

SOUTH AUSTRALIA

**POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS)
ACT 1985**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 July 1999**.*

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 8 May 1997.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
3. Interpretation
4. Act not to derogate from other law

PART 2 POLICE COMPLAINTS AUTHORITY

5. Appointment of Police Complaints Authority
6. Authority not to engage in other remunerative employment
7. Term of office
8. Removal from office
9. Staff of Authority
11. Acting Authority
- 11A. Delegation by Authority
12. Protection for Authority and persons acting under his or her direction

PART 3 POLICE INTERNAL INVESTIGATION BRANCH

13. Constitution of internal investigation branch of police force
14. Officer in charge entitled to report directly to Commissioner
15. Duties of members serving in internal investigation branch

PART 4 COMPLAINTS AND INVESTIGATIONS

16. Complaints to which this Act applies
17. Right of persons detained in custody to make complaint to Authority
18. Action on complaint being made to member of police force
19. Action on complaint being made to Authority
20. Authority to notify complainant of receipt of complaint
21. Determination by Authority that investigation not warranted
- 21A. Determination by Authority to resolve complaint informally
22. Conciliation
- 22A. Authority may initiate investigation
23. Determination that matter be investigated by Authority
24. Effect of certain determinations of Authority
25. Investigations by internal investigation branch
26. Powers of Authority to oversee investigations by internal investigation branch
28. Investigation of matters by Authority
29. Register to be kept by Authority
30. Authority to respond to inquiries by complainants

**PART 5
ACTION CONSEQUENTIAL ON INVESTIGATION**

- 31. Reports of investigations by internal investigation branch to be furnished to Authority
- 32. Authority to make assessment and recommendations in relation to investigations by internal investigation branch
- 33. Authority to report on and make assessment and recommendations in relation to investigation carried out by Authority
- 34. Recommendations of Authority and consequential action by Commissioner
- 35. Commissioner to notify Authority of laying of charges or other action consequential on investigation
- 36. Particulars in relation to matter under investigation to be entered in register and furnished to complainant and member of police force concerned

**PART 6
POLICE DISCIPLINARY TRIBUNAL**

- 37. Constitution of Police Disciplinary Tribunal
- 38. Registrar of Tribunal
- 39. Charges in respect of breach of discipline
- 40. Proceedings before the Tribunal
- 41. Powers of the Tribunal
- 42. Protection of Tribunal, counsel and witnesses
- 43. Case stated
- 44. Costs
- 45. Reasons for decision

**PART 7
APPEALS IN RESPECT OF DISCIPLINE**

- 46. Appeal against decision of Tribunal or punishment for breach of discipline

**PART 8
MISCELLANEOUS**

- 47. Application to Supreme Court as to powers and duties under Act
- 48. Secrecy
- 49. Offences in relation to complaints
- 50. Authority may revoke or vary determinations, assessments, etc.
- 51. Authority and Commissioner may report to Ministers
- 52. Annual and special reports to Parliament by Authority
- 55. Regulations

**APPENDIX
LEGISLATIVE HISTORY**

POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) ACT 1985

being

Police (Complaints and Disciplinary Proceedings) Act 1985
No. 26 of 1985 [Assented to 28 March 1985]¹

as amended by

Police (Police Aides) Amendment Act 1992 No. 60 of 1992 [Assented to 12 November 1992]²

Statutes Amendment (Abolition of Compulsory Retirement) Act 1993 No. 75 of 1993 [Assented to 21 October 1993]³

Police (Complaints and Disciplinary Proceedings) (Miscellaneous) Amendment Act 1996 No. 90 of 1996 [Assented to 12 December 1996]⁴

Police (Complaints and Disciplinary Proceedings) (Miscellaneous) Amendment Act 1998 No. 56 of 1998 [Assented to 3 September 1998]⁵

Statutes Amendment (Attorney-General's Portfolio) Act 1998 No. 59 of 1998 [Assented to 3 September 1998]⁶

¹ Came into operation 1 September 1985: *Gaz.* 29 August 1985, p. 604.

² Came into operation 18 March 1993: *Gaz.* 18 March 1993, p. 914.

³ Came into operation 1 January 1994: s. 2.

⁴ Came into operation 8 May 1997: *Gaz.* 1 May 1997, p. 1667.

