- (a) a certificate purporting to be signed by a sample collector certifying that an identified urine or oral fluid sample was taken or collected—
    - (i) from a named person; and
    - (ii) at a specified date and time; and
    - (iii) in accordance with this Part;
  - (b) a certificate purporting to be signed by a medical practitioner or registered nurse certifying that an identified blood sample was taken or collected—
    - (i) from a named person; and
    - (ii) at a specified date and time; and
    - (iii) in accordance with this Part;
  - (c) a certificate purporting to be signed by an authorised member certifying—
    - (i) that an identified oral fluid sample taken from a named person named in the certificate was subjected to oral fluid analysis on a specified day and at a specified time; and
    - (ii) that the oral fluid analysis indicated that a prescribed drug may then have been present in the oral fluid of the person;
  - (d) a certificate purporting to be signed by an authorised member certifying—
    - (i) that the apparatus used to conduct an oral fluid analysis was in proper order; and
    - (ii) that the oral fluid analysis was properly conducted;
  - (e) a certificate purporting to be signed by an analyst certifying—
    - (i) that an identified blood, urine or oral fluid sample taken from a named person was analysed for alcohol or prescribed drugs in accordance with this Part; and
    - (ii) the results obtained from that analysis.
- (14) If a certificate of an analyst relating to a blood, urine or oral fluid sample taken in accordance with this Part is received as evidence in proceedings and states that a prescribed drug has been found to be present in the blood, urine or oral fluid sample to which the certificate relates, it will be presumed, in the absence of proof to the contrary, that the prescribed drug stated in the certificate was present in the sample when the sample was taken.

## **Division 5—Other matters**

### **42—Test subject may arrange for analysis of biological sample**

A test subject from whom a biological sample was taken for the purposes of Part 6 Division 2 of the Act may cause the sample as contained in the sample container delivered to that test subject to be analysed to determine the presence of any alcohol or prescribed drug present in the sample.

### **43—Destruction of biological samples**

The Commissioner must ensure that a biological sample taken for the purposes of Part 6 Division 2 of the Act (and any other forensic material taken incidentally in the course of drug and alcohol testing) is destroyed—

- (a) if disciplinary proceedings based on evidence of the results of analysis of the biological sample are not commenced—as soon as is reasonably practicable after the decision has been made not to commence proceedings; or
- (b) if disciplinary proceedings are commenced—as soon as is reasonably practicable after the proceedings (including any proceedings on review or appeal) are finally determined or discontinued.

## **Part 8—Transfers**

### **44—Transfer to position of higher rank**

- (1) Subject to this regulation, the Commissioner may, under section 47 of the Act, transfer a member of SA Police to a position of a higher rank—
  - (a) until a person on leave from or otherwise temporarily unable to perform the duties of the position returns to the position; or
  - (b) if the position has been permanently vacated, until the position is filled by selection processes.
- (2) A transfer as authorised under subregulation (1)—
  - (a) may be made on such conditions as are approved by the Commissioner; and
  - (b) must not be for a period exceeding 2 years.
- (3) If a member has been transferred to a position of a higher rank as authorised under this regulation, the Commissioner may, under section 47 of the Act, transfer the member to a position of a lower rank in order to return the member to a position of a rank the same as that of his or her original position.

### **45—Transfer to position of lower rank**

- (1) Subject to this regulation, the Commissioner may, under section 47 of the Act, transfer a member of SA Police to a position of lower rank if—
  - (a) the transfer is in the opinion of the Commissioner necessary—
    - (i) for the purposes of the restructuring of a part of SA Police; or
    - (ii) for the purposes of filling a designated position; and

- (b) the transfer is made on condition that the member retains his or her existing rank and seniority while occupying the position of a lower rank.
- (2) A member transferred as authorised under subregulation (1) may be further transferred to positions of a rank lower than that of his or her original position.
- (3) The period or aggregate of the periods for which a transfer or transfers authorised under subregulation (1) or (2) may continue must not exceed 2 years or such longer period as the Minister may approve in a particular case.
- (4) If a member has been transferred to a position of a lower rank as authorised under this regulation, the Commissioner may, under section 47 of the Act, transfer the member to a position of a higher rank in order to return the member to a position of a rank the same as that of his or her original position.
- (5) On transferring a member to a position of a lower rank as authorised under this regulation, the Commissioner must give orders as to the performance by the member of the duties of the position and the members whose orders will be binding on the member while in the position.
- (6) In this regulation—

*designated position* means a position that the Commissioner determines, based on the nature of the position, or the qualifications, experience or other attributes that are essential or desirable in respect of the position, to be a position that, without a transfer under subregulation (1), would be difficult to fill.

## Part 9—Appointment to promotional positions in SA Police

### 46—Application of Part

Nothing in this Part applies in relation to a transfer under the Act or these regulations from 1 position in SA Police to another.

