

South Australia

Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016

An Act to amend the *Independent Commissioner Against Corruption Act 2012*; and to make related amendments to the *Criminal Law Consolidation Act 1935*, the *Judicial Conduct Commissioner Act 2015* and the *Ombudsman Act 1972*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016*.

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 3—Primary objects

Section 3(2)—delete subsection (2) and substitute:

- (2) Whilst any potential issue of corruption, misconduct or maladministration in public administration may be the subject of a complaint or report under this Act and may be assessed and referred to a relevant body in accordance with this Act, it is intended—
 - (a) that the primary object of the Commissioner be to investigate corruption in public administration; and
 - (b) that matters raising potential issues of misconduct or maladministration in public administration will be referred to an inquiry agency or to a public authority (unless the circumstances set out in section 7(1)(cb) or (cc) apply).

5—Amendment of section 4—Interpretation

- (1) Section 4, definition of *inquiry agency*, (c)—delete paragraph (c)
- (2) Section 4, definition of *law enforcement agency*, (h)—delete "Misconduct" and substitute:

Corruption
- (3) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
 - (2) For the purposes of this Act, misconduct or maladministration in public administration will be taken to be *serious or systemic* if the misconduct or maladministration—
 - (a) is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and
 - (b) has significant implications for the relevant public authority or for public administration generally (rather than just for the individual public officer concerned).

6—Amendment of section 5—Corruption, misconduct and maladministration

- (1) Section 5(1)—after paragraph (b) insert:
 - (ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
- (2) Section 5—after subsection (5) insert:
 - (6) A reference in subsection (3) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.

7—Amendment of section 7—Functions

Section 7(1)(c)—delete paragraph (c) and substitute:

- (c) to refer complaints and reports to inquiry agencies, public authorities and public officers and to give directions or guidance to public authorities in dealing with misconduct and maladministration in public administration, as the Commissioner considers appropriate;
- (ca) to identify serious or systemic misconduct or maladministration in public administration;
- (cb) to exercise the powers of an inquiry agency in dealing with serious or systemic maladministration in public administration if satisfied that it is in the public interest to do so;
- (cc) to exercise the powers of an inquiry agency in dealing with serious or systemic misconduct in public administration if the Commissioner is satisfied that the matter must be dealt with in connection with a matter the subject of an investigation of a kind referred to in paragraph (a)(i) or a matter being dealt with in accordance with paragraph (cb);

8—Amendment of section 17—Functions and objectives

Section 17(c)—delete paragraph (c) and substitute:

- (c) to refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or make recommendations to the Commissioner in relation to complaints and reports;
- (ca) to give directions or guidance to public authorities in circumstances approved by the Commissioner;

9—Amendment of section 18—Organisational structure

Section 18—after subsection (4) insert:

- (5) Where this or any other Act confers a power on the Office or requires that the Office perform any function (including requiring that the Office make a determination, or form an opinion, as to any matter)—
 - (a) the power or function may only be exercised or performed by a person who is authorised to do so on behalf of the Office by the Commissioner; and
 - (b) the exercise of that power or the performance of that function by a person so authorised will be taken to be the exercise of that power or the performance of that function by the Office.

10—Amendment of section 23—Assessment

Section 23(1)—delete "recommendations must be made to the Commissioner accordingly" and substitute:

a determination made as to whether or not action should be taken to refer the matter or to make recommendations to the Commissioner

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

- (1) Section 24(2)(a)—delete "and, if the Commissioner considers it appropriate, the Commissioner may give directions or guidance to the agency in respect of the matter"
- (2) Section 24(2)(ab) and (b)—delete paragraphs (ab) and (b) and substitute:
 - (b) in the case of a matter raising potential issues of serious or systemic maladministration in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if satisfied that it is in the public interest to do so;
 - (c) in the case of a matter raising potential issues of serious or systemic misconduct in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if the Commissioner is satisfied that the matter must be dealt with in connection with a matter the subject of an investigation of a kind referred to in subsection (1)(a) or a matter being dealt with in accordance with paragraph (b);
 - (d) the matter may be referred to a public authority and directions or guidance may be given to the authority in respect of the matter.

