

South Australia

Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2014

An Act to amend the *Independent Commissioner Against Corruption Act 2012*; and to make related amendments to the *Criminal Investigation (Covert Operations) Act 2009* and the *Crown Proceedings Act 1992*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Independent Commissioner Against Corruption Act 2012*

- 4 Amendment of section 4—Interpretation
- 5 Amendment of section 7—Functions
- 6 Amendment of section 14—Examiners and investigators
- 7 Amendment of section 16—Delegation
- 8 Amendment of section 23—Assessment
- 9 Amendment of section 24—Action that may be taken
- 10 Amendment of section 25—Public statements
- 11 Substitution of heading to Part 4 Division 2 Subdivision 2
- 12 Amendment of section 28—Production of statement of information
- 13 Insertion of section 29A
 - 29A Power to authorise inspection of financial records etc
- 14 Amendment of section 31—Enter and search powers under warrant
- 15 Amendment of section 32—Seizure and retention order procedures
- 16 Amendment of section 36—Prosecutions and disciplinary action
- 17 Substitution of heading to Part 4 Division 2 Subdivision 3
- 18 Insertion of section 36A
 - 36A Exercise of powers of inquiry agency
- 19 Amendment of section 37—Referral to inquiry agency
- 20 Amendment of section 38—Referral to public authority
- 21 Amendment of section 43—Referral of matter etc does not limit performance of functions
- 22 Amendment of section 45—Commissioner's annual report
- 23 Amendment of section 50—No obligation on persons to maintain secrecy
- 24 Amendment of section 51—Arrangements for provision of information by Commissioner of Police and Police Ombudsman
- 25 Amendment of section 54—Confidentiality
- 26 Insertion of section 56A
 - 56A Use of evidence or information obtained under Act

- 27 Amendment of Schedule 1—Public officers, public authorities and responsible Ministers
28 Amendment of Schedule 2—Examination and production of documents and other things

Schedule 1—Related amendments and transitional provision

Part 1—Related amendments to *Criminal Investigation (Covert Operations) Act 2009*

- 1 Amendment of section 4—Approval of undercover operations

Part 2—Related amendments to *Crown Proceedings Act 1992*

- 2 Amendment of section 14—Permission to issue certain subpoenas etc

Part 3—Transitional provision

- 3 Application of section 15
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2014*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Independent Commissioner Against Corruption Act 2012*

4—Amendment of section 4—Interpretation

Section 4, definition of *publish*—delete the definition and substitute:

publish means publish by—

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

seconded—a police officer or special constable is seconded to assist the Commissioner for the purposes of this Act if the police officer or special constable is employed in accordance with an arrangement whereby the police officer or special constable is granted leave without pay in relation to his or her appointment under the *Police Act 1998* for the purpose of being engaged as an employee under section 12 of this Act;

5—Amendment of section 7—Functions

Section 7(1)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) refer it to a law enforcement agency for investigation and prosecution;

6—Amendment of section 14—Examiners and investigators

Section 14—after subsection (4) insert:

- (4a) Unless otherwise agreed, by instrument in writing, between the Commissioner and the Commissioner of Police, a police officer or special constable seconded to assist the Commissioner may continue to exercise all powers and authorities vested in the person by or under the *Police Act 1998*, or another Act or law, as a member of South Australia Police or constable in the exercise of functions and powers under this Act during the period of secondment (and section 67(3) of the *Police Act 1998* does not apply in relation to the secondment).

7—Amendment of section 16—Delegation

Section 16(1)—delete subsection (1) and substitute:

- (1) Subject to subsection (1a), the Commissioner may delegate to a person (including a person for the time being performing particular duties or holding or acting in a specified position) a function or power under this or any other Act.
- (1a) The Commissioner—
 - (a) may only delegate a function or power under section 31 to an examiner; and
 - (b) may not delegate a prescribed function or power.

8—Amendment of section 23—Assessment

Section 23—after subsection (2) insert:

- (3) The Office or the Commissioner may, for the purpose of assessing a matter, by written notice, require an inquiry agency, public authority or public officer to produce a written statement of information about a specified matter, or to answer specified questions, within a specified period and in a specified form, verified if the written notice so requires by statutory declaration.
- (4) A person must not refuse or fail to comply with a requirement of a notice under subsection (3).