### 47—Notice of requirements or qualifications for appointment

If the Commissioner by general or special order makes provision concerning the requirements or qualifications for appointment to a position of or above the rank of senior constable, he or she must cause notice of the order to be given in the Police Gazette or in such other manner as may be approved by the Commissioner as soon as practicable after it is made.

### 48—Selection processes

- (1) This regulation applies to an appointment to a position in SA Police of or above the rank of senior constable and of or below the rank of Assistant Commissioner.
- (2) The Commissioner must cause the position to be advertised in either or both of the following ways:
- (a) by publishing a notice in the Police Gazette calling for applicants (except in the case of an appointment under section 23 of the Act);
- (b) by advertising the position in such other manner as may be approved by the Commissioner.



- (3) The Commissioner may appoint an advisory committee of at least 3 persons, 1 of whom may be the Commissioner, to assist in determining the suitability of applicants to fill the position.
- (4) If the Commissioner is a member of the committee, the Commissioner will determine, with the advice and assistance of the other members of the committee, which applicant is the most suitable on merit (or, if appropriate, that there is no suitable applicant).
- (5) If the Commissioner is not a member of the committee, the committee must determine which applicant is, in the opinion of the committee, the most suitable on merit (or that there is no suitable applicant) and advise the Commissioner in writing accordingly.
- (6) An applicant may be required to take part in or submit to an interview, test, medical or psychological assessment, training course or other assessment procedure.
- (7) A member of SA Police must, at the request of an advisory committee, appear before or produce to the committee any record, document or other information to which the member has access and that the committee needs in connection with its determination.

#### **49—Period of appointment**

- (1) The Commissioner may, in seeking applicants for a position of or above the rank of senior constable and of or below the rank of Assistant Commissioner, specify that any or all of the following periods of appointment apply to the position:
  - (a) a specified period of appointment;
  - (b) a minimum period of appointment;
  - (c) a maximum period of appointment.
- (2) A specified period may be varied at the discretion of the Commissioner.
- (3) A specified minimum period may be reduced, and a specified maximum period may be increased, at the discretion of the Commissioner.
- (4) If a minimum period of appointment is specified in respect of a position, a person appointed to the position is not, except at the discretion of the Commissioner, eligible for appointment to another position in SA Police of the same or a lower rank until the minimum period has expired.

### **Part 10—Grievance process and review**

#### **50—Application for review of informal inquiry**

- (1) If an employee is found on informal inquiry to have committed a breach of the Code, an application by the employee for review under section 43 of the Act must be made to the first officer in the same line of command as the employee, determined in ascending order from the next rank above the employee's rank—
  - (a) who was not involved in the informal inquiry or investigations leading up to the informal inquiry; and
  - (b) who is on duty during the 3 weekdays following the day on which the application is delivered to the Commissioner's office in accordance with subregulation (2).

- (2) An application for review under section 43 of the Act—
- (a) must be addressed to the "Informal Inquiry Review Officer" and delivered to the Commissioner's office for forwarding to the member determined under subregulation (1); and
  - (b) must be in writing in a form approved by the Commissioner; and
  - (c) must identify the informal inquiry in respect of which the review is sought; and
  - (d) must state the grounds on which the review is sought; and
  - (e) must be delivered to the Commissioner's office within 7 days after the day on which the particulars of the finding or determination on the inquiry are furnished to the employee.
- (3) In this regulation—
- weekday* means a day other than a Saturday or a Sunday or other public holiday.

### **51—Unsatisfactory performance review panel**

If it is proposed that action be taken under section 46 of the Act against a member of SA Police on the grounds of unsatisfactory performance, the panel of persons required under subsection (5)(c) of that section—

- (a) will consist of 3 persons appointed by the Commissioner, at least 1 of whom must be a member of SA Police currently employed in a human resource management or development area of SA Police; and
- (b) must be chaired by a person specified by the Commissioner; and
- (c) must make its decision by majority vote; and
- (d) must notify its decision to the Commissioner in writing as soon as practicable after the panel is appointed by the Commissioner; and
- (e) subject to this regulation, may determine its own procedures.

### **52—Grievance process for section 47 transfer**

- (1) A member of SA Police who is transferred to another position under section 47 of the Act and is aggrieved by the transfer may apply to the Commissioner to have his or her grievance dealt with.
- (2) An application under this regulation—
- (a) must be in writing in a form approved by the Commissioner; and
  - (b) must identify the transfer giving rise to the grievance; and
  - (c) must set out the grounds of the grievance; and
  - (d) must be delivered to the Commissioner's office within 14 days after the member is notified in writing of his or her transfer under section 47.
- (3) The Commissioner must give written notice to the applicant of the Commissioner's decision on the grievance application.