⁵ **Came into operation 1 July 1999: *Gaz.* 30 June 1999, p. 3310.**

⁶ Part 9 (s. 18) came into operation 8 May 1999: *Gaz.* 29 April 1999, p. 2256.

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

An Act to provide for the investigation of complaints made in respect of members of the police force; to provide for the appointment of a Police Complaints Authority and to prescribe his or her duties and functions; to make provision in relation to police disciplinary proceedings; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

* * * * *

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**the Authority**" means the person appointed to be the Police Complaints Authority under Part 2 or a person acting in the office of Police Complaints Authority in pursuance of that Part;

"**breach of discipline**" means a breach that may be the subject of a charge by the Commissioner under the *Police Act 1952*;

"**the Commissioner**" means the Commissioner of Police and includes—

- (a) the Deputy Commissioner of Police acting subject to the direction of the Commissioner; or
- (b) the Deputy Commissioner or an Assistant Commissioner of Police acting in the place of the Commissioner during a period for which the Commissioner is absent or the office of the Commissioner is vacant;

"**conduct**" of a member of the police force means—

- (a) an act or decision of a member of the police force; or
- (b) failure or refusal by a member of the police force to act or make a decision,

in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside the State, of a power, function or duty that he or she has as, or by virtue of being, a member of the police force;

"**the internal investigation branch**" means the branch of the police force established in pursuance of Part 3;

"**member**" or "**member of the police force**" means a person who is a member of the police force within the meaning of the *Police Act 1952*, and includes—

- (a) a person appointed to be a police cadet or a special constable under that Act; or
- (b) an officer or person employed in or performing duties or functions in the department of the public service of which the Commissioner is Chief Executive under the *Public Sector Management Act 1995*;

"**minor complaint**" see subsections (2), (3), (4) and (5);

"**prescribed officer or employee**" means—

- (a) a person appointed to be a special constable under the *Police Act 1952*; or
- (ab) a person appointed to be a police aide under the *Police Act 1952*; or
- (b) an officer or employee referred to in paragraph (b) of the definition of "**member**";

"**the Tribunal**" means the Police Disciplinary Tribunal established under Part 5.

(2) For the purposes of this Act, a complaint is a minor complaint that should be the subject of an informal inquiry if according to an agreement or determination under subsection (3) or (4)—

- (a) it relates only to minor misconduct; or
- (b) the complaint is otherwise of a kind that warrants an informal inquiry only.

(3) The Authority and the Commissioner may make an agreement for the purposes of subsection (2) as to the kinds of conduct that constitute minor misconduct and the kinds of complaints that otherwise warrant an informal inquiry only.

(4) If the Authority and the Commissioner cannot reach agreement on a matter referred to in subsection (3), the Authority may, and must if the Commissioner so requests, refer the matter to the Minister for determination by the Minister.

(5) The Minister must cause notice of an agreement or determination under subsection (3) or (4)—

- (a) to be given to the Minister responsible for the administration of the police force; and
- (b) to be tabled before both Houses of Parliament within 15 sitting days of the date of the agreement or determination.

Act not to derogate from other law

4. The provisions of this Act are in addition to and do not derogate from the provisions of any other law.

PART 2
POLICE COMPLAINTS AUTHORITY

Appointment of Police Complaints Authority

5. (1) Subject to this Act, the Governor may appoint a person to be the Police Complaints Authority.

(2) A person may not be appointed to be the Authority unless he or she is enrolled as a barrister or solicitor, or both, or legal practitioner, of the High Court or the Supreme Court of this State or another State or Territory of the Commonwealth and has been so enrolled for not less than 5 years.

(3) The Authority will be appointed on such terms and conditions and will be entitled to receive such salary and allowances as may be from time to time determined by the Governor.

(4) A rate of salary determined to be payable to the Authority may not be reduced during his or her term of office.

(5) The salary and allowances payable to the Authority under this section are to be paid out of the Consolidated Account of the State which is appropriated by this section to the necessary extent.

Authority not to engage in other remunerative employment

6. The Authority must not, without the consent of the Minister, engage in any remunerative employment or undertaking outside the duties of his or her office.

Term of office

7. (1) The Authority will be appointed for a term of office of 7 years.

(2) Subject to this Act, a person appointed to be the Authority is, on the expiration of his or her term of office, eligible for reappointment for a term of not less than 3 years and not more than 7 years.