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

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

- (1) Section 24(2)—after "dealt with in 1" insert:
or more
- (2) Section 24(2)(a)—delete paragraph (a) and substitute:
 - (a) the matter may be referred to an inquiry agency and, if the Commissioner considers it appropriate, the Commissioner may give directions or guidance to the agency in respect of the matter;
 - (ab) the Commissioner may exercise the powers of an inquiry agency in respect of the matter;

10—Amendment of section 25—Public statements

Section 25—after paragraph (e) insert:

- (f) whether any person has requested that the Commissioner make the statement.

11—Substitution of heading to Part 4 Division 2 Subdivision 2

Heading to Part 4 Division 2 Subdivision 2—delete the heading and substitute:

Subdivision 2—Action in relation to corruption

12—Amendment of section 28—Production of statement of information

Section 28—delete "a public authority or public officer to produce a written statement of information about a specified matter" and substitute:

an inquiry agency, public authority or public officer to produce a written statement of information about a specified matter, or to answer specified questions,

13—Insertion of section 29A

After section 29 insert:

29A—Power to authorise inspection of financial records etc

- (1) For the purposes of an investigation into corruption in public administration, the Commissioner may, by written notice, authorise an investigator to inspect and take copies of financial records.
- (2) A copy of an authorisation under this section must be served on the relevant deposit holder not less than 3 clear days before the inspection is to occur, unless the Commissioner otherwise directs.
- (3) An investigator may, for the purpose of inspecting and taking copies of financial records in accordance with an authorisation under this section, give directions to, or impose requirements on, the deposit holder or an officer or employee of the deposit holder.
- (4) In this section—
deposit holder means—
 - (a) an ADI; or

- (b) a friendly society; or
- (c) a person or an organisation that holds money in accounts on behalf of other persons; or
- (d) a person who carries on business as a pawnbroker; or
- (e) an institution of a kind declared by regulation to be a deposit holder;

financial records means any of the following in the possession or control of a deposit holder:

- (a) books of account, accounts, and accounting records (including working papers and other documents necessary to explain the methods and calculations by which accounts are made up);
- (b) books, diaries, or other records used in the course of carrying on the business of a deposit holder;
- (c) cheques, bills of exchange, promissory notes, deposit slips, orders for the payment of money, invoices, receipts and vouchers;
- (d) securities, and documents of title to securities,

and includes such records kept in electronic form.

14—Amendment of section 31—Enter and search powers under warrant

- (1) Section 31(14), definition of ***private place***—after "or used" insert:
wholly or primarily for official purposes
- (2) Section 31(14), definition of ***private vehicle***—after "or used" insert:
wholly or primarily for official purposes

15—Amendment of section 32—Seizure and retention order procedures

- (1) Section 32(3)—delete subsection (3) and substitute:
 - (3) Subject to this section, if any thing has been made the subject of a retention order under section 31, the following provisions apply:
 - (a) if proceedings are not instituted for an offence relating to the thing within the designated period after the issuing of the retention order, the retention order is taken to have been discharged on the expiration of the designated period;
 - (b) if proceedings for an offence relating to the thing are instituted within the designated period after the issuing of the retention order, the court dealing with the proceedings may order that it be forfeited to the Crown (but if no such order is made, the retention order is taken to have been discharged);

(c) if the Commissioner or an investigator subsequently determines that the thing should be seized, an investigator may, without warrant, enter and search and, if necessary, use reasonable force to break into or open—

- (i) the place at which, or vehicle in which, the thing is reasonably suspected to be located; or
- (ii) part of, or anything in or on, a place at which, or vehicle in which, the thing is reasonably suspected to be located,

and may seize and retain the thing (and section 31(8) and (9) apply to the exercise of such powers as if the powers were being exercised pursuant to a warrant under that section).

(3a) If any thing has been seized under section 31 or under subsection (3)(c), the following provisions apply:

- (a) the thing must be held pending proceedings for an offence relating to the thing seized, unless the Commissioner, on application, authorises its release to the person from whom it was seized, or to a person who had legal title to it at the time of its seizure, subject to such conditions as the Commissioner thinks fit;
- (b) if proceedings for an offence relating to the thing are instituted, the court dealing with the proceedings may order—
 - (i) that it be forfeited to the Crown; or
 - (ii) that a person to whom it was released under paragraph (a) or the defendant pay to the Attorney-General an amount equal to its market value at the time of its seizure as the court thinks fit; or
 - (iii) that it be released to any person.