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**53—Grievance process for selection decision**

- (1) A member of SA Police who is aggrieved by a selection decision notified in the Police Gazette under section 55 of the Act may apply to the Commissioner to have his or her grievance dealt with.
- (2) An application under this regulation—
  - (a) must be in writing in a form approved by the Commissioner; and
  - (b) must identify the decision giving rise to the grievance; and
  - (c) must set out the grounds of the grievance; and
  - (d) must be delivered to the Commissioner's office within 14 days after the selection decision is notified in the Police Gazette.
- (3) On an application under this regulation, the Commissioner may—
  - (a) confirm the selection decision;
  - (b) quash the selection decision;
  - (c) order that the selection processes be recommenced from the beginning or some later stage specified by the Commissioner.
- (4) The Commissioner must give written notice to the applicant of the Commissioner's decision on the grievance application within 28 days after receipt of the application (or within such longer period as may be agreed between the applicant and the Commissioner).

**54—Applications to Police Review Tribunal—time and procedures**

- (1) An application to the Police Review Tribunal under section 48 of the Act by a member (or former member) of SA Police for a review of a decision to terminate the member's appointment must be made within 28 days after the member or former member receives written notice of the relevant decision.
- (2) An application to the Tribunal under section 52 of the Act by a member of SA Police for a review of a decision to transfer the member to another position must be made within 14 days after the member receives written notice of the decision.
- (3) An application to the Tribunal under section 55 of the Act by a member of SA Police for a review of a selection decision must be made within 7 days after the member receives written notice of the decision made on his or her grievance application in respect of the selection decision.
- (4) An application to the Tribunal for a review—
  - (a) must be—
    - (i) in a form approved by the Secretary to the Tribunal; and
    - (ii) typewritten or printed; and
    - (iii) in triplicate; and
  - (b) must identify the decision to be reviewed; and
  - (c) must set out the grounds for review; and
  - (d) must specify the relief sought on review; and

- (e) must state whether or not the applicant requires any person to be summoned to appear before the Tribunal, or to produce any document, object or material; and
  - (f) in the case of an application for review of a selection decision under section 55 of the Act—must be accompanied by a copy of the decision made on the member's grievance application under that section.
- (5) An applicant to the Tribunal, or a member of SA Police summoned to appear before the Tribunal, must be granted the necessary leave of absence to allow him or her to appear before the Tribunal.
- (6) The Tribunal must hear and determine an application for review of a selection decision under section 55 of the Act within 28 days after receipt by the Tribunal of the application.

## **Part 11—History of employees**

### **55—Duty to keep history**

- (1) The Commissioner must cause a history to be kept of the conduct and service of every employee.
- (2) The history of each employee must include the following particulars:
- (a) full name, identification number, personal description, marital status and next of kin;
  - (b) educational, trade or professional qualifications gained, and special training completed, before or after joining SA Police;
  - (c) appointments, promotions and transfers;
  - (d) war service, military distinctions and other distinctions;
  - (e) entries, as directed by the Commissioner in each case, of meritorious conduct and other matters favourable to the employee;
  - (f) punishments imposed by the Commissioner (unless the Commissioner directs the punishment is not to be recorded);
  - (g) such particulars of any penalty imposed on the employee in a court of law as the Commissioner directs;
  - (h) leave granted or taken;
  - (i) any other particulars required by or under the Act or these regulations or directed from time to time by the Commissioner.
- (3) The history of each employee must be maintained in the manner and place directed by the Commissioner.

### **56—Removal of entry relating to punishment or penalty**

- (1) If—
- (a) there is an entry recording a punishment or penalty in the history of an employee; and
  - (b) not less than 5 years have elapsed since the entry was made; and

- (c) no further entry recording a punishment or penalty has since been made, the employee may apply to the Commissioner in writing to have the entry, and any previous entry recording a punishment or penalty, removed from the employee's history.
- (2) On receipt of such an application, the Commissioner—
- (a) may, if he or she thinks fit, order that the entry or any previous such entry be removed; and
  - (b) must in any event advise the employee of the Commissioner's response to the application.

### **57—Access of employee to history**

An employee—

- (a) must be given access to his or her history in accordance with procedures approved by the Commissioner; and
- (b) must, on application, be supplied with a copy of the history.

### **58—Record of commendation of employee**

- (1) If an employee displays unusual moral or physical courage or shows exceptional tact, skill or ability, the officer in charge of the employee may, if it is considered that the conduct of the employee justifies a commendation being recorded, cause a report giving full particulars to be furnished to the Commissioner.
- (2) The Commissioner must, if satisfied (on the basis of that report or such further inquiry as the Commissioner may require) that the conduct of the employee deserves commendation, cause a record to be made in the employee's history.

### **59—Certificate of service**

- (1) On ceasing to be employed under the Act, an employee will, on application to the Commissioner, be granted a certificate of service showing the employee's rank (or position), period of service and such other information as may be approved by the Commissioner.
- (2) A certificate showing the rank (or position) and period of service of a deceased employee will be supplied to the employee's next of kin on request.
- (3) The Commissioner may, on application, issue a duplicate certificate of service if satisfied of the loss or destruction of the original certificate.

