

South Australia

Independent Commissioner Against Corruption Bill 2012

A BILL FOR

An Act to establish the Independent Commissioner Against Corruption and the Office for Public Integrity; to make related amendments to the *Australian Crime Commission (South Australia) Act 2004*, the *Child Sex Offenders Registration Act 2006*, the *Correctional Services Act 1982*, the *Criminal Investigation (Covert Operations) Act 2009*, the *Criminal Law Consolidation Act 1935*, the *Criminal Law (Forensic Procedures) Act 2007*, the *Defamation Act 2005*, the *Freedom of Information Act 1991*, the *Legal Practitioners Act 1981*, the *Listening and Surveillance Devices Act 1972*, the *Local Government Act 1999*, the *Ombudsman Act 1972*, the *Parliamentary Committees Act 1991*, the *Police Act 1998*, the *Police (Complaints and Disciplinary Proceedings) Act 1985*, the *Protective Security Act 2007*, the *Public Finance and Audit Act 1987*, the *Public Sector Act 2009*, the *Shop Theft (Alternative Enforcement) Act 2000*, the *State Records Act 1997*, the *Summary Offences Act 1953*, the *Terrorism (Preventative Detention) Act 2005*, the *Whistleblowers Protection Act 1993* and the *Witness Protection Act 1996*; and for other purposes.

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71 Amendment of section 21—Offences

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 Act 2012*.

2—Commencement

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

3—Primary objects

(1) The primary objects of this Act are—

(a) to establish the Independent Commissioner Against Corruption with functions designed to further—

10 (i) the identification and investigation of corruption in public administration; and

15 (ii) the prevention or minimisation of corruption, misconduct and maladministration in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures; and

(b) to establish the Office for Public Integrity to manage complaints about public administration with a view to—

(i) the identification of corruption, misconduct and maladministration in public administration; and

20 (ii) ensuring that complaints about public administration are dealt with by the most appropriate person or body; and

(c) to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation (recognising that the balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration).

(2) While the Commissioner may perform functions under this Act in relation to any potential issue of corruption, misconduct or maladministration in public administration, it is intended that the primary object of the Commissioner be—

(a) to investigate serious or systemic corruption in public administration; and

(b) to refer serious or systemic misconduct or maladministration in public administration to the relevant body, giving directions or guidance to the body or exercising the powers of the body as the Commissioner considers appropriate.

4—Interpretation

In this Act, unless the contrary intention appears—

Australian Parliament means—

(a) the Parliament of this State or any other State of the Commonwealth; or

(b) the Parliament of the Commonwealth; or

(c) a Legislative Assembly of a Territory of the Commonwealth;

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

complaint about public administration includes—

(a) a complaint alleging corruption, misconduct or maladministration in public administration; and

(b) any complaint about a public authority or public officer;

contract work means work performed by a person as a contractor or as an employee of a contractor or otherwise directly or indirectly on behalf of a contractor;

contravention includes failure to comply;

corruption in public administration—see section 5;

disciplinary action includes any process for termination of employment or dismissal from office;

document includes a written record that reproduces in an understandable form information stored by computer, microfilm or other process;

examiner—see section 12;

inquiry agency means—

(a) the Ombudsman; or

(b) the Police Ombudsman; or

(c) the Commissioner for Public Sector Employment; or

(d) a person declared by regulation to be an inquiry agency;

investigator—see section 12;

judicial body means a court, tribunal, body or person invested by law with judicial or quasi-judicial powers;

5 **judicial officer** means a person who alone or with others constitutes a judicial body;

law enforcement agency means—

(a) the Australian Crime Commission; or

(b) the Australian Federal Police; or

(c) the Australian Commission for Law Enforcement Integrity; or

10 (d) South Australia Police; or

(e) the Police Ombudsman; or

(f) the police force of another State or a Territory of the Commonwealth; or

(g) in relation to New South Wales—the Crime Commission, the Independent
Commission Against Corruption, the Inspector of the Independent
Commission Against Corruption, the Police Integrity Commission or the
Inspector of the Police Integrity Commission; or

(h) in relation to Queensland—the Crime and Misconduct Commission; or

(i) in relation to Tasmania—the Integrity Commission; or

20 (j) in relation to Victoria—the Office of Police Integrity, the Independent
Broad-based Anti-corruption Commission or the Independent Broad-based
Anti-corruption Commission Committee; or

(k) in relation to Western Australia—the Corruption and Crime Commission or
the Parliamentary Inspector of the Corruption and Crime Commission; or

25 (l) a Royal Commission of the Commonwealth, the State or another State or a
Territory of the Commonwealth; or

(m) a person or body declared by regulation to be a law enforcement agency;

local government body means a council or a subsidiary of a council established under the *Local Government Act 1999*;

maladministration in public administration—see section 5;

30 **Minister responsible for a public authority**—see Schedule 1;

Minister responsible for an inquiry agency means the Minister responsible for administration of the Act under which the agency is constituted or, if some other Minister is declared by regulation to be responsible for the agency, that Minister;

misconduct in public administration—see section 5;

35 **Office** means the Office for Public Integrity;

personal details of a person means—

(a) the person's full name; and

(b) the person's date of birth; and

- (c) the address of where the person is living; and
- (d) the address of where the person usually lives; and
- (e) the person's business address;

prescribed offence means corruption in public administration or an offence against this Act;

public administration—without limiting the acts that may comprise public administration, an administrative act within the meaning of the *Ombudsman Act 1972* will be taken to be carried out in the course of public administration;

public authority—see Schedule 1;

public officer—see Schedule 1;

public sector agency has the same meaning as in the *Public Sector Act 2009*;

public sector employee has the same meaning as in the *Public Sector Act 2009*;

publish includes publish in printed or electronic form or by public announcement (such as by radio, television or the Internet);

statement of information—see section 26;

vehicle means a vehicle, vessel or aircraft and includes a caravan, trailer and anything attached to a vehicle.

5—Corruption, misconduct and maladministration

(1) *Corruption in public administration* means conduct that constitutes—

- (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or
- (b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
- (c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
- (d) any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;

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- (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
- (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- 5 (iv) conspiring with others to effect the commission of the offence.
- (2) If the Commissioner suspects that an offence that is not corruption in public administration (an *incidental offence*) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of corruption in public administration (whether or not the Commissioner has identified the nature of that
- 10 corruption), then the incidental offence is, for so long only as the Commissioner so suspects, taken for the purposes of this Act to be corruption in public administration.
- (3) **Misconduct in public administration** means—
- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary
- 15 action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.
- (4) **Maladministration in public administration**—
- (a) means—
- 20 (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
- (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- 25 (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- (5) Without limiting or extending the conduct that may comprise corruption, misconduct
- 30 or maladministration in public administration, this Act applies to conduct that—
- (a) occurred before the commencement of this Act; or
- (b) occurs outside this State; or
- (c) comprises a failure to act; or
- 35 (d) is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or
- (e) is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.

Part 2—Independent Commissioner Against Corruption

6—Functions

- (1) There is to be an Independent Commissioner Against Corruption with the following functions:

- 5 (a) to identify corruption in public administration and to—
- (i) investigate and refer it for prosecution; or
- (ii) refer it to South Australia Police or the Police Ombudsman for investigation and prosecution;
- 10 (b) to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration;
- (c) to give directions or guidance to inquiry agencies and public authorities, and to exercise the powers of inquiry agencies in dealing with misconduct and maladministration in public administration, as the Commissioner considers appropriate;
- 15 (d) to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration;
- (e) to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration;
- 20 (f) to perform other functions conferred on the Commissioner by this or any other Act.

- 25 (2) The Commissioner is not subject to the direction of any person in relation to any matter, including—

- (a) the manner in which functions are carried out or powers exercised under this or any other Act; and
- (b) the priority that the Commissioner gives to a particular matter in carrying out functions under this or any other Act.

- 30 (3) The Attorney-General may request the Commissioner to review a legislative scheme related to public administration and to make recommendations to the Attorney-General for the amendment or repeal of the scheme.

- (4) The Commissioner is to perform his or her functions in a manner that—

- 35 (a) is as open and accountable as is practicable, while recognising, in particular, that—
- (i) examinations relating to corruption in public administration must be conducted in private; and
- (ii) other Acts will govern processes connected with how misconduct and maladministration in public administration is dealt with; and

- (b) deals as expeditiously as is practicable with allegations of corruption in public administration.

7—Commissioner

- 5 (1) The Commissioner is to be appointed by the Governor for a term not exceeding 7 years and on conditions determined by the Governor.
- (2) A person appointed to be the Commissioner is, at the end of a term of appointment, eligible for reappointment but cannot hold office for consecutive terms (including any term as Deputy Commissioner) that exceed 10 years in total.
- (3) A person is only eligible for appointment as the Commissioner if the person—
- 10 (a) is a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; and
- 15 (b) is not a judicial officer or member of an Australian Parliament.
- (4) The Commissioner must not, without the consent of the Attorney-General, engage in any remunerated employment or undertaking outside official duties.
- (5) The Governor may, on the address of both Houses of Parliament, remove the Commissioner from office.
- 20 (6) The Governor may suspend the Commissioner from office for—
- (a) contravention of a condition of appointment; or
- (b) misconduct; or
- (c) failure or incapacity to carry out official duties satisfactorily; or
- 25 (d) failure to provide information to the Attorney-General as required under section 47.
- (7) If the Governor suspends the Commissioner from office, a full statement of the reason for the suspension must be laid before both Houses of Parliament within 7 days after the suspension if Parliament is then in session or, if not, within 7 days after the commencement of the next session of Parliament.
- 30 (8) If, at the end of 20 sitting days after the statement is laid before Parliament, neither House of Parliament has presented an address to the Governor requiring the Commissioner to be restored to office, the Commissioner is removed from office.
- (9) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the Commissioner to be restored to office, the Commissioner is restored to office.
- 35 (10) The office of Commissioner becomes vacant if the holder—
- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Governor; or
- 40 (d) is appointed to judicial office; or

(e) is nominated for election as a member of an Australian Parliament; or

(f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(g) is convicted of—

5 (i) an indictable offence against the law of this State; or

(ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or

10 (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or

(h) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or

(i) is removed from office by the Governor under this section.

15 (11) Except as is provided by this section, the Commissioner may not be removed or suspended from office, nor will the office of the Commissioner become vacant.

(12) The Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

8—Deputy Commissioner

20 (1) There is to be a Deputy Commissioner responsible for assisting the Commissioner as directed by the Commissioner.

(2) The Deputy Commissioner is to be appointed by the Governor for a term not exceeding 7 years and on conditions determined by the Governor.

25 (3) A person appointed to be the Deputy Commissioner is, at the end of a term of appointment, eligible for reappointment but cannot hold office for consecutive terms (including any term as Commissioner) that exceed 10 years in total.

(4) A person is only eligible for appointment as the Deputy Commissioner if the person—

30 (a) is a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court or any other court of a State or Territory of the Commonwealth; and

(b) is not a judicial officer or member of an Australian Parliament.

(5) The Deputy Commissioner must not, without the consent of the Attorney-General, engage in any remunerated employment or undertaking outside official duties.

35 (6) The Deputy Commissioner may—

(a) act as the Commissioner during any period for which—

(i) no person is for the time being appointed as the Commissioner; or

(ii) the Commissioner is absent from, or unable to discharge, official duties; and

- (b) when not so acting, perform functions or exercise powers at the direction of the Commissioner.
- (7) The Governor may remove the Deputy Commissioner from office for—
- 5 (a) contravention of a condition of appointment; or
- (b) misconduct; or
- (c) failure or incapacity to carry out official duties satisfactorily.
- (8) The office of Deputy Commissioner becomes vacant if the holder—
- 10 (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Governor; or
- (d) is appointed to judicial office; or
- (e) is nominated for election as a member of an Australian Parliament; or
- (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- 15 (g) is convicted of—
- (i) an indictable offence against the law of this State; or
- (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
- 20 (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
- (h) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
- (i) is removed from office by the Governor under subsection (7).
- 25 (9) Except as is provided by this section, the Deputy Commissioner may not be removed from office, nor will the office of the Deputy Commissioner become vacant.
- (10) The Deputy Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

9—Pension rights

- 30 (1) The Governor may, by instrument in writing, apply the *Judges' Pensions Act 1971* to or in relation to the Commissioner or Deputy Commissioner as if the Commissioner or Deputy Commissioner were a Judge as defined in that Act and service as the Commissioner or Deputy Commissioner were judicial service as defined in that Act.
- (2) The instrument may—
- 35 (a) impose conditions on the application of the *Judges' Pensions Act 1971* (including a condition that the Act will only apply if the person is made a Judge following his or her term of office as Commissioner or Deputy Commissioner); and

(b) apply the *Judges' Pensions Act 1971* subject to any modifications specified in the instrument.

5 (3) Unless the Governor otherwise directs, no pension is to be payable under the *Judges' Pensions Act 1971* if the Commissioner or Deputy Commissioner vacates the office due to insolvency or conviction or sentencing for an offence or is removed from office.