Removal from office

8. (1) The Governor may remove the Authority from office on the presentation of an address from both Houses of Parliament praying for his or her removal.

(2) The Governor may suspend the Authority from office on the grounds of incompetence or misbehaviour.

(3) Where the Authority is suspended from office under subsection (2), the suspension ceases to have effect—

(a) if a full statement of the reasons for the suspension is not laid before both Houses of Parliament within 7 sitting days of Parliament after the suspension; or

(b) on the expiration of one month from the date on which a statement is laid before both Houses of Parliament under paragraph (a), unless an address is presented to the Governor by both Houses of Parliament praying for the removal of the Authority.

(4) The office of the Authority becomes vacant if—

(a) he or she dies; or

(b) he or she resigns by written notice addressed to the Governor, or his or her term of office expires; or

Police (Complaints and Disciplinary Proceedings) Act 1985

- (c) he or she is removed from office under subsection (1); or
- (d) he or she is declared bankrupt; or
- (e) he or she is imprisoned or convicted of an offence punishable by imprisonment for a term of 6 months or more; or
- (f) he or she becomes a member of Parliament of the State, the Commonwealth or another State or Territory of the Commonwealth; or
- (g) he or she is removed from office by the Governor on the ground of mental or physical incapacity to carry out satisfactorily the duties of his or her office.

(5) Except as provided by this section, the Authority is not to be removed or suspended from office nor is the office to become vacant.

Staff of Authority

9. (1) The Authority's staff consists of—

- (a) Public Service employees assigned to work in the office of the Authority; and
- (b) if appointments have been made under subsection (3)—the persons holding those appointments.

(2) The Minister may, by notice in the *Gazette*—

- (a) exclude Public Service employees on the Authority's staff from specified provisions of the *Public Sector Management Act 1995*; and
- (b) if the Minister thinks that certain provisions should apply to such employees instead of those from which they are excluded under paragraph (a)—determine that those provisions will so apply,

and such a notice has effect in accordance with its terms.

(3) The Authority may, with the consent of the Minister, appoint staff for the purposes of this Act.

(4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person is not a Public Service employee.

* * * * *

Acting Authority

11. (1) The Governor may appoint a suitable person to act in the office of the Authority during any period for which the office is vacant or the Authority is absent for any reason.

(2) A person will be appointed under subsection (1) on such terms and conditions and will be entitled to receive such salary and allowances as may be from time to time determined by the Governor.

(3) The salary and allowances payable to a person appointed under subsection (1) are to be paid out of the Consolidated Account of the State which is appropriated by this section to the necessary extent.

Delegation by Authority

11A. (1) The Authority may, by instrument in writing, delegate to a member of the staff of the Authority, any of his or her powers or functions under this Act, other than this power of delegation.

(2) A delegation—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the Authority to act personally in a matter; and

(c) is revocable at will.

Protection for Authority and persons acting under his or her direction

12. No liability will attach to the Authority or any person acting under his or her direction or authority for an act or omission in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of a power, function or duty under this Act.

**PART 3
POLICE INTERNAL INVESTIGATION BRANCH**

Constitution of internal investigation branch of police force

13. (1) The Commissioner must constitute within the police force a separate branch to carry out investigations under this Act in relation to the conduct of members of the police force.

(2) In addition to carrying out investigations under this Act, the internal investigation branch may carry out such other investigations in relation to the conduct of members of the police force as may be required by the Commissioner.

Officer in charge entitled to report directly to Commissioner

14. The officer in charge of the internal investigation branch is entitled to report directly to the Commissioner on any matter relating to the branch or the performance of its functions.

Duties of members serving in internal investigation branch

15. Where a member serving in the internal investigation branch is able to do so without unduly interfering with the performance by the branch of its functions, the member may be directed by the Commissioner to perform duties not related to investigations into the conduct of members of the police force (not being duties involving the investigation of offences alleged to have been committed by persons other than members of the police force).

PART 4
COMPLAINTS AND INVESTIGATIONS

Complaints to which this Act applies

16. (1) A complaint about the conduct of a member of the police force may be made—

- (a) to a member of the police force (not being the member about whose conduct the complaint is made); or
- (b) to the Authority.

(2) Where a person makes a complaint to a member of the police force about the conduct of that member, that member must, as soon as reasonably practicable, advise the person that, in order for the complaint to be one to which this Act applies, the complaint must be made—

- (a) to some other member of the police force; or
- (b) to the Authority.