## **Part 12—Leave of absence**

### **60—Interpretation**

A reference in this Part to an employee, an officer or a member of SA Police does not include—

- (a) the Commissioner or Deputy Commissioner; or
- (b) an Assistant Commissioner appointed after the commencement of the *Police (Contract Appointments) Amendment Act 1996* (19 December 1996); or
- (c) a person appointed under section 23 of the Act; or

- (d) a community constable.

### **61—Recreation and sick leave for officers**

An officer is entitled to the rest days and recreation and sick leave that other members of SA Police are entitled to under these regulations or the Police Officers' Award.

### **62—Special sick leave for war service disabilities**

- (1) The Commissioner may grant a member of SA Police who provides evidence that he or she is absent from duty because of a disability accepted by the Commonwealth Repatriation Commission as due to war service special sick leave with pay (not debited against sick leave credits) for a period not exceeding the special sick leave standing to the credit of that member under this regulation.
- (2) The special sick leave standing to the credit of a member of SA Police absent due to a disability arising from war service is as follows:
  - (a) a non-accumulative credit of 45 working days credited on 1 July 1955 or on appointment as a member of SA Police (whichever is the later); plus
  - (b) a cumulative credit of 15 working days credited on 1 July 1964, or on appointment as a member of SA Police (whichever is the later) and on the anniversary of that date in each succeeding year to a maximum accumulation of 45 working days at any 1 time under this paragraph,less the number of working days of leave that have been taken by the officer under this regulation or a corresponding provision of the previous regulations, debited in accordance with subregulation (3).
- (3) The special sick leave standing to the credit of a member of SA Police under subregulation (2)(b)—
  - (a) may only be taken after the special sick leave standing to the member's credit under subregulation (2)(a) has been exhausted; and
  - (b) re-accumulates in accordance with subregulation (2)(b) if taken, but not so as to exceed the specified maximum accumulation.
- (4) Special sick leave granted under this regulation is in addition to any other leave to which a member of SA Police may be entitled.

### **63—Compassionate leave**

- (1) The Commissioner may grant leave to an employee on the death of a person closely related to the employee.
- (2) Leave granted under subregulation (1)—
  - (a) may only be granted for a period between notification of the death by the employee and the end of the day of the funeral of the person who has died; and
  - (b) must be without reduction in pay where the leave granted does not exceed the number of hours ordinarily worked by the employee in 3 working days.
- (3) An employee must, for the purposes of this regulation, provide proof to the satisfaction of the Commissioner of the death of the related person.

- (4) For the purposes of this regulation—

*person closely related to the employee* means a person determined by the Commissioner to be closely related (whether by blood, marriage or otherwise) to the employee.

#### **64—Other special leave**

- (1) The Commissioner may grant special leave to an employee if in the opinion of the Commissioner the grant of the leave is justified by special circumstances.
- (2) Special leave under this regulation may be granted—
  - (a) on full pay, reduced pay or without pay; and
  - (b) on such other conditions,
 as the Commissioner thinks fit.
- (3) The Commissioner may approve a maximum period for which special leave on full pay may be granted in any financial year and, if such a maximum has been approved, no special leave on full pay may be granted to an employee in a financial year in excess of that maximum.
- (4) Despite subregulation (3), the Commissioner may—
  - (a) grant special leave on reduced pay for a proportionately longer period than that approved under subregulation (3); or
  - (b) grant special leave on full or reduced pay to an employee for a longer period than that approved under subregulation (3) to enable the employee to undertake a training course or an attachment to another organisation.
- (5) Where special leave is granted without pay, the Commissioner may order that the whole or any part of the leave be counted as service.

#### **65—Leave for service in armed forces**

- (1) The Commissioner may grant leave to an employee who serves in the armed forces of the Commonwealth to enable the employee to undertake the training or duties required by that service.
- (2) Leave will be granted for the periods and on the terms and conditions as to pay or otherwise that are approved by the Commissioner.

#### **66—Leave bank**

The Commissioner may make and carry out an arrangement with employees under which employees forego part of their annual recreation leave in return for the grant of additional sick leave.

### **Part 13—Property in custody of SA Police**

#### **67—Application of Part**

- (1) Subject to subregulation (2), this Part applies subject to any other Act or regulation.
- (2) Despite subregulation (1), the *Unclaimed Goods Act 1987* does not apply to the sale, destruction or other disposal of property under this Part.