10 (4) If a person who is or has been the Commissioner or Deputy Commissioner is appointed as a Judge as defined in the *Judges' Pensions Act 1971* and was, immediately before being so appointed, in receipt of a pension under that Act, that pension ceases on the appointment.

10—Employees

(1) The Commissioner may engage employees on terms and conditions determined by the Commissioner.

15 (2) The employees are not Public Service employees but are to be taken to be public sector employees, employed by the Commissioner, for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* and section 74 of the *Public Sector Act 2009*.

11—Use of services or staff of other government entities

20 (1) The Commissioner may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

(2) The Commissioner may, under an arrangement established by the Commissioner of Police, make use of members of South Australia Police, special constables or the services of South Australia Police.

25 (3) The Commissioner may, under an arrangement established by the Director of Public Prosecutions, make use of the services or staff of the Office of the Director of Public Prosecutions.

12—Examiners and investigators

30 (1) The Commissioner may appoint suitable persons to be examiners or investigators for the purposes of this Act.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Commissioner may, at any time, revoke an appointment of a person or vary or revoke a condition of appointment or impose a further condition of appointment.

35 (4) A police officer or special constable seconded to assist the Commissioner is an investigator.

(5) An investigator who is not a police officer or special constable must be issued with an identity card—

(a) containing the person's name and a photograph of the person; and

40 (b) stating that the person is an investigator under this Act.

- (6) If the powers of an investigator have been limited by conditions, the identity card issued to the investigator must indicate those limitations.
- (7) An investigator must, at the request of a person in relation to whom the investigator intends to exercise powers under this Act, produce for the inspection of the person—
- 5 (a) in the case of an investigator who is a police officer or special constable and is not in uniform—an official card, document or badge identifying the person as a police officer or special constable; or
- (b) in the case of an investigator appointed under this Act—his or her identity card.

10 **13—Cooperation with law enforcement agencies**

The Commissioner is to cooperate with other law enforcement agencies insofar as that is consistent with the proper conduct of the Commissioner's functions.

14—Delegation

- (1) 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 (except a function or power under section 29 or a prescribed function or power).
- 15
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
- 20 (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the delegator to act in a matter; and
- (d) is revocable at will.

25 **Part 3—Office for Public Integrity**

15—Functions and objectives

There is to be an Office for Public Integrity with the following functions:

- (a) to receive and assess complaints about public administration from members of the public;
- 30 (b) to receive and assess reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers;
- (c) to make recommendations as to whether and by whom complaints and reports should be investigated;
- 35 (d) to perform other functions assigned to the Office by the Commissioner.

16—Organisational structure

- (1) The Office is responsible to the Commissioner for the performance of its functions.
- (2) The Commissioner is not bound by the recommendations of the Office.

- (3) The Office is to be comprised of—
- (a) Public Service employees assigned to the Office to assist the Commissioner; and
 - (b) employees of the Commissioner assigned to the Office by the Commissioner.

5 **Part 4—Procedures and powers**

Division 1—Complaints and reports

17—Complaints system

A system for the receipt of complaints about public administration is to be established for the Office.

10 **18—Reporting system**

- (1) The Commissioner must prepare directions and guidelines governing reporting to the Office of matters that an inquiry agency, public authority or public officer reasonably suspects involves corruption, misconduct or maladministration in public administration.
- 15 (2) The directions and guidelines—
 - (a) must include provisions specifying the matters required to be reported and guidance as to how they should be reported; and
 - (b) may require matters to be reported even if the matter has been referred to the inquiry agency, public authority or public officer under another Act; and
 - 20 (c) must be made available free of charge on the Internet, and at premises established for the receipt of complaints or reports by the Office, for inspection by members of the public.
- (3) An inquiry agency, public authority or public officer—
 - (a) must make reports to the Office in accordance with the directions; and
 - 25 (b) may report to the Office any matter that the agency, authority or officer reasonably suspects involves corruption, misconduct or maladministration in public administration.
- (4) The Attorney-General may, in any event, report such matters to the Commissioner for consideration as the Attorney-General considers appropriate.

30 **19—Obstruction of complaint or report**

A person must not—

- (a) prevent another person from making a complaint or report under this Act about a matter that may involve corruption, misconduct or maladministration in public administration; or
- 35 (b) hinder or obstruct another person in making such a complaint or report.

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

20—False or misleading statements in complaint or report etc

A person must not—

- (a) make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided in a complaint or report; or
- (b) make a complaint or report knowing that there are no grounds for the making of the complaint or report.

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

Division 2—Assessments, investigations and referrals

Subdivision 1—Assessment and action that may be taken

21—Assessment

- (1) On receipt by the Office of a complaint or report, the matter must be assessed as to whether—
 - (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution; or
 - (b) it raises a potential issue of misconduct or maladministration in public administration; or
 - (c) it raises some other issue that should be referred to an inquiry agency, public authority or public officer; or
 - (d) it is trivial, vexatious or frivolous, it has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine it or there is other good reason why no action should be taken in respect of it,and recommendations must be made to the Commissioner accordingly.
- (2) The Commissioner may also assess, or require the Office to assess, according to the criteria set out in subsection (1), any other matter identified by the Commissioner acting on his or her own initiative or by the Commissioner or the Office in the course of performing functions under this or any other Act.

22—Action that may be taken

- (1) If a matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution, the matter must be—
 - (a) investigated by the Commissioner; or
 - (b) referred to South Australia Police, the Police Ombudsman (if the issue concerns a police officer or special constable) or other law enforcement agency.
- (2) If a matter is assessed as raising a potential issue of misconduct or maladministration in public administration, the matter must be dealt with in 1 of the following ways:
 - (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, or exercise the powers of the agency, in respect of the matter; or

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Division 2—Assessments, investigations and referrals

(b) the matter may be referred to the public authority concerned and, if the Commissioner considers it appropriate, the Commissioner may give directions or guidance to the authority in respect of the matter.

5 (3) If a matter is assessed as raising other issues that should be dealt with by an inquiry agency, public authority or public officer, the matter must be referred, or the complainant or reporting agency advised to refer the matter, to the agency, authority or officer.

10 (4) If a matter is assessed as trivial, vexatious or frivolous, the matter has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine the matter or there is other good reason why no action should be taken in respect of the matter, no action need be taken in respect of the matter.

(5) The same matter, or different aspects of the same matter, may be dealt with contemporaneously under more than 1 subsection.

Example—

15 A matter that is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution and a potential issue of misconduct or maladministration in public administration may be dealt with under both subsection (1) and subsection (2).

20 (6) A matter may be dealt with under this section even if it is a matter referred to an inquiry agency or public authority under another Act.

(7) The making of an assessment, and whether action is taken, and what action is taken, in respect of a matter is at the absolute discretion of the Commissioner and, if an assessment is modified in the course of dealing with the matter, the Commissioner may deal with the matter according to the modified assessment.

25 (8) Subject to any directions of the Commissioner, reasonable steps must be taken to ensure that a complainant or reporting agency receives an acknowledgement of the complaint or report and is informed as to the action, if any, taken in respect of the matter.

23—Public statements

30 The Commissioner may make a public statement in connection with a particular matter if, in the Commissioner's opinion, it is appropriate to do so in the public interest, having regard to the following:

(a) the benefits to an investigation or consideration of a matter under this Act that might be derived from making the statement;

35 (b) the risk of prejudicing the reputation of a person by making the statement;

(c) whether the statement is necessary in order to allay public concern or to prevent or minimise the risk of prejudice to the reputation of a person;

(d) the risk of adversely affecting a potential prosecution.

Subdivision 2—Investigation of corruption

24—Standard operating procedures

- 5 (1) The Commissioner must prepare standard operating procedures governing the exercise of powers by investigators for the purposes of an investigation into corruption in public administration.
- (2) The standard operating procedures must—
- 10 (a) include provisions designed to ensure that persons in relation to whom powers are to be exercised under this Act are provided with appropriate information about their rights, obligations and liabilities under this Act; and
- (b) be made available free of charge on the Internet, and at premises established for the receipt of complaints or reports by the Office, for inspection by members of the public.
- 15 (3) Contravention of the operating procedures constitutes a ground for suspending, dismissing or taking other disciplinary action against the investigator (but the validity of the exercise of a power cannot be questioned on the ground of contravention of the operating procedures).

25—Management of investigation

- 20 (1) If the Commissioner decides to investigate a potential issue of corruption in public administration, the Commissioner must oversee the investigation.
- (2) The Commissioner—
- (a) may determine to head the investigation himself or herself or appoint the Deputy Commissioner or an examiner to head the investigation and report to the Commissioner; and
- 25 (b) may appoint 1 or more legal practitioners to assist as counsel in relation to the investigation.

26—Production of statement of information

30 For the purposes of an investigation into corruption in public administration, the person heading the investigation may, by written notice, require a public authority or public officer to produce a written statement of information about a specified matter within a specified period and in a specified form, verified if the person so requires by statutory declaration.

27—Examination and production of documents and other things

- (1) An examination may be conducted for the purposes of an investigation into corruption in public administration as set out in Schedule 2.
- 35 (2) A person may be required to produce a document or thing for the purposes of an investigation into corruption in public administration as set out in Schedule 2.

28—Power to require person to disclose identity

For the purposes of an investigation into corruption in public administration, an investigator may require a person who the investigator reasonably suspects has committed, is committing, or is about to commit, a prescribed offence, or may be able to assist an investigation of a prescribed offence, to state all or any of the person's personal details and to produce evidence of those details.

29—Enter and search powers under warrant

- (1) The Commissioner may, on application by an investigator or on his or her own initiative, issue a warrant authorising an investigator to enter and search—
 - (a) a place occupied or used by an inquiry agency, public authority or public officer; or
 - (b) a vehicle owned or used by an inquiry agency, public authority or public officer.
- (2) A judge of the Supreme Court may, on application by an investigator, issue a warrant authorising an investigator to enter and search—
 - (a) a private place or private vehicle that is reasonably suspected of being, or having been, used for or in connection with a prescribed offence; or
 - (b) a private place or private vehicle in which it is reasonably suspected there may be records relating to a prescribed offence or anything that has been used in, or may constitute evidence of, a prescribed offence.
- (3) A warrant may only be issued if the Commissioner or the judge is satisfied that the warrant is reasonably required in the circumstances for the purposes of an investigation into a potential issue of corruption in public administration.
- (4) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and attend in person, by fax, email or telephone in accordance with practices and procedures prescribed, in the case of an application to the Commissioner, by the regulations and, in the case of an application to a judge of the Supreme Court, by rules of the court.
- (5) The grounds of an application for a warrant must be verified—
 - (a) if the application is made to the Commissioner—by statutory declaration; or
 - (b) if the application is made to a judge of the Supreme Court—by affidavit.
- (6) A warrant must—
 - (a) specify the place or vehicle to which the warrant relates; and
 - (b) state whether entry is authorised at any time of the day or night or during specified hours of the day or night.
- (7) A warrant authorises an investigator—
 - (a) to enter and search and, if necessary, use reasonable force to break into or open—
 - (i) the place or vehicle to which the warrant relates; or

- (ii) part of, or anything in or on, a place or vehicle to which the warrant relates; and
- (b) to give directions with respect to the stopping or movement of a vehicle to which the warrant relates; and
- 5 (c) in the course of executing the warrant—
 - (i) to take photographs, films or audio, video or other recordings; and
 - (ii) to examine, copy or take extracts from a document connected with the investigation or any other investigation into corruption in public administration; and
 - 10 (iii) to examine or test any thing connected with the investigation or any other investigation into corruption in public administration, or cause or require it to be examined or tested; and
 - (iv) if the investigator reasonably suspects that a person who is or has been on or in the place or vehicle has on or about his or her body evidence of a prescribed offence, to search the person; and
 - 15 (v) to seize and retain anything that the investigator reasonably suspects has been used in, or may constitute evidence of, a prescribed offence, or issue a retention order in respect of such a thing requiring that it not be removed or interfered with without the approval of an investigator; and
 - 20 (vi) to seize and retain anything that the investigator reasonably suspects has been used in, or may constitute evidence of, an offence other than a prescribed offence, or issue a retention order in respect of such a thing requiring that it not be removed or interfered with without the approval of an investigator, if the investigator reasonably believes that it is necessary to do so in order to prevent its concealment, loss, mutilation or destruction or its use in committing such an offence.
- (8) In executing a warrant, the investigator may be assisted by such persons as the investigator considers necessary in the circumstances.
- 30 (9) An investigator may require an occupier of a place or a person apparently in charge of a document or thing to give to an investigator, or a person assisting an investigator, such assistance as is reasonably required by the investigator for the effective execution of a warrant.
- (10) In searching a person under this section, the investigator—
 - 35 (a) may run his or her hands over the person's outer clothing; and
 - (b) may require the person to remove a coat, jacket, hat or shoes the person is wearing, and may run his or her hands over the person's remaining outer clothing; and
 - 40 (c) if the investigator sees or detects any thing that he or she reasonably suspects is, or contains, evidence of a prescribed offence, may require the person to surrender that item for inspection; and
 - (d) may use reasonable force to remove an item from a person if the person does not comply with a requirement to remove or surrender the item under paragraph (b) or (c); and

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(e) may inspect an item that a person has removed or surrendered, or that has been removed from a person; and

(f) must conduct the search in a manner that affords, to the extent that the circumstances of the search permit, reasonable privacy to the person being searched; and

(g) must conduct the search as quickly as is reasonably practicable in the circumstances of the search.

