

South Australia

# **Independent Commissioner Against Corruption Regulations 2013**

under the *Independent Commissioner Against Corruption Act 2012*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Independent Commissioner Against Corruption Regulations 2013*.

### 3—Interpretation

In these regulations—

*Act* means the *Independent Commissioner Against Corruption Act 2012*.

### 3A—Declared law enforcement agency

In accordance with paragraph (m) of the definition of *law enforcement agency* in section 4 of the Act, the Australian Competition and Consumer Commission established by section 6A of the *Competition and Consumer Act 2010* of the Commonwealth is declared to be a law enforcement agency.

## Part 2—Procedures for urgent applications for warrant to Commissioner

### 4—Procedures for urgent applications for warrant to Commissioner (section 31(4) of Act)

- (1) If an application for a warrant is made to the Commissioner by fax or email, the following provisions apply:
  - (a) the applicant must be available to speak to the Commissioner by telephone;
  - (b) the Commissioner is entitled to assume, without further inquiry, that a person who identifies himself or herself as the applicant acting in the capacity of an investigator during a telephone conversation with the Commissioner is indeed the applicant acting in that capacity;
  - (c) the application must be accompanied (through fax or email) by a statutory declaration made by the applicant verifying the application;
  - (d) the Commissioner must forward the warrant to the applicant by fax or email.
- (2) If an application for a warrant is made to the Commissioner by telephone, the following provisions apply:
  - (a) the applicant must inform the Commissioner of the applicant's name and identify himself or herself as an investigator and the Commissioner, on receiving that information, is entitled to assume its accuracy without further inquiry;
  - (b) the applicant must inform the Commissioner of the purpose for which the warrant is required and the grounds on which it is sought;

- (c) the Commissioner may, on being satisfied as to the grounds for the issue of the warrant, inform the applicant of the facts on which the Commissioner relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make a statutory declaration verifying those facts;
- (d) the Commissioner must inform the applicant of the terms of the warrant;
- (e) the applicant must fill out and sign a warrant form (the *duplicate warrant*) that—
  - (i) specifies the person authorised to exercise the powers conferred by the warrant; and
  - (ii) specifies the place or vehicle to which the warrant relates; and
  - (iii) states whether entry is authorised at any time of the day or night or during specified hours of the day or night;
- (f) the applicant must, as soon as practicable after the issue of the warrant, forward to the Commissioner a statutory declaration verifying the facts referred to in paragraph (c) and a copy of the duplicate warrant.

## Part 3—Property in custody of Commissioner

### 5—Application of Part

This Part applies subject to any other Act or regulation.

### 6—Interpretation

In this Part, unless the contrary intention appears—

*money* includes a negotiable instrument;

*prescribed account* means an ADI account established and maintained by the Commissioner for the purpose of holding money that is in the custody of the Commissioner or the proceeds of the sale of other things in the custody of the Commissioner;

*property* includes anything that has been seized or made the subject of a retention order under section 31 of the Act;

*unclaimed property* means property that has been in the custody of the Commissioner for the period of at least 2 months after the designated period in respect of the property 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.

## 7—Custody of property

- (1) The Commissioner must ensure the safety and security of property in the custody of the Commissioner.
- (2) If an investigator seizes or otherwise takes custody of property, the investigator 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 seized or otherwise obtained.
- (3) An investigator must not use property that is in the custody of the Commissioner for purposes other than—
  - (a) those for which it was received, seized or otherwise taken; or
  - (b) purposes authorised under these regulations.

## 8—Money

- (1) Money that is in the custody of the Commissioner 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 by the Commissioner.
- (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) 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.

## 9—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 the Commissioner.

## 10—Disposal of property

Subject to section 32(3) of the Act, property that is in the custody of the Commissioner 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 the order;
- (b) if proceedings to determine the ownership of the property have commenced, the property must be retained by the Commissioner until those proceedings have been completed or discontinued;

- (c) 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—
  - (i) cannot be located after reasonable inquiry; or
  - (ii) does not exercise his or her right to recover the property;
- (d) if the property is unclaimed property, it must be disposed of as unclaimed property in accordance with these regulations.