## 68—Interpretation

In this Part, unless the contrary intention appears—

***found property*** means any personal property that has been lost and whose owner is unknown at the time at which it is found;

***legal proceedings*** includes a coronial inquiry;

***money*** includes a negotiable instrument;

***owner***, in relation to property, means the person who is entitled to possession of the property;

***prescribed account*** means an ADI (authorised deposit-taking institution) account maintained for the purpose of holding money that is in the custody of SA Police or the proceeds of the sale of other property that is in the custody of SA Police;

***property*** means—

- (a) found property; and
- (b) the personal effects of deceased persons; and
- (c) property that is seized or otherwise taken into the custody of a member of SA Police for investigatory or evidentiary purposes;

***unclaimed property*** means property that has been in the custody of SA Police for the period of at least 2 months and in relation to which—

- (a) there is no person who appears, to the satisfaction of the Commissioner, to be the owner of the property; or
- (b) there is such a person but that person has not been located after reasonable inquiry; or
- (c) there is such a person but that person has not exercised his or her right to recover the property,

but does not include found property unless, in addition—

- (d) the finder has not exercised his or her right to claim the property within 42 days from the time at which he or she delivered the property to SA Police; or
- (e) the finder has relinquished his or her claim to the property.

## 69—Custody of property

- (1) The Commissioner must ensure the safety and security of property in the custody of SA Police.
- (2) If a member of SA Police receives, seizes or otherwise takes custody of property, the member (or where 2 or more members are performing duty together, the senior member) must cause—
  - (a) a record of the property to be made in the manner approved by the Commissioner; and
  - (b) subject to this Part, the property to be kept in the manner and place approved by the Commissioner; and



- 
- (c) a receipt to be issued, as soon as is reasonably practicable and in the manner approved by the Commissioner, to the person from whom the property was received, seized or otherwise obtained.
  - (3) A member of SA Police must not use property that is in the custody of SA Police for purposes other than—
    - (a) those for which it was received, seized or otherwise taken; or
    - (b) purposes authorised under these regulations.

## 70—Money

- (1) Money that is in the custody of SA Police must, unless it is required *in specie* for evidentiary purposes in legal proceedings or to assist in the identification of its owner, be paid into a prescribed account in accordance with general or special orders.
- (2) If the money is not in Australian currency, it must be converted to Australian currency for retention in the account.
- (3) On payment of money into a prescribed account—
  - (a) the amount in Australian currency paid into the account; and
  - (b) except where found money is later returned to the finder or a court otherwise orders, any interest earned on the amount,

is to be taken to constitute the relevant money for the purposes of the disposal of property in accordance with these regulations.

## 71—Investigation of ownership

The Commissioner must cause all reasonable efforts to be made to determine and locate the owner of property that is in the custody of SA Police.

## 72—Disposal of property

- (1) Subject to any order of a court, property that is in the custody of SA Police for investigatory or evidentiary purposes must not be released or disposed of by SA Police except—
  - (a) for scientific analysis, use as an exhibit or other use in connection with legal proceedings or official investigations; or
  - (b) in accordance with subregulation (2), when the Commissioner is satisfied that the property is no longer required for use in connection with any legal proceedings or official investigations.
- (2) Subject to subregulation (1) property that is in the custody of SA Police must be disposed of as follows:
  - (a) if a court makes an order for the disposal of the property—the property must be disposed of in accordance with that order;
  - (b) if proceedings to determine the ownership of the property have commenced—the property must be retained by SA Police until those proceedings have been completed or discontinued;
  - (c) subject to paragraphs (a) and (b)—

- (i) if there is a person who appears, to the satisfaction of the Commissioner, to be the owner, the property must be returned to that person unless he or she—
  - (A) cannot be located after reasonable inquiry; or
  - (B) does not exercise his or her right to recover the property;
- (ii) if there is no person who appears to be the owner (or if subparagraph (i)(A) or (B) applies) and the property is found property claimed by the finder within the period required by these regulations and retained by SA Police for the period required by these regulations—the property must be returned to the finder in accordance with these regulations;
- (iii) if the property is unclaimed property—it must be disposed of as unclaimed property in accordance with these regulations.

### **73—Dealing with certain property**

Despite these regulations—

- (a) if property in the custody of SA Police is of such a nature that no person is lawfully entitled to it, the Commissioner must, if the property is not required by SA Police for use in connection with any legal proceedings or official investigations or for training or educational purposes, cause the property to be destroyed; and
- (b) subject to paragraph (a)—if it appears to the Commissioner that property in the custody of SA Police whose owner is not known, cannot be located or does not exercise his or her right to recover the property—
  - (i) is perishable or may rapidly depreciate in value; or
  - (ii) is of such a nature or in such condition that it would be dangerous, not reasonably practicable or unduly costly for SA Police to retain the property; or
  - (iii) is an electronic device or electronic equipment capable of storing or recording information or data so that the information or data may be accessed by a person,

the Commissioner may cause the property to be sold, destroyed, returned to the finder (if there is a finder and he or she claims the property) or otherwise disposed of at such time and in such manner as the Commissioner thinks fit.

### **74—Property subject to court order**

If property is in the custody of SA Police under an order of a court that requires the property to be retained until further notice, the property may be disposed of in accordance with these regulations as unclaimed property if no person becomes entitled to the property by order of a court in proceedings commenced within 3 years after the making of the earlier order.