(11) A search must be conducted by a person of the same sex as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search.

(12) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

(13) The Supreme Court may make rules of court providing for the Chief Justice to determine the judge to whom an application is to be made or otherwise regulating practice and procedure for the purposes of this section.

(14) In this section—

private place means a place other than a place occupied or used by an inquiry agency, public authority or public officer;

private vehicle means a vehicle other than a vehicle owned or used by an inquiry agency, public authority or public officer.

30—Seizure and retention order procedures

(1) A retention order under section 29—

(a) must be in the form of a written notice given to the owner or person apparently in control of the thing to which the order relates; and

(b) may be varied or discharged by further such written notice.

(2) If a retention order is issued, a person who, knowing of the order, removes or interferes with the thing to which the order relates without the approval of the Commissioner or an investigator before the thing is dealt with under this section or the retention order discharged is guilty of an offence.

Maximum penalty: \$5 000.

(3) Subject to this section, if any thing has been seized or made the subject of a retention order under section 29, the following provisions apply:

(a) the thing must, if it has been seized, be held pending proceedings for an offence related 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 (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));

(b) if proceedings for an offence relating to the thing are instituted within the designated period after its seizure or the issuing of the retention order and the defendant is convicted or found guilty of the offence, the court may—

(i) order that it be forfeited to the Crown; or

(ii) if it has been released pursuant to paragraph (a) or is the subject of a retention order—order that it be forfeited to the Crown or that the person to whom it was released 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;

(c) if—

(i) proceedings are not instituted for an offence relating to the thing within the designated period after its seizure or the issuing of the retention order; or

(ii) proceedings have been so instituted and—

(A) the defendant is found not guilty of the offence; or

(B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

(iii) in the case of a thing seized—the person from whom the thing was seized, or a person with legal title to it, is entitled to recover from the Commissioner (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure; or

(iv) in the case of a thing subject to a retention order—the order is discharged.

(4) In this section—

designated period means 6 months or such longer period as a judge of the Supreme Court may, on application by the Commissioner, allow.

31—Obstruction

(1) A person must not—

(a) refuse or fail to provide a statement of information as required by the person heading an investigation; or

(b) include information in a statement of information knowing that it is false or misleading in a material particular; or

(c) without lawful excuse, refuse or fail to comply with a requirement or direction of an investigator under this Act; or

(d) alter, destroy, conceal or fabricate a document or other thing knowing that it is or is likely to be required by an investigator performing functions under this Act; or

(e) otherwise hinder or obstruct an investigator, or a person assisting an investigator, in the performance of his or her functions.

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

- (2) An investigator may arrest a person without warrant if the investigator reasonably suspects that the person has committed, is committing, or is about to commit, an offence against subsection (1) and—
- 5 (a) when required to do so by an investigator the person failed to state truthfully his or her personal details or to produce true evidence of those details; or
- (b) the investigator has reasonable grounds for believing that the person would, if not arrested—
- 10 (i) fail to attend court in answer to a summons issued in respect of the offence; or
- (ii) continue the offence or repeat the offence; or
- (iii) alter, destroy, conceal or fabricate evidence relating to the offence; or
- (iv) intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.
- (3) On arresting a person under this section, the investigator must immediately deliver the person, or cause the person to be delivered, into the custody of a police officer (and the person will, for the purposes of any other law, then be taken to have been apprehended by the police officer without warrant).
- 15

32—Limiting action by other agencies and authorities

- 20 (1) The Commissioner may, by written notice, require a South Australian law enforcement agency, inquiry agency or public authority to refrain from taking action, in respect of a particular matter being investigated by the Commissioner under this Act or to conduct a joint investigation with the Commissioner in respect of a particular matter (and the agency or authority must comply with the requirement even if the agency or authority is otherwise required or authorised to take action under another
- 25 Act).
- (2) The notice must specify the period for which it is to apply and set out details of the action that is not to be taken or the requirements governing any joint investigation.
- (3) The Commissioner must consider any comments of the agency or authority with respect to the terms of the notice.

33—Injunction to refrain from conduct pending investigation

- 30 (1) The Supreme Court may, on application made by the Commissioner (in a case where section 32 does not apply or the Commissioner does not consider it appropriate to issue a notice under that section), grant an injunction restraining a person from engaging in conduct that is the subject of, or affects the subject matter of, an investigation or proposed investigation by the Commissioner.
- 35 (2) The Supreme Court must not grant an injunction under this section unless it is satisfied—
- (a) that the conduct sought to be restrained is likely to impede the investigation or proposed investigation; or
- 40 (b) that it is necessary in the public interest to do so.
- (3) The Supreme Court cannot require the Commissioner to give an undertaking as to damages as a condition of the granting of an injunction under this section.

34—Prosecutions and disciplinary action

On completing an investigation or at any time during an investigation, the Commissioner 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 a public authority for further investigation and potential disciplinary action against a public officer for whom the authority is responsible.

Subdivision 3—Referral of misconduct or maladministration

35—Referral to inquiry agency

- (1) The Commissioner may not refer a matter to an inquiry agency except after consultation with the agency and after taking into consideration the views of the agency.
- (2) If a matter raising potential issues of misconduct or maladministration in public administration is referred to an inquiry agency, the directions or guidance that may be given to the agency by the Commissioner include (without limitation)—
 - (a) a requirement that the agency 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 agency and the period within which it should be taken.
- (3) If the matter has been previously referred to the inquiry agency under an Act, the Commissioner must take that into account in formulating the directions or guidance.
- (4) The Commissioner may disclose to the inquiry agency information that the Commissioner has in respect of the matter.
- (5) If the Commissioner decides to exercise the powers of an inquiry agency in respect of a matter referred to the inquiry agency—
 - (a) the Commissioner must notify the agency in writing; and
 - (b) the agency must refrain from taking action in respect of the matter; and
 - (c) the Commissioner has all the functions and powers of the agency as if the Commissioner constituted the agency; and
 - (d) the Commissioner is bound by any Act governing the performance of the functions or the exercise of the powers by the agency; and
 - (e) a reference to the agency in any Act will be taken to include a reference to the Commissioner; and
 - (f) the Commissioner must inform the agency of the outcome of the matter.
- (6) The Commissioner may at any time—
 - (a) revoke a referral to an inquiry agency; or
 - (b) revoke or vary directions or guidance given to an inquiry agency or give further directions or guidance; or

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- (c) withdraw from exercising the powers of an inquiry agency or decide to exercise such powers,

as the Commissioner sees fit.

- 5 (7) If the Commissioner is not satisfied that an inquiry agency has duly and properly taken action in relation to a matter referred by the Commissioner, the Commissioner must inform the agency of the grounds of the Commissioner's dissatisfaction and give the agency an opportunity to comment within a specified time.
- 10 (8) If, after considering any comments received from the inquiry agency within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister responsible for the agency setting out the grounds of dissatisfaction, together with any comments from the agency.
- 15 (9) If, after considering any comments received from the Minister responsible for the inquiry agency 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.
- (10) 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.

20 **36—Referral to public authority**

- (1) The Commissioner may not refer a matter to a public authority except after consultation with the authority and after taking into consideration the views of the authority.
- 25 (2) If a matter raising potential issues of misconduct or maladministration in public administration is referred to a public authority, the directions or guidance that may be given to the authority by the Commissioner 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
- 30 (b) a recommendation as to the action that should be taken by the authority and the period within which it should be taken.
- (3) 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.
- 35 (4) The Commissioner may disclose to the public authority information that the Commissioner has in respect of the matter.
- (5) 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.
- 40 (6) 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.

- (7) 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.
- 5 (8) 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.
- 10 (9) 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.

Subdivision 4—Request for Auditor-General to examine accounts

37—Request for Auditor-General to examine accounts

- 15 The Commissioner may, if the Commissioner considers it appropriate in respect of any matter subject to an assessment, investigation or referral under this Act, request the Auditor-General to conduct an examination of accounts under the *Public Finance and Audit Act 1987*.

Division 3—Evaluation of agency or authority practices

38—Evaluation of practices, policies and procedures

- 20 (1) If, in performing the Commissioner's functions, the Commissioner decides to evaluate the practices, policies and procedures of an inquiry agency or public authority, the Commissioner must inform the agency or authority as to the nature and timing of the evaluation.
- 25 (2) An inquiry agency or public authority must assist the Commissioner in the conduct of the evaluation as requested by the Commissioner.
- (3) The Commissioner must prepare a report of the evaluation and provide a copy to the President of the Legislative Council and the Speaker of the House of Assembly.
- 30 (4) 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.

Division 4—Recommendations and reports by Commissioner

39—Recommendations

- 35 (1) On conducting an evaluation or in response to issues observed by the Commissioner in the course of an investigation or the handling of a matter referred to an inquiry agency or public authority, the Commissioner may recommend to an inquiry agency or public authority that the agency or authority—
- (a) change practices, policies or procedures in a specified way or review practices, policies or procedures to achieve specified outcomes; or

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(b) conduct, or participate in, specified educational programs or educational programs designed to achieve specified outcomes.

5 (2) The Commissioner must prepare a report containing the recommendations and provide a copy to the President of the Legislative Council and the Speaker of the House of Assembly.

(3) 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.

10 (4) If the Commissioner is not satisfied that an inquiry agency or public authority has complied with the recommendations of the Commissioner, the Commissioner must inform the agency or authority of the grounds of the Commissioner's dissatisfaction and give the agency or authority an opportunity to comment within a specified time.

15 (5) If, after considering any comments received from the inquiry agency or public authority within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister responsible for the agency or authority setting out the grounds of dissatisfaction, together with any comments from the agency or authority.

20 (6) If, after considering any comments received from the Minister responsible for the inquiry agency or 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.

25 (7) 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.

40—Reports

(1) The Commissioner may prepare a report setting out—

(a) recommendations, formulated in the course of the performance of the Commissioner's functions, for the amendment or repeal of a law; or

30 (b) other matters arising in the course of the performance of the Commissioner's functions (but not identifying or about a particular matter subject to assessment, investigation or referral under this Act) that the Commissioner considers to be in the public interest to disclose.

35 (2) A copy of the report must be provided to the Attorney-General, the President of the Legislative Council and the Speaker of the House of Assembly.

(3) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after 28 days (or such shorter number of days as the Attorney-General approves) have passed after receiving a report, lay it before their respective Houses.

Division 5—Miscellaneous

41—Proceedings before judicial body or charge of offence does not inhibit performance of functions

5 The Commissioner, the Deputy Commissioner, an examiner or an investigator may perform functions or exercise powers in respect of a particular matter despite 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.

10 42—Public authority to assist with compliance by public officers

- 15 (1) A public authority must assist the public officers for whom it is responsible to comply with requirements and directions of the Commissioner, the Deputy Commissioner, an examiner or an investigator under this Act and, in particular, regard compliance as an official duty that may be performed during normal working hours.
- 15 (2) If a public officer attends at a place at the direction, or as reasonably required by a direction, of the Commissioner, the Deputy Commissioner, an examiner or an investigator under this Act, the officer—
 - 20 (a) will be taken not to be absent from work for the period for which the officer's attendance is required; and
 - 20 (b) will, if attendance necessitates the absence of the officer from the officer's usual place of employment, be entitled to be reimbursed from the funds of the public authority responsible for the officer for expenses in respect of travel, accommodation and meals in accordance with rates determined by the Commissioner.

25 Part 5—Accountability

43—Commissioner's annual report

- 30 (1) The Commissioner must, before 30 September in each year, prepare a report on the operations of the Commissioner and the Office.
- 30 (2) The report must—
 - 30 (a) relate to the financial year preceding the making of the report; and
 - 35 (b) describe—
 - 35 (i) the number and general nature of complaints and reports received by the Office; and
 - 35 (ii) the number and general nature of matters investigated by the Commissioner; and
 - 35 (iii) the number of warrants issued by the Commissioner and by judges of the Supreme Court; and
 - 35 (iv) the number of examinations conducted; and

- 5
- (v) the extent to which investigations have resulted in prosecutions or disciplinary action; and
- (vi) the number and general nature of matters referred for investigation to the Commissioner of Police, the Police Ombudsman or other law enforcement agency; and
- (vii) the number and general nature of occasions on which public statements have been made by the Commissioner; and
- (viii) the number and general nature of matters referred to an inquiry agency or public authority; and
- 10 (ix) the number and general nature of directions or guidance given by the Commissioner in referring matters; and
- (x) the number and general nature of the occasions on which the Commissioner exercised the powers of an inquiry agency in respect of a referred matter; and
- 15 (xi) the number and general nature of requests for examinations of accounts by the Auditor-General; and
- (xii) the number and general nature of recommendations made to an inquiry agency or public authority by the Commissioner; and
- 20 (xiii) the number and general nature of reports made to the Attorney-General, President of the Legislative Council or Speaker of the House of Assembly; and
- (xiv) a description of the activities carried out in relation to its evaluation and educational functions; and

(c) deal with any other matters stipulated by the regulations.