### **11—Perishable, unsafe, unlawful etc property**

Despite these regulations—

- (a) if property in the custody of the Commissioner is of such a nature that no person is lawfully entitled to it, the Commissioner must, if the property is not required for use in connection with any legal proceedings or official investigations, cause the property to be destroyed; and
- (b) subject to paragraph (a), if it appears to the Commissioner that property in the custody of the Commissioner 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 the Commissioner to retain the property,

the Commissioner may cause the property to be sold, destroyed or otherwise disposed of at such time and in such manner as the Commissioner thinks fit.

### **12—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 the Commissioner to be 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 the Commissioner is to be dealt with in accordance with regulation 8.

### **13—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 the Commissioner in relation to the property;
  - (c) thirdly, by payment of the balance into a prescribed account.

### **14—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.

### **15—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 the Commissioner, 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.

### **16—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 4—Miscellaneous**

### **16A—Deposit holders (section 29A of Act)**

- (1) In accordance with section 29A(4)(e) of the Act, an institution that is a credit provider is declared to be a deposit holder.
- (2) In this regulation—

*credit provider* means a credit provider within the meaning of the *National Credit Code* in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth.

### **16B—Authorisation for disclosure of information (section 54 of Act)**

For the purposes of section 54(1)(ca) of the Act, the Commissioner may give an authorisation to a person to disclose information if the Commissioner has determined that the disclosure would be in the public interest.

### **17—Service (section 58 of Act)**

- (a1) Without derogating from section 58(e) of the Act, a notice or other document required or authorised to be given to or served on a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be transmitted by email to an email address provided by the company or registered body for that purpose (in which case the notice or other document will be taken to have been given or served at the time of transmission).

- (1) If a person refuses to accept personal service of a notice or other document that is required to be served on the person, the notice or document will be taken to have been served personally on the person if the person serving the notice or document—
  - (a) puts it down in the person's presence; and
  - (b) tells the person what the notice or document is.
- (2) It is not necessary to show the original of the notice or document to the person being served.
- (3) A summons issued under clause 4(1) of Schedule 2 of the Act requiring a person to appear before an examiner must be served on the person—
  - (a) at least 5 days before the day specified in the summons as the day on which the person is required to appear before the examiner; or
  - (b) at an earlier or later date specified in the summons by the examiner issuing the summons.

## 18—Witness and production fees

- (1) Subject to this regulation, the following amounts may be certified by the Commissioner as payable in respect of a person summoned to attend before an examiner at an examination:
  - (a) the actual amount lost, or the expenses necessarily incurred, by the person by reason of his or her absence from home or business for the purpose of attending at the examination or \$100 per day, whichever is the lesser;
  - (b) an allowance for the travelling expenses of the person in attending at the examination, calculated on the basis of travel by public transport to and from the place where the examination is held, or, if the use of public transport by the person is not reasonably practicable, \$0.20 per kilometre necessarily travelled to and from the place where the examination is held;
  - (c) if the person is required at the examination to produce documents or things referred to in the summons—the expenses incurred by the person in complying with this requirement as determined by the Commissioner to be just and reasonable in the circumstances;
  - (d) if the person is necessarily absent from home overnight—the accommodation and meal expenses reasonably incurred by the person;
  - (e) if the person is necessarily accompanied by another person—an amount equal to that which could be certified in accordance with these regulations in respect of that other person if he or she were required to attend before the examiner at the examination.
- (2) If—
  - (a) the amount lost, or the expenses incurred by the person exceed the amount determined in accordance with subregulation (1)(a); or
  - (b) the travelling expenses incurred by the person exceed the amount determined in accordance with subregulation (1)(b),

the amount certified may include such further amount as the Commissioner thinks just and reasonable in the circumstances.

- (3) Subject to this regulation, if a person is required by notice in writing to produce a document or thing specified in the notice at a specified time and place, the Commissioner may certify that an amount determined by the Commissioner to be just and reasonable in the circumstances is payable to the person for expenses incurred in complying with the requirement.
- (4) A claim for fees or expenses under this regulation must be verified by a declaration in writing signed by the person making the claim.
- (5) No amount is to be certified in respect of a person required to attend at an examination who is an officer or employee of the State or Commonwealth, including a police officer but excluding an officer or employee who is on leave during the period of attendance at the examination.