## **75—Found property**

- (1) Found property in the custody of SA Police—
  - (a) may be claimed by the finder no later than 42 days from the day on which he or she delivered the property to SA Police; and
  - (b) must not be returned to the finder until it has been in the custody of SA Police for a period of at least 2 months.
- (2) If found property is returned to the finder, the finder—
  - (a) does not obtain title to the property as against the owner or the person who lost the property until the end of 5 years from the day on which the property was returned to the finder by SA Police; and
  - (b) will be taken to have agreed to—
    - (i) return the property (or, if the finder no longer has the property, pay an amount equal to its value at that time) to a person who claims the property, and proves that claim to the satisfaction of the Commissioner, within 5 years after the day on which it was returned to the finder by SA Police; and
    - (ii) indemnify the Commissioner and any employee in the department in respect of any order or claim made or cost, loss, damage or expense incurred by any of them as a result of the return of the property to the finder; and
  - (c) is not entitled to interest on found money.
- (3) Found property must not be returned to the finder unless he or she is first given notice in writing, in a form approved by the Commissioner, as to the operation of this regulation in relation to the finder's title to the property.
- (4) An agreement under subregulation (2) is not void for want of consideration or for failure to comply with subregulation (3).
- (5) An employee in the department who comes into possession of property in the course of his or her duties does not have the rights of a finder in relation to that property.

## **76—Unclaimed property**

- (1) The Commissioner may cause the whole or any part of unclaimed property, other than unclaimed money, that is in the custody of SA Police to be retained for use by SA Police, or sold, destroyed or otherwise disposed of at such time and in such manner as the Commissioner thinks fit.
- (2) Unclaimed money in the custody of SA Police is to be dealt with in accordance with regulation 70.

## **77—Effect, proceeds of sale**

- (1) A person who buys property sold by or on the authority of the Commissioner under this Part obtains good title to that property.
- (2) The proceeds of a sale of property under this Part must be applied as follows:
  - (a) firstly, in payment of the expenses occasioned by the sale;

- (b) secondly, in payment of storage or other expenses incurred by SA Police in relation to the property;
- (c) thirdly, by payment of the balance into a prescribed account in accordance with general or special orders.

#### **78—Proceeds, unclaimed money to be paid into Consolidated Account**

- (1) Proceeds of sale and unclaimed money held in a prescribed account under this Part must be retained in the account for a period of 6 months, after which the principal and any interest must be paid into the Consolidated Account.
- (2) If unclaimed money held in a prescribed account was not unclaimed money at the time it was paid into the account but subsequently became unclaimed, the 6 month period referred to in subregulation (1) commences at the time at which the money became unclaimed.

#### **79—Return of unclaimed property, proceeds of sale**

The Commissioner may, at his or her discretion—

- (a) if a person who appears, to the satisfaction of the Commissioner, to be the owner of property claims the property after it has become unclaimed property but while it remains in the custody of SA Police, authorise the property to be returned to the person;
- (b) if a person who appears, to the satisfaction of the Commissioner, to have been the owner of property before it was sold under this Part claims the balance of the proceeds of the sale while the money continues to be held in a prescribed account under this Part, authorise the payment of the balance (and any interest on the balance) to the person.

#### **80—Commissioner may prepare instruments**

The Commissioner may prepare and execute all instruments necessary for carrying into effect the sale, destruction or other disposal of property under this Part.

### **Part 14—Prisoners**

#### **81—Interpretation**

In this Part, unless the contrary intention appears—

*Metropolitan Adelaide* has the same meaning as in the *Development Act 1993*;

*officer in charge*, in relation to a police station, means the member of SA Police who is for the time being in charge of the police station;

*police station* means a police station at which cell facilities are available for the continuous care and custody of a person accepted into custody at the police station;

*prisoner* means a person accepted into custody at a police station;

*responsible officer*, in relation to a police station, means—

- (a) the officer in charge of the police station; or

- 
- (b) if a member of SA Police has, for the time being, been designated by the officer in charge of the police station as the officer with responsibility for prisoners at the police station—that officer.

## 82—Search of prisoners

- (1) Immediately after a prisoner is accepted into custody at a police station on a charge of committing an offence, the responsible officer for the police station must cause the prisoner to be searched in accordance with these regulations and general or special orders.
- (2) A search of a prisoner must, wherever practicable, be made by a person of the same sex as the prisoner.
- (3) The person searching a prisoner must remove from the prisoner everything that might—
  - (a) assist the prisoner to escape; or
  - (b) be used to cause injury or harm to the prisoner or any other person; or
  - (c) be used to damage property.
- (4) If a prisoner objects to the retention by SA Police of an article taken from the prisoner and the responsible officer for the police station considers that there is no valid reason for its retention, the article may be returned to the prisoner.

## 83—Property taken from prisoners

- (1) If money or other property is removed from a prisoner, the responsible officer for the police station must—
  - (a) cause a written record to be made of, and a receipt issued for, the money or other property; and
  - (b) request the prisoner to check and sign the written record.
- (2) If a prisoner is unable or refuses to sign the record referred to in subregulation (1), the responsible officer for the police station must make a note on the record of that fact and the reason for that inability or refusal.
- (3) Money or other property removed from a prisoner must be kept and stored in the manner directed by the Commissioner.