- 25 (3) A copy of the report must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.
- (4) 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.

30 **44—Annual review of exercise of powers**

- (1) The Attorney-General must, before the end of each financial year, appoint a person who would be eligible for appointment as the Commissioner to conduct a review to determine whether powers under this Act were exercised in an appropriate manner during the financial year.
- 35 (2) The Commissioner must ensure that a person appointed to conduct a review is provided with such information as he or she may require for the purpose of conducting the review.
- (3) A report on a review must be presented to the Attorney-General on or before 30 September in each year.
- 40 (4) The Attorney-General must, within 12 sitting days after receipt of the report, cause copies of the report to be laid before each House of Parliament.

45—Crime and Corruption Policy Review Committee

5 The Commissioner must ensure that a copy of each annual report and other public report prepared by the Commissioner under this Act is promptly delivered to the Crime and Corruption Policy Review Committee established under the *Parliamentary Committees Act 1991*.

46—Commissioner's website

The Commissioner must maintain a website for the purposes of this Act and include on it—

- 10 (a) information about the educational programs conducted or facilitated by the Commissioner; and
- (b) information about the evaluations of practices, policies and procedures of inquiry agencies and public authorities conducted by the Commissioner; and
- (c) information about the other functions of the Commissioner and the Office; and
- 15 (d) the Commissioner's standard operating procedures; and
- (e) the reports prepared under section 39; and
- (f) the reports prepared under section 40; and
- (g) the Commissioner's annual reports; and
- (h) the reports on reviews under section 44; and
- 20 (i) information designed to assist in preventing or minimising corruption, misconduct and maladministration in public administration or other material, as considered appropriate by the Commissioner.

47—Provision of information to Attorney-General

- 25 (1) The Commissioner must keep the Attorney-General informed of the general conduct of the functions of the Commissioner and the Office and, if the Attorney-General so requests, provide information to the Attorney-General relevant to the performance of the functions of the Commissioner or the Office (but not information identifying or about a particular matter subject to assessment, investigation or referral under this Act).
- 30 (2) However, if the Commissioner is of the opinion that to provide information as requested by the Attorney-General would compromise the proper performance of the Commissioner's functions, the Commissioner may instead provide to the Governor a detailed written explanation of the reasons for the Commissioner's opinion.

Part 6—Miscellaneous

48—No obligation on persons to maintain secrecy

35 No obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of a complaint, report or investigation under this Act, except an obligation or restriction designed to keep the identity of an informant secret.

49—Arrangements for provision of information by Commissioner of Police and Police Ombudsman

5 The Commissioner of Police and the Police Ombudsman are to enter into arrangements with the Commissioner under which the Commissioner, the Deputy Commissioner, examiners and investigators are given access to confidential information and databases for the purposes of investigations under this Act and for appropriate protection of the confidentiality of the information accessed.

50—Commissioner and staff to be regarded as law enforcement body

10 The Commissioner and members of the staff of the Commissioner are, for the purposes of any other Act, to be regarded as a body established for law enforcement purposes (however described).

51—Impersonation of Commissioner, Deputy Commissioner, examiner or investigator

15 A person must not falsely represent, by words or conduct, that he or she is the Commissioner, the Deputy Commissioner, an examiner or an investigator.

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

52—Confidentiality

20 (1) A person must not, directly or indirectly, disclose information obtained in the course of the administration of this Act in connection with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act except—

- (a) for the purposes of the administration or enforcement of this Act; or
- (b) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
- 25 (c) for the performance of the functions of the Commissioner under another Act; or
- (d) as otherwise required or authorised by this Act.

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

30 (2) The Commissioner may, as the Commissioner considers appropriate, provide, or authorise the provision of, information connected with a matter that is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act to—

- (a) a person who makes a complaint or report to the Office; or
- (b) a person who is the subject of a complaint, report or investigation; or
- 35 (c) a person who is required by the Commissioner or an investigator to answer a question, produce a document or other thing or provide a copy of a document or a statement of information; or
- (d) an inquiry agency, public authority or public officer; or
- (e) a law enforcement agency; or
- (f) a Minister; or
- 40 (g) the Auditor-General; or

-
- (h) a legal or technical expert from whom advice is sought in the course of an investigation; or
- (i) a person conducting a review under Part 5; or
- (j) any other person of a class prescribed by the regulations.
- 5 (3) Without limiting the matters to which the Commissioner may have regard in determining whether it is appropriate to provide or authorise the provision of information under subsection (2), it is intended that the Commissioner have regard to whether that action may assist in the prevention of the commission of an offence constituting or involving corruption.
- 10 (4) Information connected with a matter that is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act provided by the Commissioner or on the authorisation of the Commissioner will be taken to be provided on the understanding that the information is confidential unless the person to whom the information is provided is informed in writing to the contrary.
- 15 (5) Information obtained by a person present when information or evidence is being given before the Commissioner, the Deputy Commissioner, an examiner or an investigator under this Act will be taken to be provided by the Commissioner to the person on the understanding that the information is confidential unless the person is informed by the Commissioner in writing to the contrary.
- 20 (6) If the Commissioner provides, or authorises the provision of, information to a person on the understanding that the information is confidential, that person, and any person or employee under the control of the person, is subject to the same rights, privileges, obligations and liabilities under this section as if the person obtained the information in the course of the administration of this Act.

25 **53—Proceedings to be heard in private**

- (1) Subject to an order of the court or judicial officer concerned to the contrary, proceedings for an application for a warrant or injunction under this Act, proceedings for contempt of the Commissioner and other proceedings under this Act (other than for an offence) must be heard in private.
- 30 (2) Proceedings for an offence against this Act must be heard in private if a public hearing may prejudice an investigation under this Act or unduly prejudice the reputation of a person other than the defendant.

54—Publication of information and evidence

35 A person must not, except as authorised by the Commissioner, publish, or cause to be published—

- (a) information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under this Act; or
- 40 (b) information that might enable a person who has made a complaint or report under this Act to be identified or located; or
- (c) the fact that a person has made or may be about to make a complaint or report under this Act; or

- (d) information that might enable a person who has given or may be about to give information or other evidence under this Act to be identified or located, or
- (e) the fact that a person has given or may be about to give information or other evidence under this Act; or
- 5 (f) any other information or evidence publication of which is prohibited by the Commissioner.

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

55—Victimisation

- 10 (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make a complaint or report under this Act or has provided, or intends to provide, information or other assistance to the Commissioner in connection with an investigation under this Act commits an act of victimisation.
- (2) Causing detriment on the ground that a person—
 - 15 (a) has made a false allegation; or
 - (b) has not acted in good faith,does not constitute an act of victimisation.
- (3) An act of victimisation under this Act may be dealt with—
 - 20 (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*, but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.
- 25 (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- 30 (5) In this section—

detriment includes—

 - (a) injury, damage or loss; or
 - (b) intimidation or harassment; or
 - 35 (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
 - (d) threats of reprisal.

56—Service

Subject to the regulations, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- 5 (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- 10 (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

15 57—Evidence

In proceedings, a certificate apparently executed by the Commissioner certifying as to a matter relating to—

- (a) the appointment of an examiner or investigator; or
- (b) a delegation; or
- 20 (c) a notice; or
- (d) an order; or
- (e) the receipt or non-receipt of a document, statement of information or other thing,

under this Act constitutes proof, in the absence of proof to the contrary, of the matters so certified.

58—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - 30 (a) make provision for the payment of expenses or other amounts to persons (other than public officers) required to attend before the Commissioner, the Deputy Commissioner, an examiner or an investigator, produce a document or other thing or provide a copy of a document; and
 - (b) prescribe forms for the purposes of this Act; and
 - 35 (c) prescribe the manner in which a summons or notice under Schedule 2 is to be served or given to a person; and
 - (d) prescribe fines (not exceeding \$5 000) for offences against the regulations; and
 - 40 (e) be of general application or vary in their application according to prescribed factors; and

- (f) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner.

59—Review of operation of Act

The Attorney-General must, within 5 years after the commencement of this Act or any provision of this Act—

- (a) cause a report to be prepared on the operation of this Act; and
 (b) cause a copy of the report to be laid before each House of Parliament.

Schedule 1—Public officers, public authorities and responsible Ministers

For the purposes of this Act, the table below lists public officers, the public authorities responsible for the officers and the Ministers responsible for the public authorities.

Public officers	Public authority	Minister
Governor	Attorney-General	Premier
a person appointed to an office by the Governor	Governor Attorney-General	Premier
President of the Legislative Council	Attorney-General	Premier
a Member of the Legislative Council (other than the President)	President of the Legislative Council	Premier
an officer of the Legislative Council		
a person under the separate control of the President		
a member of the joint parliamentary service when the President of the Legislative Council is the chairman of the Joint Parliamentary Service Committee		
Speaker of the House of Assembly	Attorney-General	Premier
a Member of the House of Assembly (other than the Speaker)	Speaker of the House of Assembly	Premier
an officer of the House of Assembly		
a person under the separate control of the Speaker		
a member of the joint parliamentary service when the Speaker of the House of Assembly is the chairman of the Joint Parliamentary Service Committee		

Independent Commissioner Against Corruption Bill 2012
Public officers, public authorities and responsible Ministers—Schedule 1

Public officers	Public authority	Minister
the principal officer of a judicial body	Attorney-General	Premier
a judicial officer that constitutes a judicial body		
a judicial officer (other than a judicial officer who is the principal officer of a judicial body or who constitutes a judicial body)	the principal officer of the judicial body of which the judicial officer is a member Attorney-General	Premier
a member of the staff of the State Courts Administration Council	State Courts Administration Council	Attorney-General
a person who constitutes a statutory authority or who is a statutory office holder	the Minister responsible for the administration of the Act under which the statutory authority is constituted or the statutory office holder is appointed	Premier
a person who is a member of the governing body of, a statutory authority an officer or employee of a statutory authority or statutory office holder or a Public Service employee assigned to assist the statutory authority or statutory office holder	the statutory authority or statutory office holder	the Minister responsible for the administration of the Act constituting the statutory authority or statutory office holder
a member of a local government body an officer or employee of a local government body	the local government body	the Minister responsible for the administration of the <i>Local Government Act 1999</i>
the chief executive of an administrative unit of the Public Service	the Minister responsible for the administrative unit	Premier
a Public Service employee (other than a chief executive)	the chief executive of the administrative unit of the Public Service in which the employee is employed	the Minister responsible for the administrative unit
a police officer	Commissioner of Police	the Minister responsible for the administration of the <i>Police Act 1998</i>
a protective security officer appointed under the <i>Protective Security Act 2007</i>	Commissioner of Police	the Minister responsible for the administration of the <i>Protective Security Act 2007</i>
an officer or employee appointed by the employing authority under the <i>Education Act 1972</i>	the employing authority under the <i>Education Act 1972</i>	the Minister responsible for the administration of the <i>Education Act 1972</i>

Independent Commissioner Against Corruption Bill 2012
 Schedule 1—Public officers, public authorities and responsible Ministers

Public officers	Public authority	Minister
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>
a person appointed by the Premier under the <i>Public Sector Act 2009</i>	Premier	Attorney-General
a person appointed by the Minister under the <i>Public Sector Act 2009</i>	the Minister responsible for the administration of the <i>Public Sector Act 2009</i>	Premier
any other public sector employee	the public sector agency that employs the employee	if the public sector agency is the Premier, the Attorney-General if the public sector agency is a Minister other than the Premier, the Premier in any other case, the Minister responsible for the public sector agency or the Premier
a person to whom a function or power of a public authority or a public officer is delegated in accordance with an Act	the public authority or the public authority responsible for the public officer (as the case requires)	if the public authority is the Premier, the Attorney-General if the public authority is a Minister other than the Premier, the Premier in any other case, the Minister responsible for the public authority
a person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act	the public authority responsible for the public officer	the Minister responsible for the public authority
a person performing contract work for a public authority or the Crown	if the work is performed for a public authority, the public authority or, in any other case, the Premier	the Minister responsible for the public authority
a person declared by regulation to be a public officer	the person declared by regulation to be the public authority responsible for the public officer	the Minister declared by regulation to be responsible for the public authority and its public officers

Schedule 2—Examination and production of documents and other things

1—Interpretation

In this Schedule—

examiner means—

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

- (c) an examiner appointed by the Commissioner;

official matter means any of the following (whether past, present or contingent):

- (a) an investigation into corruption in public administration;
- (b) an examination held by an examiner;
- (c) court proceedings.

5

2—Examinations

An examiner may conduct an examination for the purposes of an investigation into corruption in public administration.