### **19—Declared public officers, public authorities and responsible Ministers (Schedule 1 of Act)**

The table below specifies—

- (a) public officers; and
- (b) the public authorities responsible for the officers; and
- (c) the Ministers responsible for the public authorities,

that are declared in accordance with Schedule 1 of the Act.

<b>Public officers</b>	<b>Public authority</b>	<b>Minister</b>
a private certifier within the meaning of the <i>Development Act 1993</i>	the Minister responsible for the administration of the <i>Development Act 1993</i>	Premier
an authorised examiner appointed under the <i>Motor Vehicles Act 1959</i> (other than a police officer)	the Registrar of Motor Vehicles under the <i>Motor Vehicles Act 1959</i>	the Minister responsible for the administration of the <i>Motor Vehicles Act 1959</i>

### **20—Prescribed form (Schedule 3 of Act)**

Notice of an application under Schedule 3 clause 3 of the Act must be in the form prescribed in Schedule 1.

### **21—Relevant complaint (Schedule 4 of Act)**

A relevant complaint under Schedule 4 of the Act—

- (a) may only be made by—
  - (i) email addressed to [icacreviewer@sa.gov.au](mailto:icacreviewer@sa.gov.au); or
  - (ii) mail addressed to The Reviewer, GPO Box 2371, Adelaide, SA, 5001; and
- (b) must include—
  - (i) details of the alleged abuse of power, impropriety or other misconduct on the part of the Commissioner or employees of the Commissioner or of the Office; and
  - (ii) contact details for the complainant.

## **Schedule 1—Prescribed form**

### **NOTICE OF APPLICATION TO DETERMINE CLAIM OF PRIVILEGE**

*Independent Commissioner Against Corruption Act 2012* Schedule 3 Clause 3

To: INDEPENDENT COMMISSIONER AGAINST CORRUPTION

Address: Level 1, 55 Currie St ADELAIDE 5000

Claimant: [insert name of claimant]

Address: [insert address of claimant]

You are notified that, having made a claim of privilege in relation to a document or a thing at a search of [insert place or vehicle] on [insert date], the claimant has applied to the Supreme Court under Schedule 3 Clause 3 *Independent Commissioner Against Corruption Act 2012* for a determination of the claim of privilege with respect to [list documents or other things over which the claim is made\*] on the basis that [identify nature of the claim\*].

\* attach schedule if insufficient space

A copy of the application bearing the seal of the Supreme Court is attached.

The application will be heard in the Supreme Court at 1 Gouger St, Adelaide on [insert hearing date] at [insert time of hearing] or so soon afterwards as the business of the Court allows.

Signed.....

Name: [insert name]

Claimant/Solicitor for the Claimant (delete whichever is inapplicable)

Date: [insert date]

Address for service: [insert address for service]

## 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
2013	204	<i>Gazette 15.8.2013 p3507</i>	1.9.2013: r 2
2014	282	<i>Gazette 11.12.2014 p6762</i>	11.12.2014: r 2
2015	217	<i>Gazette 15.10.2015 p4611</i>	15.10.2015: r 2
2017	198	<i>Gazette 11.7.2017 p2851</i>	15.7.2017: r 2
<b>2017</b>	<b>284</b>	<b><i>Gazette 26.9.2017 p4193</i></b>	<b>26.9.2017: r 2</b>
2019	176	<i>Gazette 27.6.2019 p2556</i>	1.7.2019: 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		
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>11.12.2014</i>
r 3A	inserted by 217/2015 r 4	15.10.2015
Pt 4		
rr 16A and 16B	inserted by 217/2015 r 5	15.10.2015
r 17		
r 17(a1)	inserted by 217/2015 r 6	15.10.2015
r 19	inserted by 282/2014 r 4 varied by 217/2015 r 7 <b>varied by 284/2017 r 4</b>	11.12.2014 15.10.2015 <b>26.9.2017</b>
rr 20 and 21	inserted by 198/2017 r 4	15.7.2017
Sch 1	inserted by 198/2017 r 4	15.7.2017

## Historical versions

11.12.2014

15.10.2015

15.7.2017