(2) Section 32(4), definition of *designated period*—delete "6 months" and substitute:
2 years

16—Amendment of section 36—Prosecutions and disciplinary action

Section 36—after its present contents (now to be designated as subsection (1)) insert:

- (2) The Commissioner may disclose to the relevant law enforcement agency or public authority information that the Commissioner has in respect of the matter.
- (3) The Commissioner need not obtain the views of a public authority before referring a matter under this section.

- (4) If a matter is referred to a public authority under subsection (1)(b), the Commissioner may give directions or guidance to the authority, which may include (without limitation)—
 - (a) a requirement that the authority submit a report or reports on action taken in respect of the matter as set out in the directions; and
 - (b) a recommendation as to the action that should be taken by the authority and the period within which it should be taken.
- (5) The Commissioner may not give directions to the Governor or a judicial officer or to the Attorney-General in relation to a matter concerning the Governor or a judicial officer.
- (6) The Commissioner may not give directions to a House of Parliament or the Joint Parliamentary Service Committee in relation to a matter concerning a public officer.
- (7) The Commissioner may revoke or vary directions or guidance given to a public authority or give further directions or guidance, as the Commissioner sees fit.
- (8) If the Commissioner is not satisfied that a public authority has duly and properly taken action in relation to a matter referred by the Commissioner, the Commissioner must inform the authority of the grounds of the Commissioner's dissatisfaction and give the authority an opportunity to comment within a specified time.
- (9) If, after considering any comments received from the public authority within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister responsible for the authority setting out the grounds of dissatisfaction, together with any comments from the authority.
- (10) If, after considering any comments received from the Minister responsible for the public authority within 21 days after the report was submitted to the Minister, the Commissioner is still not satisfied, the Commissioner may provide to the President of the Legislative Council and the Speaker of the House of Assembly a report setting out the grounds of dissatisfaction.
- (11) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.

17—Substitution of heading to Part 4 Division 2 Subdivision 3

Heading to Part 4 Division 2 Subdivision 3—delete the heading and substitute:

Subdivision 3—Action in relation to misconduct or maladministration

18—Insertion of section 36A

Before section 37 insert:

36A—Exercise of powers of inquiry agency

- (1) The Commissioner must, before deciding to exercise the powers of an inquiry agency in respect of a matter raising potential issues of misconduct or maladministration in public administration, take reasonable steps to obtain the views of the agency.
- (2) If the Commissioner decides to exercise the powers of an inquiry agency in respect of such a matter—
 - (a) the Commissioner may, by notice in writing to the agency, require that the agency refrain from taking action in respect of the matter or require that the agency only take action of a specified kind in relation to the matter; and
 - (b) the Commissioner—
 - (i) has all the powers of the agency; and
 - (ii) is bound by any statutory provisions governing the exercise of those powers (subject to such modifications as may be prescribed, or as may be necessary for the purpose),
as if the Commissioner constituted the agency; and
 - (c) the Commissioner must inform the agency of the outcome of the matter.
- (3) The Commissioner may at any time withdraw from exercising the powers of an inquiry agency, or decide to exercise such powers, as the Commissioner sees fit.

19—Amendment of section 37—Referral to inquiry agency

- (1) Section 37(1)—after "matter" insert:
raising a potential issue of misconduct or maladministration in public administration
- (2) Section 37(5)—delete subsection (5)
- (3) Section 37(6)(c)—delete paragraph (c)

20—Amendment of section 38—Referral to public authority

Section 38(1)—after "matter" insert:

raising a potential issue of misconduct or maladministration in public administration

21—Amendment of section 43—Referral of matter etc does not limit performance of functions

Section 43—delete "proceedings that may be before a judicial body or the fact that a person has been charged with an offence but, in that case, the Commissioner, Deputy Commissioner, examiner or investigator must endeavour to avoid, as far as practicable, prejudice to any person affected by the proceedings" and substitute:

the referral of the matter for prosecution or investigation and prosecution, the institution of any proceedings before a judicial body or the charging of a person with an offence (but in such a case the Commissioner, Deputy Commissioner, examiner or investigator must endeavour to avoid, as far as practicable, prejudice to any person affected by the referral or proceedings or who is charged with the offence)