3—Conduct of examination

- 10 (1) An examiner may regulate the conduct of proceedings at an examination as the examiner thinks fit.
- (2) At an examination before an examiner—
 - (a) a person giving evidence may be represented by a legal practitioner; and
 - 15 (b) if, by reason of the existence of special circumstances, the examiner consents to a person who is not giving evidence being represented by a legal practitioner—the person may be so represented.
- (3) An examination before an examiner must be held in private and the examiner may give directions as to the persons who may be present during the examination or a part of the examination.
- 20 (4) Nothing in a direction given by the examiner under subclause (3) prevents the presence, when evidence is being taken at an examination before the examiner, of—
 - (a) a person representing the person giving evidence; or
 - (b) a person representing, in accordance with subclause (2), a person who, by reason of a direction given by the examiner under subclause (3), is entitled to
 - 25 be present.
- (5) If an examination before an examiner is being held, a person (other than a member of the staff of the Commissioner approved by the examiner) must not be present at the examination unless the person is entitled to be present by reason of a direction given by the examiner under subclause (3) or by reason of subclause (4).
- 30 (6) At an examination before an examiner—
 - (a) counsel assisting the examiner generally or in relation to the matter to which the investigation relates; or
 - (b) any person authorised by the examiner to appear before the examiner at the examination; or
 - 35 (c) any legal practitioner representing a person at the examination in accordance with subclause (2),

may, so far as the examiner thinks appropriate, examine or cross-examine any witness on any matter that the examiner considers relevant to the investigation or any other investigation.

(7) If a person (other than a member of the staff of the Commissioner) is present at an examination before an examiner while another person (the *witness*) is giving evidence at the examination, the examiner must—

(a) inform the witness that the person is present; and

(b) give the witness an opportunity to comment on the presence of the person.

(8) A person does not cease to be entitled to be present at an examination before an examiner or part of such an examination if—

(a) the examiner fails to comply with subclause (7); or

(b) a witness comments adversely on the presence of the person under subclause (7)(b).

(9) An examiner may direct that—

(a) any evidence given before the examiner; or

(b) the contents of any document, or a description of any thing, produced to the examiner; or

(c) any information that might enable a person who has given evidence before the examiner to be identified; or

(d) the fact that any person has given or may be about to give evidence at an examination,

must not be published, or must not be published except in such manner, and to such persons, as the examiner specifies.

(10) The examiner must give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been, or may be, charged with an offence.

(11) Subject to subclause (12), the Commissioner may, in writing, vary or revoke a direction under subclause (9).

(12) The Commissioner must not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

(13) If—

(a) a person has been charged with an offence; and

(b) the court considers that it may be desirable in the interests of justice that particular evidence given before an examiner, being evidence in relation to which the examiner has given a direction under subclause (9), be made available to the person or to a legal practitioner representing the person,

the court may give to the examiner or to the Commissioner a certificate to that effect and, if the court does so, the examiner or the Commissioner, as the case may be, must make the evidence available to the court.

(14) If—

(a) the examiner or the Commissioner makes evidence available to a court in accordance with subclause (13); and

- (b) the court, after examining the evidence, is satisfied that the interests of justice so require,

the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

5 (15) A person who—

- (a) is present at an examination in contravention of subclause (5); or
(b) makes a publication in contravention of a direction given under subclause (9),
is guilty of an offence.

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

10 (16) At the conclusion of an examination held by an examiner, the examiner must give the person heading the investigation—

- (a) a record of the proceedings of the examination; and
(b) any documents or other things given to the examiner at, or in connection with,
the examination.

15 **4—Power to summon witnesses and take evidence**

(1) An examiner may summon a person to appear before the examiner at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

20 (2) Before issuing a summons under subclause (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so.

(3) The examiner must also record in writing the reasons for the issue of the summons.

25 (4) A summons under subclause (1) requiring a person to appear before an examiner at an examination must, unless the examiner issuing the summons is satisfied that, in the particular circumstances of the investigation to which the examination relates, it would prejudice the effectiveness of the investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the examiner intends to question the person, but nothing in this subclause prevents the examiner from questioning the person in relation to any matter that relates to an investigation into corruption in public administration.

30 (5) The examiner who is holding an examination may require a person appearing at the examination to produce a document or other thing.

(6) An examiner may, at an examination, take evidence on oath or affirmation and for that purpose—

35 (a) the examiner may require a person appearing at the examination to give evidence either to take an oath or to make an affirmation in a form approved by the examiner; and

(b) the examiner, or a person who is a member of the staff of the Commissioner authorised for the purpose by the Commissioner, may administer an oath or affirmation to a person so appearing at the examination.

40 (7) The powers conferred by this clause are not exercisable except for the purposes of an investigation into corruption in public administration.

5—Power to obtain documents

- (1) An examiner may, by notice in writing served on a person, require the person—
- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being the examiner or a member of the staff of the Commissioner; and
 - (b) to produce at that time and place to the person so specified a document or other thing specified in the notice, being a document or other thing that is relevant to an investigation into corruption in public administration.
- (2) Before issuing a notice under subclause (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so.
- (3) The examiner must also record in writing the reasons for the issue of the notice.
- (4) A notice may be issued under this clause in relation to an investigation into corruption in public administration, whether or not an examination before an examiner is being held for the purposes of the investigation.
- (5) A person must not refuse or fail to comply with a notice served on the person under this clause.
- Maximum penalty: \$20 000 or imprisonment for 4 years.
- (6) The provisions of clause 8(3) to (6) apply in relation to a person who is required to produce a document or thing by a notice served on him or her under this clause in the same manner as they apply in relation to a person who is required to produce a document or thing at an examination before an examiner.

6—Disclosure of summons or notice may be prohibited

- (1) The examiner issuing a summons under clause 4 or a notice under clause 5 must, or may, as provided in subclause (2), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.
- (2) A notation must not be included in the summons or notice except as follows:
- (a) the examiner must include the notation if satisfied that failure to do so would reasonably be expected to prejudice—
 - (i) the safety or reputation of a person; or
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) the effectiveness of an investigation;
 - (b) the examiner may include the notation if satisfied that failure to do so might prejudice—
 - (i) the safety or reputation of a person; or
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) the effectiveness of an investigation;
 - (c) the examiner may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.

(3) If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by clause 7 on the person who was served with, or otherwise given, the summons or notice.

5 (4) If, after the investigation concerned has been concluded—

- (a) no evidence of an offence has been obtained; or
- (b) evidence of an offence or offences has been assembled and the Commissioner has been advised that no person will be prosecuted; or
- 10 (c) evidence of an offence or offences committed by only one person has been assembled and criminal proceedings have begun against that person; or
- (d) evidence of an offence or offences committed by 2 or more persons has been assembled and—
 - (i) criminal proceedings have begun against all those persons; or
 - 15 (ii) criminal proceedings have begun against 1 or more of those persons and the Commissioner has been advised that no other of those persons will be prosecuted,

all the notations that were included under this clause in any summonses or notices relating to the operation or investigation are cancelled by this subclause.

20 (5) If a notation is cancelled by subclause (4), the Commissioner must serve a written notice of that fact on each person who was served with, or otherwise given, the summons or notice containing the notation.

7—Offences of disclosure

(1) A person who is served with, or otherwise given, a summons or notice containing a notation made under clause 6 must not disclose—

- 25
- (a) the existence of the summons or notice or any information about it; or
 - (b) the existence of, or any information about, any official matter connected with the summons or notice.

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

(2) Subclause (1) does not prevent the person from making a disclosure—

- 30
- (a) in accordance with the circumstances, if any, specified in the notation; or
 - (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
 - (c) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
 - 35 (d) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under clause 8(3) to the legal practitioner answering a question or producing a document at an examination before an examiner; or
 - 40 (e) to a person or body for the purpose of determining whether the person is entitled to obtain an indemnity for legal costs.

- (3) If a disclosure is made to a person as permitted by subclause (2) or (4), the following provisions apply:

- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons or notice, or any official matter connected with it, except as permitted by subclause (4);
- (b) while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or disclose any information about any of them.

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

- (4) A person to whom information has been disclosed, as permitted by subclause (2) or this subclause, may disclose that information—

- (a) if the person is an officer or agent of a body corporate referred to in subclause (2)(c)—
- (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
- (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
- (b) if the person is a legal practitioner—for the purpose of giving legal advice, or making representations, relating to the summons, notice or matter.

- (5) This clause ceases to apply to a summons or notice after—

- (a) the notation contained in the summons or notice is cancelled by clause 6(4); or
- (b) 5 years elapse after the issue of the summons or notice, whichever is sooner.

- (6) A reference in this clause to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

8—Failure of witnesses to attend and answer questions

- (1) A person served, as prescribed, with a summons to appear as a witness at an examination before an examiner must not—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by the examiner.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (2) A person appearing as a witness at an examination before an examiner must not—

- (a) when required pursuant to clause 4 either to take an oath or make an affirmation—refuse or fail to comply with the requirement; or
- (b) refuse or fail to answer a question that he or she is required to answer by the examiner; or

- (c) refuse or fail to produce a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (3) If—

- 5 (a) a legal practitioner is required to answer a question or produce a document at an examination before an examiner; and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner,

10 the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he or she must, if so required by the examiner, give the examiner the name and address of the person to whom or by whom the

15 communication was made.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (4) Subclause (5) limits the use that can be made of any answers given at an examination before an examiner, or documents or things produced at an examination before an examiner and that subclause only applies if—

- 20 (a) a person appearing as a witness at an examination before an examiner—
- (i) answers a question that he or she is required to answer by the examiner; or
- (ii) produces a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed; and
- 25 (b) in the case of the production of a document that is, or forms part of, a record of an existing or past business—the document sets out details of earnings received by the person in respect of his or her employment and does not set out any other information; and
- (c) before answering the question or producing the document or thing, the person
- 30 claims that the answer, or the production of the document or thing, might tend to incriminate the person or make the person liable to a penalty.

- (5) The answer, or the document or thing, is not admissible in evidence against the person in—

- (a) a criminal proceeding; or
- 35 (b) a proceeding for the imposition of a penalty,

other than—

- (c) proceedings under the *Criminal Assets Confiscation Act 2005*; or
- (d) a proceeding in respect of—
- (i) in the case of an answer—the falsity of the answer; or
- 40 (ii) in the case of the production of a document—the falsity of any statement contained in the document.

- (6) Subclause (3) does not affect the law relating to legal professional privilege.

9—Warrant for arrest of witness

- (1) If, on application by an examiner, a judge of the Supreme Court is satisfied by evidence on oath that there are reasonable grounds to believe—

5 (a) that a person who has been ordered, under clause 18, to deliver his or her passport to the examiner, whether or not the person has complied with the order, is nevertheless likely to leave Australia for the purpose of avoiding giving evidence before the examiner; or

10 (b) that a person in relation to whom a summons has been issued under clause 4(1)—

(i) has absconded or is likely to abscond; or

(ii) is otherwise attempting, or is otherwise likely to attempt, to evade service of the summons; or

(c) that a person has committed an offence under clause 8(1) or is likely to do so,
15 the judge may issue a warrant for the apprehension of the person.

- (2) The warrant may be executed by any person to whom it is addressed and the person executing it has power to break into and enter any premises or vehicle for the purpose of executing it.

- 20 (3) The warrant may be executed even if the warrant is not at the time in the possession of the person executing it.

- (4) A person executing the warrant may only use such reasonable force as is necessary for the execution.

- (5) If a person is apprehended under the warrant, he or she must be brought, as soon as practicable, before a judge of the Supreme Court and the judge may—

25 (a) admit the person to bail, with such security as the judge thinks fit, on such conditions as he or she thinks necessary to ensure the appearance of the person as a witness before the examiner; or

(b) order the continued detention of the person for the purposes of ensuring his or her appearance as such a witness; or

30 (c) order the release of the person.

- (6) If a person is under detention under this clause, he or she must, within 14 days after he or she was brought, or last brought, before a judge of the Supreme Court in accordance with this clause, or within such shorter or longer time as a judge has fixed upon the last previous appearance of the person before a judge under this clause, be again brought before a judge and the judge may then exercise any of the powers of a
35 judge under subclause (5).

- (7) In this clause—

Australia includes the external Territories.

10—False or misleading evidence

A person must not, at an examination before an examiner, give evidence that the person knows is false or misleading in a material particular.

Maximum penalty: \$20 000 or imprisonment for 4 years.

11—Protection of witnesses from harm or intimidation

If it appears to an examiner that, by reason of the fact that a person—

- (a) is to appear, is appearing or has appeared at an examination before the examiner to give evidence or to produce a document or thing; or
- (b) proposes to furnish or has furnished information, or proposes to produce or has produced a document or thing, to the Commissioner or the Office otherwise than at an examination before the examiner,

the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment, the examiner may make such arrangements (including arrangements with the South Australia Police) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

12—Contempt of Commissioner

A person is in contempt of the Commissioner if he or she—

- (a) when appearing as a witness at an examination before an examiner—
 - (i) refuses or fails to take an oath or affirmation when required to do so under clause 4; or
 - (ii) refuses or fails to answer a question that he or she is required to answer by the examiner; or
 - (iii) refuses or fails to produce a document or other thing that he or she was required to produce by a summons or notice under this Act that was served on him or her in accordance with this Act; or
- (b) is a legal practitioner who is required to answer a question or produce a document at an examination before an examiner, and both of the following apply:
 - (i) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;
 - (ii) he or she refuses to comply with the requirement and does not, when required by the examiner, give the examiner the name and address of the person to whom or by whom the communication was made; or
- (c) gives evidence at an examination before an examiner that he or she knows is false or misleading in a material particular; or
- (d) obstructs or hinders an examiner in the performance of his or her functions as an examiner; or
- (e) disrupts an examination before an examiner; or
- (f) threatens a person present at an examination before an examiner.