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

- (1) Section 31(1)—after "investigator" second occurring insert:

or a police officer
- (2) Section 31(2)—delete subsection (2) and substitute:
 - (2) A judge of the Supreme Court may, on application by an investigator, issue a warrant authorising an investigator or a police officer to enter and search any place or vehicle.
- (3) Section 31(7)—after "investigator" first occurring insert:

or a police officer
- (4) Section 31(7)(c)(iv)—after "investigator" insert:

or police officer
- (5) Section 31(7)(c)(v)—after "investigator" first occurring insert:

or police officer
- (6) Section 31(7)(c)(vi)—after "investigator" first and third occurring insert:

or police officer
- (7) Section 31(8), (9) and (10)—after "investigator" wherever occurring insert:

or police officer

(8) Section 31(14)—delete subsection (14) and substitute:

(14) The provisions set out in Schedule 3 apply in relation to a warrant under this section.

13—Amendment of section 36—Prosecutions and disciplinary action

(1) Section 36(1)—after "investigation" second occurring insert:

(whether relating to a potential issue of corruption in public administration or of misconduct or maladministration in public administration)

(2) Section 36(2)—after "public authority" insert:

any evidence or

(3) Section 36(7) and (8)—delete subsections (7) and (8) and substitute:

(7) The Commissioner may at any time—

- (a) revoke a referral to a public authority; or
- (b) revoke or vary directions or guidance given to a public authority or give further directions or guidance,

as the Commissioner sees fit.

(8) If—

- (a) a referral of a matter by the Commissioner under this section included a requirement that the public authority submit a report or reports on action taken in respect of the matter; and
- (b) the Commissioner is not satisfied that a public authority has duly and properly taken action in relation to the matter,

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.

14—Amendment of section 36A—Exercise of powers of inquiry agency

(1) Section 36A(1)—after "deciding" insert:

(in accordance with section 24(2)(b) or (c))

(2) Section 36A(2)—after "decides" insert:

(in accordance with section 24(2)(b) or (c))

15—Substitution of section 37

Section 37—delete the section and substitute:

37—Referral to inquiry agency

The Commissioner must, before referring a matter raising a potential issue of misconduct or maladministration in public administration to an inquiry agency, take reasonable steps to obtain the views of the agency as to the referral.

16—Amendment of section 38—Referral to public authority

- (1) Section 38(1), (2) and (5)—after "Commissioner" wherever occurring insert:
or the Office
- (2) Section 38(3) and (4)—delete "The Commissioner may not" wherever occurring and substitute in each case:
Neither the Commissioner nor the Office may
- (3) Section 38(6) and (7)—delete subsections (6) and (7) and substitute:
 - (6) The Commissioner may at any time—
 - (a) revoke a referral to a public authority; or
 - (b) revoke or vary directions or guidance given to a public authority or give further directions or guidance,as the Commissioner sees fit.
 - (7) If the Office has given directions or guidance to a public authority, the Office may revoke or vary the directions or guidance or give further directions or guidance.
 - (7a) If—
 - (a) a referral of a matter by the Commissioner or the Office under this section included a requirement that the public authority submit a report or reports on action taken in respect of the matter; and
 - (b) the Commissioner is not satisfied that a public authority has duly and properly taken action in relation to the matter,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.