## 84—Illness or injury of prisoners

If it is necessary to obtain medical assistance for a prisoner at a police station who is ill or injured, the responsible officer for the police station—

- (a) must, if practicable, cause the prisoner to be conveyed to an incorporated hospital within the meaning of the *Health Care Act 2008*; or
- (b) if that is not practicable, must cause the prisoner to be attended by a police medical officer or other legally qualified medical practitioner.

### **85—Legal, medical and other assistance for prisoners**

- (1) The responsible officer for a police station must afford a prisoner every reasonable facility necessary—
  - (a) to enable compliance with the requirements of the *Bail Act 1985*, the *Summary Offences Act 1953*, the *Young Offenders Act 1993* or any other Act or law concerning persons in the custody of SA Police; and
  - (b) to obtain private legal or medical advice; and
  - (c) in the case of a prisoner who is a national or a citizen of a foreign country—to meet a consular officer or other person acting as a representative of the government of that country.
- (2) If a prisoner requests that he or she be examined by a specified medical practitioner and refuses any other medical examination offered to the prisoner in accordance with these regulations—
  - (a) the responsible officer for the police station must take all reasonable steps to secure the attendance of the medical practitioner; and
  - (b) the examination must take place at a police station; and
  - (c) wherever practicable, the responsible officer must ensure that there is present at the examination—
    - (i) a police medical officer (if the examination takes place within Metropolitan Adelaide); or
    - (ii) a member of SA Police of the same sex as the prisoner (if a police medical officer is unable to be present or the examination takes place outside Metropolitan Adelaide).

### **86—Liability for payment of medical expenses**

- (1) If a medical practitioner other than a police medical officer attends a prisoner under this Part, any amount payable for that attendance that is not covered by a medical benefit scheme is payable—
  - (a) where a specified medical practitioner requested by the prisoner attends the prisoner after other treatment is offered to the prisoner in accordance with these regulations but is refused—by the prisoner;
  - (b) in any other case—by the department (if the prisoner does not agree to pay the amount).
- (2) Where these regulations specify that a prisoner is to be liable for the payment of an amount in respect of the attendance of a medical practitioner, the responsible officer must ensure that both the prisoner and the medical practitioner concerned are informed of that fact prior to any such attendance.

### **87—Interviews with prisoners**

No person may interview a prisoner in custody at a police station without the consent of the responsible officer.

## **Part 15—Miscellaneous**

### **88—Form of oath or affirmation**

- (1) For the purposes of sections 25 and 60 of the Act, the form of the oath or affirmation to be made by a member of SA Police or a special constable on appointment is as set out in Schedule 3.
- (2) An oath or affirmation in the form specified in Schedule 3 may be made before a Justice of the Peace of this State or of another State or a Territory of the Commonwealth.

### **89—Annual report**

The Commissioner must, in his or her annual report to the Minister under section 75 of the Act, report on—

- (a) the current state of SA Police, including its numbers, components, distribution and operational efficiency; and
- (b) the operations of SA Police; and
- (c) the offences reported in the State since the previous annual report; and
- (d) the formation and closure of police stations and offices; and
- (e) any other matter relevant to SA Police and its operations on which the Commissioner wishes to report or on which the Minister requires a report.

### **90—Remuneration on suspension, revocation of suspension**

- (1) If a person's appointment is suspended by the Commissioner under 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) Where the appointment of an employee is suspended under section 41 of the Act and the suspension is subsequently revoked—
  - (a) if the employee has been found guilty of an offence or breach of the Code, the Commissioner must, unless the Commissioner believes that the special circumstances of the case require otherwise, determine that the employee 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; and
  - (b) in any case, the Commissioner may determine that income received (from whatever source) by the employee during his or her suspension is to be deducted from any withheld remuneration that is to be paid to the employee on revocation of the suspension.

## 91—Transport costs on transfer

- (1) Subject to this regulation and any general or special order of the Commissioner, if a member of SA Police is transferred to another position in SA Police and is reasonably required to change his or her place of residence as a consequence of that transfer, the reasonable transportation costs of the member in connection with that change of residence (provided that the transportation is undertaken in a manner approved by the Commissioner) are payable by the South Australian Police Department.
- (2) Subregulation (1) does not apply to a member's transportation costs if the transfer is effected—
  - (a) at the member's request; or
  - (b) in consequence of fault on the part of the member,but the Commissioner may order that part or all of those costs be paid by the department.

## 92—Liability for loss of equipment

An employee to whom equipment is issued is responsible for that equipment and is liable for any loss of or damage to the equipment incurred as a result of his or her negligence.