13—Supreme Court to deal with contempt

- (1) If an examiner is of the opinion that, during an examination before the examiner, a person is in contempt of the Commissioner, the examiner may apply to the Supreme Court for the person to be dealt with in relation to the contempt.
- 5 (2) Before making the application, the examiner must inform the person that the examiner proposes to make the application.
- (3) The application must be accompanied by a certificate that states—
- (a) the grounds for making the application; and
 - (b) evidence in support of the application.
- 10 (4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.
- (5) If, after—
- (a) considering the matters specified in the certificate; and
 - (b) hearing or receiving any evidence or statements by or in support of the
- 15 Commissioner; and
- (c) hearing or receiving any evidence or statements by or in support of the person,

the Supreme Court finds that the person was in contempt of the Commissioner, the Court may deal with the person as if the acts or omissions involved constituted a contempt of that Court.

20

14—Conduct of contempt proceedings

- (1) This clause applies if an application for a person to be dealt with in relation to a contempt of the Commissioner is made to the Supreme Court under clause 13.
- 25 (2) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any rules of court) that apply in relation to the punishment of a contempt of the Supreme Court.
- (3) In proceedings in relation to the application, a certificate under clause 13(3) is prima facie evidence of the matters specified in the certificate.

15—Person in contempt may be detained

- 30 (1) If an examiner proposes to make an application under clause 13(1) in respect of a person, he or she may, during the hearing concerned, direct a police officer to detain the person for the purpose of bringing the person before the Supreme Court for the hearing of the application.
- (2) If the person is detained under subclause (1)—
- 35 (a) the examiner must apply to the Court as soon as practicable under clause 13(1) in respect of the person; and
- (b) the person must, subject to subclause (3), be brought before the Court as soon as practicable.

- (3) The Court may—
- (a) direct that the person be released from detention on condition that he or she will appear before the Court in relation to the application; or
 - (b) order that the person continue to be detained until the application is determined.
- (4) The Court may also impose any other condition on the release, for example—
- (a) that the person surrenders his or her passport; or
 - (b) that the person gives an undertaking as to his or her living arrangements; or
 - (c) that the person reports as required to a law enforcement agency.
- (5) The Court may at any time vary or revoke a condition imposed under subclause (4).

16—Examiner may withdraw contempt application

- (1) An examiner may at any time withdraw an application in relation to a person under clause 13(1).
- (2) If—
- (a) the examiner does so; and
 - (b) the person is in detention under clause 15,
- the person must be released from detention immediately.

17—Legal protection of examiners, counsel and witnesses

- (1) An examiner has, in the performance of his or her functions or the exercise of his or her powers as an examiner in relation to an examination before the examiner, the same protection and immunity as a judge of the Supreme Court.
- (2) A legal practitioner assisting the Commissioner or an examiner or representing a person at an examination before an examiner has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person summoned to attend or appearing before an examiner as a witness has the same protection as a witness in proceedings in the Supreme Court.

18—Order for delivery to examiner of passport of witness

- (1) If, on application by an examiner, a judge of the Supreme Court is satisfied by evidence on oath that—
- (a) in connection with an investigation into corruption in public administration, a summons has been issued under this Act requiring a person to appear before an examiner at an examination (whether or not the summons has been served), or a person has appeared before an examiner at an examination, to give evidence or to produce documents or other things; and
 - (b) there are reasonable grounds for believing that the person may be able to give to the examiner evidence or further evidence that is, or to produce to the examiner documents or other things or further documents or other things that are, relevant to the investigation and could be of particular significance to the investigation; and

- (c) there are reasonable grounds for suspecting that the person intends to leave Australia and has in his or her possession, custody or control of a passport issued to him or her,

5 the judge may make an order requiring the person to appear before a judge of the Supreme Court on a date, and at a time and place, specified in the order to show cause why he or she should not be ordered to deliver the passport to the examiner.

- (2) If a person appears before a judge of the Supreme Court under an order made under subclause (1), the judge may, if he or she thinks fit, make an order—

10 (a) requiring the person to deliver to the examiner any passport issued to him or her that is in his or her possession, custody or control; and

(b) authorising the examiner to retain the passport until the expiration of such period (not exceeding 1 month) as is specified in the order.

- (3) A judge of the Supreme Court may, on application by the examiner, extend for a further period (not exceeding 1 month) or further periods (not exceeding 1 month in each case) the period for which the examiner is authorised to retain a passport under an order made under subclause (2), but not so that the total period for which the examiner is authorised to retain the passport exceeds 3 months.

- 15 (4) A judge of the Supreme Court may, at any time while the examiner is authorised under an order made under this clause to retain a passport issued to a person, on application made by the person, revoke the order and, if the order is revoked, the examiner must immediately return the passport to the person.

- 20 (5) In this clause—

Australia includes the external Territories.

19—Offence to hinder, obstruct or disrupt

25 A person must not—

- (a) hinder or obstruct an examiner in the performance of his or her functions as an examiner; or
(b) disrupt an examination before an examiner.

Maximum penalty: \$20 000 or imprisonment for 4 years.

30 Schedule 3—Related amendments

Part 1—Preliminary

1—Amendment provisions

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

Part 2—Amendment of *Australian Crime Commission (South Australia) Act 2004*

2—Amendment of section 18—Conduct of examination

Section 18(6)—after "relevant to the ACC operation/investigation" insert:

5 or any other ACC operation/investigation

Part 3—Amendment of *Child Sex Offenders Registration Act 2006*

3—Amendment of Act

10 Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

Police Ombudsman

Part 4—Amendment of *Correctional Services Act 1982*

4—Amendment of section 28—Removal of prisoner for criminal investigation, attendance in court etc

15 Section 28—after subsection (2) insert:

(2a) If a prisoner is required to attend before the Independent Commissioner Against Corruption, the Deputy Commissioner or an examiner under the *Independent Commissioner Against Corruption Act 2012*, the Commissioner, Deputy Commissioner or examiner may, by order, direct the manager of the correctional institution in which the prisoner is being detained to cause the prisoner to be brought before the Commissioner, Deputy Commissioner or examiner in accordance with the order.

20

5—Amendment of section 33—Prisoner's mail

25 (1) Section 33(7)—before paragraph (a) insert:

(aaa) to the Independent Commissioner Against Corruption or the Office for Public Integrity; or

(aa) to the Police Ombudsman; or

(2) Section 33(8)—after "from" insert:

30 the Independent Commissioner Against Corruption, the Office for Public Integrity, the Police Ombudsman,

6—Insertion of section 35A

After section 35 insert:

35A—Assistance to make complaint to Office for Public Integrity

5 If a prisoner informs the manager of a correctional institution that the
prisoner wishes to make a complaint to the Office for Public
Integrity or a complaint about corruption, misconduct or
maladministration in public administration (within the meaning of
10 the *Independent Commissioner Against Corruption Act 2012*), the
manager of the correctional institution must take such steps as are
necessary to facilitate the making of a complaint (including
providing facilities to enable the prisoner to prepare the complaint
and enclose and seal it in an envelope and delivering the sealed
15 envelope to the Office without undue delay).

Part 5—Amendment of *Criminal Investigation (Covert Operations) Act 2009*

7—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *chief officer*, (a)—after subparagraph (ii) insert:

20 (iii) in relation to the Independent Commissioner Against Corruption—
means the Independent Commissioner Against Corruption;

(2) Section 3(1), definition of *law enforcement agency*—after paragraph (b) insert:

or

(c) the Independent Commissioner Against Corruption;

(3) Section 3(1), definition of *law enforcement officer*—delete the definition and
25 substitute:

law enforcement officer means—

(a) in relation to SA Police—a police officer or a police officer
(however described) of another jurisdiction seconded to SA Police;
or

30 (b) in relation to the Australian Crime Commission—a member of staff
of the Australian Crime Commission or a person seconded to the
Australian Crime Commission; or

(c) in relation to the Independent Commissioner Against Corruption—an
investigator under the *Independent Commissioner Against*
35 *Corruption Act 2012*;

Part 6—Amendment of *Criminal Law Consolidation Act 1935*

8—Amendment of section 246—Confidentiality of jury deliberations and identities

(1) Section 246(5)—after paragraph (b) insert:

5 (ba) to the Independent Commissioner Against Corruption, the Deputy Commissioner, an examiner or an investigator under the *Independent Commissioner Against Corruption Act 2012* or in the course of making a complaint or report under that Act; or

(2) Section 246(6)—after paragraph (b) insert:

10 (ba) by the Independent Commissioner Against Corruption, the Deputy Commissioner, an examiner or an investigator under the *Independent Commissioner Against Corruption Act 2012* or in the course of the assessment of a complaint or report under that Act; or

Part 7—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

9—Amendment of section 45—Access to and use of DNA database system

Section 45(2)(i)—delete "Police Complaints Authority" and substitute:

Police Ombudsman

10—Amendment of section 50—Confidentiality

20 Section 50(1)(i)—delete "Police Complaints Authority" and substitute:

Police Ombudsman

11—Amendment of section 57—Compliance audits

Section 57—delete "Police Complaints Authority" wherever occurring and substitute in each case:

25 Police Ombudsman

Part 8—Amendment of *Defamation Act 2005*

12—Amendment of section 4—Interpretation

Section 4, definition of *Australian tribunal*—after "inquiry" insert:

30 and the Independent Commissioner Against Corruption, the Deputy Commissioner or an examiner conducting an examination under the *Independent Commissioner Against Corruption Act 2012*

Part 9—Amendment of *Freedom of Information Act 1991*

13—Amendment of Act

35 Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

Police Ombudsman

14—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *agency*—delete paragraph (f) and substitute:

- (f) an incorporated or unincorporated body—
 - (i) established or continued in existence for a public purpose by an Act; or
 - (ii) established or continued in existence for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
 - (iii) subject to control or direction by the Governor, a Minister of the Crown or other instrumentality or agency of the Crown or a council (whether or not the body is established or continued in existence by or under an Act); or
- (fa) a body responsible for the management of a local government indemnity scheme established under Schedule 1 clause 2 of the *Local Government Act 1999*; or
- (fb) a regional development assessment panel or a council development assessment panel constituted under section 34 or 56A of the *Development Act 1993*; or

(2) Section 4—after subsection (5) insert:

- (6) An agency is not to be taken to hold a document while the document is held by or in the possession of an exempt agency for which the agency is responsible.

15—Amendment of Schedule 2—Exempt agencies

Schedule 2—after paragraph (e) insert:

- (ea) the Independent Commissioner Against Corruption;
- (eb) the Office for Public Integrity;

Part 10—Amendment of *Legal Practitioners Act 1981*

16—Amendment of section 21—Entitlement to practise

Section 21(5), definition of *tribunal*—after "royal commission" insert:

, the Independent Commissioner Against Corruption, the Deputy Commissioner or an examiner conducting an examination under the *Independent Commissioner Against Corruption Act 2012*

Part 11—Amendment of *Listening and Surveillance Devices Act 1972*

17—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *associated equipment* insert:

chief officer of an investigating agency means—

- (a) in the case of South Australia Police—the Commissioner of Police;
or
- (b) in the case of the Independent Commissioner Against Corruption—the Independent Commissioner Against Corruption; or
- (c) in the case of the ACC—the Chief Executive Officer of the ACC;

- (2) Section 3—after the definition of *declared listening device* insert:

investigating agency means—

- (a) South Australia Police; or
- (b) the Independent Commissioner Against Corruption; or
- (c) the ACC;

- (3) Section 3—after the definition of *member of the staff of the ACC* insert:

officer of an investigating agency means—

- (a) in the case of South Australia Police—a police officer or a police officer (however described) of another jurisdiction seconded to South Australia Police; or
- (b) in the case of the Independent Commissioner Against Corruption—an investigator under the *Independent Commissioner Against Corruption Act 2012*; or
- (c) in the case of the ACC—a member of the Board of the ACC or a member of the staff of the ACC who is a member of the Australian Federal Police or the police force of a State or Territory of the Commonwealth;

- (4) Section 3, definition of *relevant proceeding*, (h)—delete "a member of a police force or an officer or employee" and substitute:

a police officer (however described), or an officer or employee,

- (5) Section 3—after the definition of *relevant proceeding* insert:

review agency for an investigating agency means—

- (a) for South Australia Police—the Police Ombudsman; or
- (b) for the Independent Commissioner Against Corruption—a person who is independent of the Commissioner and is appointed by the Governor as the review agency;

18—Amendment of section 6—Warrants—General provisions

- (1) Section 6(2)—delete subsection (2) and substitute:
- 5 (2) An application for a warrant may be made by an officer of an investigating agency with the written approval of the chief officer of the investigating agency certifying that the chief officer is satisfied that the warrant is reasonably required for an investigation.
- (2) Section 6(8) and (9)—delete subsections (8) and (9) and substitute:
- 10 (8) If the chief officer of the investigating agency is satisfied that the grounds on which a warrant was issued have ceased to exist, the chief officer must, if the warrant is still in force, cancel the warrant by instrument in writing.
- (9) A warrant may, at any time, be cancelled by the chief officer of the investigating agency.