17—Amendment of section 42—Reports

- (1) Section 42(1)(b)—delete paragraph (b) and substitute:
 - (b) findings or recommendations resulting from completed investigations by the Commissioner in respect of matters raising potential issues of corruption, misconduct or maladministration in public administration; or
 - (c) other matters arising in the course of the performance of the Commissioner's functions that the Commissioner considers to be in the public interest to disclose.
- (2) Section 42(2)—delete subsection (2) and substitute:
 - (1a) The Commissioner must not—
 - (a) prepare a report under this section setting out findings or recommendations resulting from a completed investigation into a potential issue of corruption in public administration unless—

- (i) all criminal proceedings arising from that investigation are complete; or
 - (ii) the Commissioner is satisfied that no criminal proceedings will be commenced as a result of the investigation, in which case the report must not identify any person involved in the investigation; or
 - (b) prepare a report under this section setting out findings or recommendations resulting from a completed investigation into a potential issue of misconduct or maladministration in public administration that identifies any person involved in the particular matter or matters the subject of the investigation unless the person consents.
- (2) A copy of the report must be provided—
- (a) in the case of a report of a kind referred to in subsection (1)(b)—to the public authority responsible for any public officer to whom the report relates and to the Minister responsible for that public authority; and
 - (b) in any case—to the Attorney-General, the President of the Legislative Council and the Speaker of the House of Assembly.

18—Amendment of section 44—Public authority to assist with compliance by public officers

- (1) Section 44(1)—delete "of the Commissioner, the Deputy Commissioner, an examiner or an investigator" and substitute:
- issued
- (2) Section 44(2)—delete "at the direction, or as reasonably required by a direction, of the Commissioner, the Deputy Commissioner, an examiner or an investigator" and substitute:
- in accordance with a direction, or as reasonably required by a direction,
issued

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

- Section 45(2)(b)(ix)—delete "by the Commissioner in referring matters" and substitute:
- in referring matters under this Act

20—Substitution of section 46

- Section 46—delete the section and substitute:

46—Reviews

Reviews must be conducted in accordance with Schedule 4.

21—Amendment of section 48—Commissioner's website

Section 48(h)—delete "reviews under section 46" and substitute:

annual reviews laid before Parliament in accordance with Schedule 4

22—Substitution of section 54

Section 54—delete the section and substitute:

54—Confidentiality

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

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

- (2) Despite subsection (1), a person engaged in the administration of this Act may disclose information—
 - (a) for the purposes of the administration or enforcement of this Act; or
 - (b) for the purposes of referring a matter in accordance with this Act to a law enforcement agency, inquiry agency, public authority or public officer; or
 - (c) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
 - (d) for the performance of the functions of the Office or the Commissioner under another Act; or
 - (e) as otherwise required or authorised by this or another Act.
- (3) A person who receives information knowing that the information is connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act must not disclose that information unless—
 - (a) the person is authorised in writing by the Commissioner or by a person approved by the Commissioner under this section to give an authorisation; or
 - (b) the disclosure of that information is for the purpose of—
 - (i) dealing with a matter referred under this Act by the Commissioner or the Office; or
 - (ii) a criminal proceeding, a proceeding for the imposition of a penalty or disciplinary action; or
 - (iii) a person obtaining legal advice or legal representation or for the purposes of determining whether a person is entitled to an indemnity for legal costs; or

- (iv) a person obtaining medical or psychological assistance from a medical practitioner or psychologist; or
 - (c) the information relates to the person and is disclosed by the person to a close family member of the person.
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- (4) For the purposes of subsection (3)(c), a person is a *close family member* of another person if—
- (a) 1 is a spouse of the other or is in a close personal relationship with the other; or
 - (b) 1 is a parent or grandparent of the other (whether by blood or by marriage); or
 - (c) 1 is a brother or sister of the other (whether by blood or by marriage); or
 - (d) 1 is a guardian or carer of the other.

23—Amendment of section 56A—Use of evidence or information

Section 56A(1)—delete subsection (1) and substitute:

- (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 in relation to suspected corruption, misconduct or maladministration in public administration—
 - (a) may be used for the purposes of any other investigation in relation to suspected corruption, misconduct or maladministration in public administration; and
 - (b) 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 in relation to suspected corruption, misconduct or maladministration in public administration,whether the investigation, proceedings or action relate to, or arise from, the same matter or a different matter; and
 - (c) is not inadmissible in proceedings before a court merely because the evidence or information was not obtained for the purposes of those proceedings.