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

Section 45(2)(b)(x)—delete "in respect of a referred matter"

23—Amendment of section 50—No obligation on persons to maintain secrecy

Section 50—delete "or investigation" and substitute:

, assessment, investigation or referral

24—Amendment of section 51—Arrangements for provision of information by Commissioner of Police and Police Ombudsman

Section 51—delete ", the Deputy Commissioner, examiners and investigators are given access to confidential information and databases for the purposes of" and substitute:

and other persons performing functions under this Act are given access to confidential information and databases for the purposes of assessments and

25—Amendment of section 54—Confidentiality

(1) Section 54(1)—after paragraph (a) insert:

(ab) for the purposes of referring a matter in accordance with this Act to a law enforcement agency, inquiry agency, public authority or public officer; or

(2) Section 54(1)—after paragraph (c) insert:

(ca) in accordance with an authorisation of the Commissioner given in accordance with the regulations; or

(3) Section 54(1)(d)—after "this" insert:

or another

- (4) Section 54(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:
- (2) Any disclosed information connected with a matter that is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act will be taken to be disclosed on the understanding that the information is confidential unless the person to whom the information is disclosed is informed in writing to the contrary by the Commissioner.

26—Insertion of section 56A

After section 56 insert:

56A—Use of evidence or information obtained under Act

- (1) Subject to this Act (but despite any other Act or law) evidence or information obtained (whether before or after the commencement of this section) by the lawful exercise of powers under this Act—
- (a) may be provided to, and may be received and used by—
- (i) law enforcement agencies and prosecution authorities for the purposes of any criminal investigation or proceedings or proceedings for the imposition of a penalty; and
- (ii) public authorities for the purposes of any disciplinary investigation or action; and
- (b) is not inadmissible in proceedings before a court merely because the evidence or information was obtained by the exercise of powers under this Act and not for the purposes of those proceedings.
- (2) No civil or criminal liability lies against a person in respect of any use of evidence or information permitted by this section.

27—Amendment of Schedule 1—Public officers, public authorities and responsible Ministers

Schedule 1—delete the following row in the table in Schedule 1:

an officer or employee appointed by the employing authority under the <i>Technical and Further Education Act 1975</i>	the employing authority under the <i>Technical and Further Education Act 1975</i>	the Minister responsible for the administration of the <i>Technical and Further Education Act 1975</i>
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28—Amendment of Schedule 2—Examination and production of documents and other things

Schedule 2, clause 3(9)—delete "published, or must not be published" and substitute:
communicated or provided to any person, or must not be communicated or provided

Schedule 1—Related amendments and transitional provision

Part 1—Related amendments to *Criminal Investigation (Covert Operations) Act 2009*

1—Amendment of section 4—Approval of undercover operations

- (1) Section 4—after subsection (1) insert:
 - (1a) An investigator under the *Independent Commissioner Against Corruption Act 2012* may apply to the Independent Commissioner Against Corruption to approve undercover operations for the purpose of an investigation into corruption in public administration under that Act where the suspected corruption involves, or may involve, serious criminal behaviour.
- (2) Section 4(2), (3), (5) and (6)—after "senior police officer" wherever occurring insert:

or the Independent Commissioner Against Corruption (as the case may be)
- (3) Section 4(4)(b)—delete "senior police officer" and substitute:

person

Part 2—Related amendments to *Crown Proceedings Act 1992*

2—Amendment of section 14—Permission to issue certain subpoenas etc

Section 14(1)—after "produce documents," insert:

in proceedings

Part 3—Transitional provision

3—Application of section 15

Section 32 of the *Independent Commissioner Against Corruption Act 2012*, as in force immediately after the commencement of section 15 of this Act, applies in relation to a thing—

- (a) that is, immediately before that commencement, subject to a retention order under section 32; or
- (b) that has been seized under section 32 and that is, immediately before that commencement, being held pending the institution or finalisation of proceedings for an offence relating to the thing,

as if the thing had been made subject to a retention order or had been seized after that commencement.