19—Amendment of section 6AB—Use of information or material derived from use of listening or surveillance devices under warrants

15 Section 6AB(f)—delete "where" and substitute:
 if

20—Amendment of section 6AC—Register of warrants

 Section 6AC(1)—delete subsection (1) and substitute:

- 20 (1) The chief officer of an investigating agency (other than the ACC) must keep a register of warrants issued to the agency.

21—Amendment of section 6B—Reports and records relating to warrants etc

- (1) Section 6B—delete "members of the police force" wherever occurring and substitute in each case:
- 25 police officers
- (2) Section 6B(1)—delete "The Commissioner of Police must, in relation to warrants issued to members of the police force" and substitute:
- The chief officer of an investigating agency (other than the ACC) must, in relation to warrants issued to the agency
- 30 (3) Section 6B(1)(c)(vi)(A)—delete "police force" and substitute:
 agency
- (4) Section 6B(1b)—delete "Commissioner of Police" and substitute:
 chief officer of an investigating agency
- (5) Section 6B(1b)(a)—delete "member of the police force" and substitute:
- 35 police officer
- (6) Section 6B(2)—delete "The Commissioner of Police" and substitute:
 The chief officer of an investigating agency

22—Amendment of section 6C—Control by police etc of certain records, information and material

Section 6C—delete "The Commissioner of Police and the ACC" and substitute:

The chief officer of an investigating agency

5 **23—Amendment of section 6D—Inspection of records by review agency**

(1) Section 6D(1)—delete "Police Complaints Authority" and substitute:

review agency for an investigating agency

(2) Section 6D(1)(a)—delete "the police force" and substitute:

the investigating agency

10 (3) Section 6D(2)—delete "Police Complaints Authority is of the opinion that the Commissioner of Police" and substitute:

review agency is of the opinion that the investigating agency

(4) Section 6D(2)—delete "Authority" and substitute:

review agency

15 (5) Section 6D(3)—delete "Police Complaints Authority must give the Commissioner of Police" and substitute:

review agency must give the investigating agency

24—Amendment of section 6E—Powers of review agency

(1) Section 6E(1), (2) and (3)—delete subsections (1), (2) and (3) and substitute:

20 (1) For the purposes of an inspection under section 6D, the review agency, or a person authorised by the review agency for the purpose—

25 (a) may, after notifying the chief officer of an investigating agency, enter at any reasonable time premises occupied by the investigating agency; and

(b) is entitled to have full and free access at all reasonable times to all records of the investigating agency; and

(c) is, despite any other law, entitled to make copies of, and to take extracts from, records of the investigating agency; and

30 (d) may require an officer of an investigating agency to give the review agency or authorised person such information as the review agency considers necessary, being information that is in the officer's possession, or to which the officer has access, and that is relevant to the inspection.

5 (2) If the review agency has reason to believe that an officer of an investigating agency is able to give information relevant to an inspection under section 6D, the review agency may, by written notice to the officer, require the officer to do 1 or both of the following:

(a) give the information, in writing, signed by the officer, at a specified place and within a specified period;

10 (b) attend before a specified person at a specified place and within a specified period or at a specified time on a specified day, in order to answer questions relevant to the inspection.

15 (3) If the review agency has reason to believe that an officer of an investigating agency is able to give information relevant to an inspection under section 6D but does not know the officer's identity, the review agency may, by written notice to the chief officer of an investigating agency, require the chief officer or a person nominated by the chief officer to attend before a specified person at a specified place and within a specified period or at a specified time on a specified day, in order to answer questions relevant to the inspection.

(2) Section 6E(6)—delete subsection (6) and substitute:

20 (6) The chief officer of an investigating agency must ensure that officers of the investigating agency provide the review agency with such assistance in relation to an inspection under section 6D as the review agency reasonably requires.

25 **25—Amendment of section 7—Lawful use of listening device by party to private conversation**

(1) Section 7(1)—delete "where" and substitute:

if

(2) Section 7(2)—delete subsection (2) and substitute:

30 (2) An exemption from section 4 that applies to an officer of an investigating agency in relation to the use of a listening device for the purposes of the investigation of a matter by the agency extends to any other such officer who overhears, records, monitors or listens to the private conversation by means of the device for the purposes of the investigation.

35 (3) Section 7(3)(c)—delete "the police or the ACC" and substitute:

an investigating agency

(4) Section 7(3)(e)—delete "where" and substitute:

if

40 **26—Amendment of section 8—Possession etc of declared listening device**

(1) Section 8(1)—delete "published" first occurring

(2) Section 8(1)—delete "by a notice published in a like manner" and substitute:
 , by subsequent notice in the Gazette,

(3) Section 8(2)—delete "any" and substitute:

a

5 (4) Section 8(5)—delete "any" and substitute:

a

27—Amendment of section 9—Power to seize listening devices etc

(1) Section 9(1)—delete all words before "suspects on reasonable grounds" and substitute:

10 If an officer of an investigating agency

(2) Section 9(1)—delete "member" and substitute:

officer

(3) Section 9(2)—delete "A member referred to in subsection (1)" and substitute:

An officer of an investigating agency

15 (4) Section 9(2)—delete "member" wherever occurring and substitute in each case:

officer

28—Amendment of section 10—Evidence

(1) Section 10—delete "any"

20 (2) Section 10—delete "the Commissioner of Police or a member of the Board of the ACC" and substitute:

the chief officer of an investigating agency

29—Amendment of section 11—Forfeiture of listening devices

(1) Section 11(1)—delete "Where" and substitute:

If

25 (2) Section 11(1)—delete "any listening device or record of any" and substitute:

a listening device or record of

30—Amendment of section 12—Regulations

Section 12(2)(b)—delete "the police force" and substitute:

an investigating agency

Part 12—Amendment of *Local Government Act 1999*

31—Substitution of section 63

Section 63—delete the section and substitute:

63—Code of conduct for members

- 5
- (1) The Governor may, by regulation, prescribe a code of conduct to be observed by the members of all councils.
 - (2) Council members must observe the code of conduct.

32—Amendment of section 74—Members to disclose interests

Section 74(5a) and (5b)—delete subsections (5a) and (5b)

33—Insertion of section 78A

After section 78 insert:

78A—Obtaining of legal advice

- 15
- (1) The regulations may establish a scheme under which a member of a council may directly obtain legal advice at the expense of the council to assist the member in performing or discharging official functions and duties.
 - (2) The scheme may require the preparation and adoption of a policy by a council and include provisions for the variation of the policy and its availability to the public.
 - 20 (3) The scheme or a policy adopted under the scheme may—
 - (a) impose limitations on the obtaining of legal advice; and
 - (b) provide for a process for approval of requests to obtain legal advice; and
 - 25 (c) allow for conditions to be imposed on an approval, including a condition limiting the expenditure that may be incurred; and
 - (d) provide for a council to set an overall budget for the purpose; and
 - (e) include other relevant provisions.

34—Substitution of section 110

Section 110—delete the section and substitute:

110—Code of conduct for employees

- 35
- (1) The Governor may, by regulation, prescribe a code of conduct to be observed by the employees of all councils.
 - (2) The Minister must consult with any registered association that represents the interests of employees of councils before the regulation is made.

- (3) A code of conduct must not diminish a right or employment condition under an Act, award, industrial agreement or contract of employment.
- (4) Council employees must observe the code of conduct.
- 5 (5) Contravention of or failure to comply with the code of conduct constitutes a ground for suspending, dismissing or taking other disciplinary action against the employee.

35—Amendment of section 129—Conduct of audit

Section 129(8)—delete subsection (8)

36—Amendment of section 263—Grounds of complaint

- 10 (1) Section 263(1)—delete "section 74" and substitute:
Chapter 5 Part 4
- (2) Section 263(2)—delete subsection (2)

37—Insertion of sections 263A and 263B

15 After section 263 insert:

263A—Investigation of grounds of complaint by Ombudsman

- 20 (1) The Minister may refer to the Ombudsman for investigation and report under the *Ombudsman Act 1972* any matter alleged to constitute grounds for complaint under this Act against a member of a council.
- (2) Any person may make a complaint to the Ombudsman setting out matters alleged to constitute grounds for complaint under this Act against a member of a council.
- 25 (3) The Ombudsman may, on his or her own initiative, carry out an investigation under the *Ombudsman Act 1972* of matters that may constitute grounds for complaint under this Act against a member of a council.
- (4) For the purposes of the *Ombudsman Act 1972*, all acts that may constitute grounds for complaint under this Act against a member of a council will be taken to be administrative acts.
- 30

263B—Outcome of Ombudsman investigation

- 35 (1) The recommendations that may be made by the Ombudsman under the *Ombudsman Act 1972* on the completion of an investigation of the complaint include that the council—
- (a) reprimand the member (including by means of a public statement); or
- (b) require the member to attend a specified course of training or instruction, to issue an apology in a particular form or to take other steps; or

- (c) require the member to reimburse the council a specified amount; or
- (d) ensure that a complaint is lodged against the member in the District Court.

- 5
- (2) If a member of a council fails to comply with a requirement of the council of a kind referred to in subsection (1) made in accordance with the recommendation of the Ombudsman, the member will be taken to have failed to comply with Chapter 5 Part 4 and the council is to ensure that a complaint is lodged against the member in the
- 10
- District Court.
- (3) A council is taken to have the power to act according to the Ombudsman's recommendations.

38—Amendment of section 264—Complaint lodged in District Court

Section 264(2)—delete subsection (2) and substitute:

- 15
- (2) However—
- (a) a public official may not lodge a complaint unless the matter has been investigated by the Ombudsman; and
 - (b) a person other than a public official may not lodge a complaint unless a legally qualified person appointed by the
- 20
- Minister after consultation with the LGA has granted written approval to do so.

39—Amendment of section 267—Outcome of proceedings

- (1) Section 267(1)(a)—after "person" insert:
- (including by means of a public statement)
- 25
- (2) Section 267(1)(b)—after "instruction," insert:
- to issue an apology in a particular form
- (3) Section 267(1)—after paragraph (b) insert:
- (ba) require the person to reimburse the council a specified amount;

40—Substitution of section 272

30

Section 272—delete the section and substitute:

272—Minister may refer investigation of council to Ombudsman

- (1) The Minister may refer to the Ombudsman for investigation and report a matter in respect of which the Minister has reason to believe that—
- 35
- (a) a council has contravened or failed to comply with this or another Act; or
 - (b) a council has failed to discharge a responsibility under this or another Act; or

(c) an irregularity has occurred in the conduct of the affairs of a council (in relation to matters arising under this or another Act).

(2) The referral may be made on the basis of a report received under this Act from an auditor or on any other basis.

(3) Before referring a matter, the Minister must give the council a reasonable opportunity to explain its actions and make submissions unless the Minister considers that the giving of notice would be likely to undermine the investigation of the matter.

41—Amendment of section 273—Action on report

(1) Section 273(1)(a)—delete paragraph (a) and substitute:

(a) information provided by the Independent Commissioner Against Corruption; or

(2) Section 273(1)(c)—insert after "under"

this or

(3) Section 273(2)(b)(iv)—before "the Ombudsman" insert:

the Independent Commissioner Against Corruption or

42—Amendment of section 274—Investigation of subsidiary

(1) Section 274(2)—delete "appoint an investigator or investigators to carry out an investigation and to report to the Minister on the matter" and substitute:

refer the matter to the Ombudsman for investigation and report

(2) Section 274(3) to (10)—delete subsections (3) to (10) (inclusive) and substitute:

(3) Before referring a matter, the Minister must give the subsidiary a reasonable opportunity to explain its actions and make submissions unless the Minister considers that the giving of notice would be likely to undermine the investigation of the matter.

Part 13—Amendment of *Ombudsman Act 1972*

43—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *agency to which this Act applies*, (d)—delete paragraph (d) and substitute:

(d) an incorporated or unincorporated body—

(i) established or continued in existence for a public purpose by an Act; or

(ii) established or continued in existence for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or

- (iii) subject to control or direction by the Governor, a Minister of the Crown or other instrumentality or agency of the Crown or a council (whether or not the body is established or continued in existence by or under an Act); or

- 5 (2) Section 3(1), definition of *agency to which this Act applies*—after "does not include" insert:

the Independent Commissioner Against Corruption, the Office for Public Integrity or

44—Amendment of section 13—Matters subject to investigation

- 10 Section 13—after subsection (3) insert:

- (3a) The ability to lay a complaint for disciplinary action against a person is to be disregarded for the purposes of subsection (3).