- (1a) For the purposes of subsection (1), evidence or information will be taken to be obtained by a lawful exercise of powers in relation to suspected corruption, misconduct or maladministration in public administration notwithstanding a jurisdictional error in the exercise of those powers.

24—Amendment of section 59—Evidence

Section 59—after its present contents (now to be designated as subsection (1)) insert:

- (2) In proceedings, a certificate apparently executed by the Commissioner certifying that during a period specified in the certificate the Commissioner suspected that an offence may have been directly or indirectly connected with, or a part of, a course of activity involving the commission of corruption in public administration for the purposes of section 5(2) constitutes proof, in the absence of proof to the contrary, of the matters so certified.

25—Insertion of Schedules 3 and 4

After Schedule 2 insert:

Schedule 3—Search warrants and privilege

1—Interpretation

In this Schedule—

claimant—see clause 2(1)(b);

searcher—see clause 2(1)(a).

2—Privilege claims in relation to search warrants

- (1) This clause applies if—
- (a) a person executing a warrant (the *searcher*) wishes to inspect, copy or seize a document or other thing under the warrant; and
 - (b) a person who is entitled to claim the privilege (the *claimant*) claims that the document or other thing is the subject of privilege.
- (2) The searcher must consider the claim of privilege and either—
- (a) cease exercising the power under the warrant in relation to the document or other thing over which the claim of privilege is made; or
 - (b) require the claimant to immediately seal the document or other thing in an envelope, or otherwise secure it if it cannot be sealed in an envelope, and give it to the searcher.
- (3) The searcher must not inspect the document or other thing in considering the claim of privilege.

- (4) If the searcher requires the claimant to give the document or other thing to the searcher under subclause (2)(b), the searcher must—
 - (a) notify the Commissioner as soon as is reasonably practicable; and
 - (b) as soon as is reasonably practicable, give the document or other thing to the proper officer of the Supreme Court to be held in safe custody.
- (5) Subject to clause 4, a person must not open a sealed envelope or interfere with a document or thing secured otherwise than in an envelope before delivery to the proper officer of the Supreme Court.

3—Application to Supreme Court to determine privilege

- (1) Within 7 days after a sealed envelope or document or thing secured otherwise than in an envelope is given to the proper officer of the Supreme Court in accordance with clause 2, the claimant may apply to the Supreme Court to determine whether or not the document or other thing is the subject of privilege.
- (2) If no application is made under subclause (1) within the period of 7 days, the proper officer must give the document or thing to the Commissioner.
- (3) The claimant must give notice of the application to the Commissioner within a reasonable time before the hearing of the application.
- (4) Notice under subclause (3) must be in the prescribed form.
- (5) The Commissioner is entitled to appear and be heard on the hearing of the application.

4—Determination of privilege claims

- (1) On an application under clause 3, the Supreme Court must determine whether or not the document in the sealed envelope or the document or thing secured otherwise than in an envelope is the subject of privilege (in whole or in part).
- (2) For the purpose of making a determination under subclause (1), the Judge constituting the Supreme Court and any other person authorised by the Court may—
 - (a) open the sealed envelope or access the document or thing secured otherwise than in an envelope; and
 - (b) inspect the document or thing.
- (3) If the Supreme Court determines that the whole of the document or thing is the subject of privilege—
 - (a) the Court must order that the document or thing be returned to the claimant; and
 - (b) the proper officer must return the document or thing to the claimant.