## 93—Offence for former employees in the department to use or disclose information

- (1) A person who has been an employee in the department must not, after he or she ceases to be an employee in the department, use or disclose information gained by virtue of that employment if the use or disclosure of the information would constitute an offence or breach of the Code assuming that the person were still an employee in the department.  
Maximum penalty: \$1 250.
- (2) It is a defence to a charge of an offence against subregulation (1) if the person charged proves that he or she had lawful authority or excuse to so use or disclose the information.

## Schedule 1—Fees

### 1—Interpretation

In this Schedule—

**concession cardholder** means a person who is the holder of—

- (a) a current card or pass that entitles the person to travel on public passenger vehicles in this State at a concession fare; or
- (b) any other current concession card approved by the Minister;

**national police certificate** means a certificate issued in respect of a specified person on due application following a national police check carried out in respect of the person;

**volunteer** means a person who acts on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).



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**Fees**

1	For a national police certificate in respect of a specified person—	
	(a) if the applicant is a natural person (other than where paragraph (b) or (c) applies)	\$59.50
	(b) if the applicant is a concession cardholder (other than where paragraph (c) applies)	\$42.75
	(c) if the applicant is a volunteer who is required to obtain a national police certificate for the purposes of volunteering	\$38.50
	(d) if application is made on behalf of a Commonwealth, State or local government agency	\$59.50
	(e) if application is made on behalf of a commercial organisation	\$59.50
2	For a report on a search of fingerprint records in respect of a specified person	\$123.00
3	For a report on a search of fingerprint and other criminal history records in respect of a specified person	\$182.00
4	For a report on a search of police records to provide notification about the existence of a specified person's criminal history (other than where item 1 applies)	\$67.00
5	For a report on a search of police records to provide notification about the existence of a specified person's apprehension history (other than where item 1 applies)	\$70.50
6	For a report on a search of police incident reports ( <i>PIR</i> )—in respect of each PIR	\$70.50
7	For a report on a search of vehicle collision reports ( <i>VCR</i> ), in respect of each VCR—	
	(a) if the applicant is an approved insurer under Part 4 of the <i>Motor Vehicles Act 1959</i> ; or	\$26.25
	(b) in any other case	\$70.75

## Schedule 2—Notice of charge of breach of code

### Notice of charge of breach of code

*Police Act 1998*

To:

You have been charged with a breach of the Code of Conduct under the *Police Act 1998* as indicated in the charge/s attached dated the            day of            20    .

If you admit the charge/s, you may state any mitigating circumstances relating to it/them, either in writing, or at a personal interview with the Commissioner.

If you deny the charge/s, the matter will be heard and determined by the Police Disciplinary Tribunal.

You may detach the bottom portion of this notice and, after striking out the clauses that do not apply, deliver it within 21 days after receipt of this notice to the Registrar of the Police Disciplinary Tribunal.

If you do not admit the truth of the charge/s in writing (either on the bottom portion of this notice or otherwise) delivered to the Registrar of the Police Disciplinary Tribunal within 21 days after you receive this notice, you will be taken to have denied the truth of the charge/s.

Dated the            day of            20

Registrar, Police Disciplinary Tribunal:

To the Registrar Adelaide  
Police Disciplinary Tribunal  
Adelaide

- (1) I admit the truth of the charge/s against me dated the            day of            20    for a breach of the Code of Conduct.
- (2) I attach a statement of mitigating circumstances.
- (3) I desire to appear before the Commissioner to make a personal representation.
- (4) I do not admit the truth of the said charge/s.

*(Strike out clauses that do not apply.)*

Dated the            day of            20

Signed:



## **2—Leave rights**

Subject to these regulations, existing and accruing rights in respect of leave of employees remain in full force and effect.

## **3—Property currently in custody of SA Police**

- (1) Subject to subclause (2), Part 13 of these regulations applies to property received, seized or otherwise taken into the custody of SA Police before or after the commencement of these regulations.
- (2) The *Police Regulations 1999* continue in force in relation to found property claimed by the finder in accordance with those regulations prior to 1 July 1999.

## **4—Administrative acts**

An administrative act under a provision of the previous regulations that substantially corresponds to a provision of these regulations will, subject to later administrative acts and these regulations, be taken to be an administrative act under the corresponding provision of these regulations.

## Legislative history

### Notes

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

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2014	231	<i>Gazette 28.8.2014 p4169</i>	1.9.2014: r 2
2014	246	<i>Gazette 25.9.2014 p5993</i>	25.9.2014: r 2
<b>2015</b>	<b>96</b>	<b><i>Gazette 18.6.2015 p2654</i></b>	<b>1.7.2015: r 2</b>
2016	66	<i>Gazette 23.6.2016 p2173</i>	1.7.2016: r 2

### Provisions varied

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>25.9.2014</i>
<b>Sch 1</b>	<b>substituted by 96/2015 r 4</b>	<b>1.7.2015</b>
Sch 3		
Form 1	substituted by 246/2014 r 4	25.9.2014

### Historical versions

25.9.2014