45—Amendment of section 19A—Ombudsman may issue direction in relation to administrative act

- 15 (1) Section 19A(1) to (4)—delete subsections (1) to (4) (inclusive) and substitute:

- (1) If the Ombudsman is of the opinion that an administrative act by an agency is—

- (a) likely to prejudice an investigation or proposed investigation or the effect or implementation of a recommendation that the Ombudsman might make as a result of an investigation or proposed investigation; or

- (b) likely to cause serious hardship to a person,

the Ombudsman may, by notice in writing, direct an agency to which this Act applies to refrain from performing the administrative act as specified in the notice for any period specified in the notice.

- (2) However—

- (a) a notice must not be issued if compliance with the notice by the agency would result in the agency breaching a contract or other legal obligation or cause any third parties undue hardship; and

- (b) a notice or notices issued under this section must not require an agency to refrain from performing an administrative act for more than 45 days in aggregate.

- (3) The Ombudsman may, at any time, revoke a notice and must do so if of the opinion that the notice should not have been issued.

- 20 (2) Section 19A(7)—delete subsection (7)

46—Amendment of section 20—No obligation on persons to maintain secrecy

Section 20—before "is not entitled" insert:

or an agency to which this Act applies

47—Repeal of section 22

Section 22—delete the section

48—Substitution of section 26

Section 26—delete the section and substitute:

5 **26—Confidentiality, disclosure of information and publication
of reports**

(1) A person engaged or formerly engaged in the administration of this Act must not disclose information obtained in the course of the administration of this Act except—

10 (a) for the purposes of the administration of this Act or proceedings under this Act or the *Royal Commissions Act 1917*; or

15 (b) for the purposes of the performance of official functions by an agency to which this Act applies, any agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth, or any other statutory authority or statutory office holder; or

(c) as authorised or required by the Ombudsman.

Maximum penalty: \$20 000.

20 (2) The Ombudsman is only to authorise or require information to be disclosed if of the opinion that the disclosure is in the public interest (but a person to whom an authorisation or requirement is directed need not inquire into the basis of the authorisation or requirement).

25 (3) The Ombudsman may, if of the opinion that it is in the public interest to do so, cause a report on an investigation, or a statement about an investigation, or a decision not to investigate or to discontinue an investigation, to be published in such manner as the Ombudsman thinks fit.

30 (4) Information that has been disclosed under this section for a particular purpose must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

35 Maximum penalty: \$20 000.

Part 14—Amendment of *Parliamentary Committees Act 1991*

49—Amendment of section 3—Interpretation

Section 3—delete the definition of *Committee* and substitute:

Committee means a Committee established under this Act;

50—Insertion of Parts 5E and 5F

After Part 5D insert:

Part 5E—Parliamentary Conduct Committee

Division 1—Establishment and membership of Committee

15M—Establishment of Committee

The *Parliamentary Conduct Committee* is established as a committee of the Parliament.

15N—Membership of Committee

(1) The Committee consists of 5 members of whom—

(a) 3 must be members of the House of Assembly appointed by the House of Assembly (of whom at least 1 must be appointed from the group led by the Leader of the Opposition and at least 1 must be appointed from the group led by the Leader of the Government); and

(b) 2 must be members of the Legislative Council appointed by the Legislative Council (of whom at least 1 must be appointed from the group led by the Leader of the Opposition and at least 1 must be appointed from the group led by the Leader of the Government).

(2) The members of the Committee are not entitled to remuneration for their work as members of the Committee.

(3) The Committee must from time to time appoint 1 of its House of Assembly members to be the Presiding Member of the Committee but if the members are at any time unable to come to a decision on who is to be the Presiding Member, or on who is to preside at a meeting of the Committee in the absence of the Presiding Member, the matter is referred by force of this subsection to the House of Assembly and that House will determine the matter.

Division 2—Functions of Parliamentary Conduct Committee

15O—Functions of Committee

The functions of the Parliamentary Conduct Committee are—

(a) to promote compliance with standards of conduct required of members of Parliament by their respective Houses and investigate, on its own initiative or on receipt of a complaint, alleged contraventions of those standards; and

(b) if it is satisfied that there has been a contravention of the standards by a member, to report to the member's House the nature of the contravention; and

(c) to keep the standard of parliamentary conduct generally under review and make such recommendations as it sees fit for modifications of the standards of conduct required of members of Parliament to both Houses; and

5 (d) to perform other functions assigned to the Committee under this or any other Act or by resolution of both Houses.

Part 5F—Crime and Corruption Policy Review Committee

Division 1—Establishment and membership of Committee

15P—Establishment of Committee

The *Crime and Corruption Policy Review Committee* is established as a committee of the Parliament.

15Q—Membership of Committee

(1) The Committee consists of 7 members of whom—

15 (a) 4 must be members of the House of Assembly appointed by the House of Assembly (of whom at least 1 must be appointed from the group led by the Leader of the Opposition and at least 1 must be appointed from the group led by the Leader of the Government); and

20 (b) 3 must be members of the Legislative Council appointed by the Legislative Council (of whom at least 1 must be appointed from the group led by the Leader of the Opposition and at least 1 must be appointed from the group led by the Leader of the Government).

25 (2) The members of the Committee are not entitled to remuneration for their work as members of the Committee.

30 (3) The Committee must from time to time appoint 1 of its House of Assembly members to be the Presiding Member of the Committee but if the members are at any time unable to come to a decision on who is to be the Presiding Member, or on who is to preside at a meeting of the Committee in the absence of the Presiding Member, the matter is referred by force of this subsection to the House of Assembly and that House will determine the matter.

Division 2—Functions of Crime and Corruption Policy Review Committee

15R—Functions of Committee

(1) The functions of the Crime and Corruption Policy Review Committee are—

(a) to examine—

(i) each annual and other report laid before both Houses prepared by the Independent Commissioner Against Corruption, the Commissioner of Police or the Police Ombudsman; and

(ii) each report laid before both Houses under the *Police Act 1998*, the *Serious and Organised Crime (Control) Act 2008* or the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; and

(b) to report to both Houses on any matter of policy affecting public administration arising out of a report as the Committee considers appropriate; and

(c) to perform other functions assigned to the Committee under this or any other Act or by resolution of both Houses.

(2) Nothing in this section authorises the Crime and Corruption Policy Review Committee—

(a) to investigate a matter relating to particular conduct; or

(b) to reconsider a decision of the Independent Commissioner Against Corruption or any other person or body in relation to a particular matter; or

(c) to report on the performance of the functions of the Independent Commissioner Against Corruption, South Australia Police or the Police Ombudsman.

(3) The Independent Commissioner Against Corruption must not disclose to the Crime and Corruption Policy Review Committee information in relation to a particular matter that is, or has been, the subject of a complaint, report, assessment, investigation or referral under the *Independent Commissioner Against Corruption Act 2012*, except such information as could have been the subject of a public statement under section 23 of that Act.

Part 15—Amendment of *Police Act 1998*

51—Amendment of Act

Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

Police Ombudsman

52—Amendment of section 38—Report and investigation of breach of Code

Section 38—after subsection (1) insert:

(1a) The Commissioner must provide the Police Ombudsman with details of each report as soon as practicable after it is made.

53—Amendment of section 67—Divestment or suspension of powers

Section 67(3)—after "S.A. Police" first occurring insert:

or a special constable

Part 16—Amendment of *Police (Complaints and Disciplinary Proceedings) Act 1985*

54—Amendment of Act

- (1) Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

Police Ombudsman

- (2) Act—delete "Authority" wherever occurring and substitute in each case:

Ombudsman

- (3) Act—delete "Authority's" wherever occurring and substitute in each case:

Ombudsman's

55—Amendment of section 12—Protection for Ombudsman and person acting under direction

Section 12—after "this Act" insert:

or any other Act

56—Amendment of section 21—Determination by Ombudsman that investigation not warranted

Section 21(2)—delete "and his or her reasons for making the determination"

57—Amendment of section 28—Investigation of matters by Ombudsman

- (1) Section 28(10) and (11)—delete subsections (10) and (11)

- (2) Section 28(18)—delete subsection (18)

58—Insertion of section 28A

After section 28 insert:

28A—Obstruction

A person must not—

- (a) fail to attend before a person as required for the purposes of an investigation under this Act; or
- (b) refuse or fail to answer to the best of the person's knowledge, information and belief a question the person is required to answer for the purposes of an investigation under this Act; or
- (c) provide information or evidence in the course of an investigation under this Act knowing that it is false or misleading in a material particular; or
- (d) without lawful excuse, refuse or fail to comply with a requirement or direction given for the purposes of an investigation of the Ombudsman or an authorised person under this Act; or

- (e) otherwise hinder or obstruct the Ombudsman or an authorised person, or a person assisting the Ombudsman or an authorised person, in the exercise of powers conferred by this Act.

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

Part 17—Amendment of *Protective Security Act 2007*

59—Amendment of Act

Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

10 Police Ombudsman

Part 18—Amendment of *Public Finance and Audit Act 1987*

60—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *imprest account* insert:

15 *local government indemnity scheme* means a scheme conducted and managed under Schedule 1 clause 2 of the *Local Government Act 1999*;

- (2) Section 4(1), definition of *publicly funded body*, (a)—delete paragraph (a) and substitute:

(a) a council constituted under the *Local Government Act 1999* or a subsidiary of such a council; or

- 20 (3) Section 4(1), definition of *publicly funded project*, (b)—delete paragraph (b) and substitute:

(b) a council constituted under the *Local Government Act 1999* or a subsidiary of such a council; or

61—Amendment of section 32—Examination of publicly funded bodies and projects and local government indemnity schemes

- 25 (1) Section 32(1)—delete "must, if requested by the Treasurer" and substitute:
may

- (2) Section 32(1)—after paragraph (b) insert:

or

30 (c) examine accounts relating to a local government indemnity scheme and the efficiency and cost-effectiveness of the scheme.

- (3) Section 32(1a)—delete "or project" and substitute:

, project or scheme

- (4) Section 32—after subsection (1a) insert:

35 (1b) The Auditor-General must conduct an examination under subsection (1) if requested to do so by the Treasurer or the Independent Commissioner Against Corruption.

(5) Section 32(3)—delete subsection (3) and substitute:

- (3) The Auditor-General must deliver copies of the report to—
- (a) any publicly funded body concerned in the examination; and
 - (b) if the examination was requested by the Treasurer—the Treasurer; and
 - (c) if the examination was requested by the Independent Commissioner Against Corruption—the Independent Commissioner Against Corruption; and
 - (d) the President of the Legislative Council and the Speaker of the House of Assembly.

62—Amendment of section 36—Auditor-General's annual report

Section 36(1)—after paragraph (a) insert:

- (ab) sets out the examinations made under section 32 that have been completed during the preceding financial year and briefly describes the outcome of those examinations; and

Part 19—Amendment of *Public Sector Act 2009*

63—Amendment of section 25—Public Service employees

Section 25(2)(f)—delete "Police Complaints Authority" and substitute:

Police Ombudsman

Part 20—Amendment of *Shop Theft (Alternative Enforcement) Act 2000*

64—Amendment of section 17—Confidentiality

Section 17(1)(d)—delete "Police Complaints Authority" and substitute:

Police Ombudsman

Part 21—Amendment of *State Records Act 1997*

65—Amendment of section 3—Interpretation

Section 3(1), definition of *agency*—after paragraph (m) insert:

and

- (n) a present or former Independent Commissioner Against Corruption or Deputy Commissioner; and
- (o) a present or former examiner or investigator appointed by the Independent Commissioner Against Corruption; or
- (p) a present or former employee of the Independent Commissioner Against Corruption; and
- (q) a present or former public service employee assigned to the Office for Public Integrity to assist the Independent Commissioner Against Corruption;

Part 22—Amendment of *Summary Offences Act 1953*

66—Amendment of section 74C—Interpretation

- (1) Section 74C, definition of *interview*—after paragraph (c) insert:

but does not include an examination under the *Independent Commissioner Against Corruption Act 2012*;

- (2) Section 74C, definition of *investigating officer*—after paragraph (a) insert:

(ab) an investigator under the *Independent Commissioner Against Corruption Act 2012*; or

Part 23—Amendment of *Terrorism (Preventative Detention) Act 2005*

67—Amendment of Act

Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

Police Ombudsman

Part 24—Amendment of *Whistleblowers Protection Act 1993*

68—Amendment of Act

Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

Police Ombudsman

Part 25—Amendment of *Witness Protection Act 1996*

69—Amendment of Act

Act—delete "Police Complaints Authority" wherever occurring and substitute in each case:

Police Ombudsman

70—Amendment of section 12—Access to register

Section 12(2)—delete "Authority" and substitute:

Police Ombudsman

71—Amendment of section 21—Offences

- (1) Section 21(3)—after paragraph (a) insert:

(ab) is necessary for the purposes of an investigation by the Independent Commissioner Against Corruption; or

- (2) Section 21(4)(b)—after subparagraph (i) insert:

(ia) for the purposes of an investigation by the Independent Commissioner Against Corruption; or