- (4) If the Supreme Court determines that the document or thing is not the subject of privilege—
- (a) the Court must order that the document or thing be given to the Commissioner; and
 - (b) the proper officer must release the document or thing accordingly.
- (5) If the Supreme Court determines that a part of the document or thing is the subject of privilege (the *privileged part*) and a part is not (the *non-privileged part*)—
- (a) if the document or thing is able to be divided into the privileged part and the non-privileged part—
 - (i) the Court must so divide the document or thing and order that the privileged part be returned to the claimant and the non-privileged part be given to the Commissioner; and
 - (ii) the proper officer must return the privileged part to the claimant and release the non-privileged part to the Commissioner; or
 - (b) if paragraph (a) doesn't apply but the Court is of the opinion that it would be possible to produce a copy of the document or thing from which the privileged part is able to be redacted—
 - (i) the Court must make such orders as the Court thinks fit for the production of such a copy; and
 - (ii) the Court must order that the copy so produced be given to the Commissioner and that the document or thing be returned to the claimant; and
 - (iii) the proper officer must—
 - (A) release the copy so produced to the Commissioner; and
 - (B) return the document or thing to the claimant; or
 - (c) in any other case—
 - (i) the Court must order that the document or thing be returned to the claimant; and
 - (ii) the proper officer must return the document or thing to the claimant.
- (6) Except as provided in subclause (2), a person must not open the sealed envelope or otherwise have access to the document or thing contained in the sealed envelope before—
- (a) the Supreme Court determines the claim of privilege; or

(b) the document or thing is given to the claimant.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(7) Except as provided in subclause (2), a person must not open or otherwise have access to a document or thing secured otherwise than in an envelope before—

(a) the Supreme Court determines the claim of privilege; or

(b) the document or thing is returned to the claimant.

Maximum penalty: \$5 000 or imprisonment for 1 year.

Schedule 4—Reviews

1—Interpretation

In this Schedule—

Committee means the Crime and Public Integrity Policy Committee established under the *Parliamentary Committees Act 1991*;

employees of the Commissioner includes staff subject to an arrangement under section 13;

employees of the Office means the employees assigned to the Office in accordance with section 18(3);

relevant complaint means a complaint made in accordance with any requirements prescribed by the regulations relating to an abuse of power, impropriety or other misconduct on the part of the Commissioner or employees of the Commissioner or of the Office;

reviewer—see clause 2(1).

2—Appointment of reviewer

- (1) The Attorney-General must appoint a person (the *reviewer*)—
 - (a) to conduct annual reviews examining the operations of the Commissioner and the Office during each financial year; and
 - (b) to conduct reviews relating to relevant complaints received by the reviewer; and
 - (c) to conduct other reviews at the request of the Attorney-General or the Committee; and
 - (d) to perform other functions conferred on the reviewer by the Attorney-General or by another Act.
- (2) The reviewer—
 - (a) subject to subclause (3), must be a person who would be eligible for appointment as the Commissioner; and
 - (b) will be appointed under this section for a term not exceeding 3 years and on conditions determined by the Attorney-General and, at the end of a term of appointment, will be eligible for reappointment.

- (3) Despite section 8(3)(b), a person who is not appointed as a judicial officer on a permanent basis may be appointed as the reviewer.
- (4) The appointment of the reviewer may be terminated by the Attorney-General on the ground that the reviewer—
 - (a) has been guilty of misconduct; or
 - (b) has been convicted of an offence punishable by imprisonment; or
 - (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
 - (d) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
 - (f) is incompetent or has neglected the duties of the position.
- (5) The appointment of the reviewer is terminated if the reviewer—
 - (a) becomes a member, or a candidate for election as a member, of the Parliament of a State or the Commonwealth or a Legislative Assembly of a Territory of the Commonwealth; or
 - (b) is sentenced to imprisonment for an offence.
- (6) The reviewer may resign by notice in writing to the Attorney-General of not less than 3 months (or such shorter period as is accepted by the Attorney-General).
- (7) The reviewer is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

3—Reviews

- (1) Without limiting the matters that may be the subject of a review, the reviewer—
 - (a) must, in the case of an annual review, consider the following in relation to the financial year to which the review relates:
 - (i) whether the powers under this Act were exercised in an appropriate manner, including—
 - (A) whether there was any evidence of—
 - maladministration in public administration on the part of the Commissioner or employees of the Commissioner or of the Office; or
 - unreasonable delay in the conduct of investigations under this Act; or

- unreasonable invasions of privacy by the Commissioner or employees of the Commissioner or of the Office; and
- (B) whether undue prejudice to the reputation of any person was caused;
- (ii) whether the practices and procedures of the Commissioner and the Office were effective and efficient;
 - (iii) whether the operations made an appreciable difference to the prevention or minimisation of corruption, misconduct and maladministration in public administration; and
- (b) may examine any particular exercises of power by the Commissioner or the Office; and
- (c) may make any recommendations to the Commissioner or to the Attorney-General that the reviewer thinks fit.
- (2) The Commissioner must ensure that the reviewer is provided with such information as the reviewer may require for the purpose of conducting a review.
- (3) On completing a review, or at any time during a review, the reviewer may do either or both of the following:
- (a) refer a matter to the relevant law enforcement agency for further investigation and potential prosecution;
 - (b) refer a matter to the Commissioner or a public authority for further investigation and potential disciplinary action against a public officer for whom the Commissioner or authority is responsible.
- (4) Before referring a matter under subclause (3), the reviewer must notify the Commissioner of the proposed referral unless the reviewer is of the opinion that it would be inappropriate to do so in the circumstances of the case.
- (5) The reviewer may disclose to the relevant law enforcement agency, or to the Commissioner or public authority, information that the reviewer has in respect of the matter.
- (6) A report on a review must be presented to the Attorney-General—
- (a) in the case of an annual review examining the operations of the Commissioner and the Office and relevant complaints received during a financial year—on or before 30 September in the following financial year; or
 - (b) in any other case—as soon as practicable after completion of the review.

- (7) The reviewer—
 - (a) must, in preparing a report on a review, consider the effect of the proposed report on any complaint, report, assessment, investigation or referral under this Act; and
 - (b) must not include information in a report if publication of the information would constitute an offence against section 56.
- (8) The Attorney-General must, within 12 sitting days after receipt of a report on an annual review, cause copies of the report to be laid before each House of Parliament.

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Criminal Law Consolidation Act 1935*

1—Amendment of section 237—Definitions

Section 237, definition of *public officer*—delete the definition and substitute:

public officer means a public officer specified in Schedule 1 of the *Independent Commissioner Against Corruption Act 2012* (and *public office* has a corresponding meaning);

Part 2—Amendment of *Judicial Conduct Commissioner Act 2015*

2—Insertion of section 29A

After section 29 insert:

29A—Other reviews

If the person appointed as the Independent Commissioner Against Corruption is also appointed as the Commissioner under this Act, a review conducted in accordance with Schedule 4 of that Act may relate to conduct of the person in the administration, or purported administration, of this Act.

Part 3—Amendment of *Ombudsman Act 1972*

3—Insertion of section 14B

After section 14A insert:

14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
 - (a) will be taken to relate to administrative acts for the purposes of this Act; and
 - (b) must be dealt with under this Act as if a complaint had been made under this Act and—

- (i) if the matter was the subject of a complaint or report under the ICAC Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
 - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.
- (2) In this section—

Commissioner means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

ICAC Act means *Independent Commissioner Against Corruption Act 2012*;

Office means the Office for Public Integrity under the ICAC Act.

Part 4—Transitional provisions

4—Exercise of powers of inquiry agency

If, immediately before the commencement of this Act, the Independent Commissioner Against Corruption was taking action in respect of a matter raising potential issues of misconduct or maladministration in public administration by exercising the powers of an inquiry agency, the *Independent Commissioner Against Corruption Act 2012*, as in force immediately before the commencement of this Act, continues to apply in relation to the matter unless and until the Commissioner determines to withdraw from exercising the powers of an inquiry agency in accordance with section 36A(3) of that Act (as so in force).

5—Application of Schedule 3

Despite section 31(14) of the *Independent Commissioner Against Corruption Act 2012* (as in force after the commencement of section 12 of this Act), the provisions of Schedule 3 of that Act do not apply in relation to a warrant issued before the commencement of section 12 or any items seized pursuant to such a warrant.