(3) A complaint made to the Authority must, if the Authority so requires, be reduced to writing.

(4) This Act applies to a complaint made under this section—

- (a) whether or not the member of the police force about whose conduct the complaint is made is identified by the complainant;
- (b) whether or not the identity of the complainant is known by or disclosed to the member of the police force to whom the complaint is made or the Authority, as the case may be;
- (c) whether the complaint is made by a person on his or her own behalf or on behalf of some other person;
- (ca) whether or not the person by whom or on whose behalf the complaint is made is a member of the police force;
- (d) whether the person by whom or on whose behalf the complaint is made is a natural person or a body corporate.

(5) This Act does not apply to a complaint—

- (a) made to a member of the police force by or on behalf of another member of the police force unless it is made in writing in a form approved by the Commissioner for the purpose; or
- (b) made about conduct that occurred before the commencement of this section; or
- (c) made by or on behalf of a member or members of the police force in relation to the employment or terms or conditions of employment of the member or members.

Right of persons detained in custody to make complaint to Authority

17. (1) Where a person detained in custody wishes to make a complaint to the Authority about the conduct of a member of the police force, any person performing duties in connection with the detention of the person must—

Police (Complaints and Disciplinary Proceedings) Act 1985

- (a) at the request of the person, provide him or her with facilities to enable him or her to prepare the complaint and to enclose and seal it in an envelope; and
- (b) on receiving the sealed envelope from the person for delivery to the Authority—
 - (i) ensure that the sealed envelope is plainly addressed to the Authority and marked as being confidential; and
 - (ii) cause the sealed envelope to be delivered to the Authority without undue delay.

(2) A request referred to in subsection (1)—

- (a) must be made to a person other than the member of the police force about whose conduct the complaint is to be made; and
- (b) must be complied with as soon as reasonably practicable (but without there being any obligation to interrupt the carrying out of any other lawful procedure or function).

(3) Where a request referred to in subsection (1) is made to the member of the police force about whose conduct the complaint is to be made, the member must, as soon as reasonably practicable, advise the person of the requirement that the request be made to some other person who is performing duties in connection with the person's detention.

(4) Where a person receives a sealed envelope for delivery to the Authority under subsection (1), a person other than the Authority or a person acting with the authority of the Authority must not open the envelope or inspect its contents.

Maximum penalty: \$2 500.

(5) It will be a defence to a charge of an offence against subsection (4) if the defendant proves that the acts to which the charge relates were done inadvertently.

Action on complaint being made to member of police force

18. (1) Where a complaint to which this Act applies is made to a member of the police force, the member must, in accordance with any directions of the Commissioner—

- (a) refer the complaint, by the most expeditious means available to him or her, to the internal investigation branch for investigation; or
- (b) refer the complainant to a member of the police force authorised to receive the complaint.

(2) Where a complaint is made to a member of the police force to whom the complainant has been referred under subsection (1)(b), that member must refer the complaint, by the most expeditious means available to him or her, to the internal investigation branch for investigation.

(3) Where a complaint is referred to the internal investigation branch under this section, the Authority must be notified, by writing, of the complaint and furnished with particulars of the complaint.

(4) Despite the other provisions of this section, where a complaint made to a member of the police force concerns the conduct of a prescribed officer or employee, the complaint must not be referred to the internal investigation branch but must, in accordance with any directions of the Commissioner, be referred to the Authority.

(5) Where a complaint is referred to the Authority under subsection (4), the provisions of this Act apply in relation to the complaint as if it were a complaint made to the Authority.

Action on complaint being made to Authority

19. (1) Where a complaint to which this Act applies is made to the Authority, the Authority must—

- (a) notify the Commissioner, by writing, of the complaint and furnish him or her with particulars of the complaint; and
- (b) subject to any determination under section 21, 21A, 22 or 23, refer the complaint to the Commissioner.

(2) Where a complaint is referred to the Commissioner under subsection (1)(b), the Commissioner must refer the complaint to the internal investigation branch for investigation.

Authority to notify complainant of receipt of complaint

20. The Authority must, unless the identity of the complainant is not known, acknowledge, by writing, each complaint made to the Authority and each complaint of which he or she is notified under section 18.

Determination by Authority that investigation not warranted

21. (1) The Authority may, in his or her discretion, determine that a complaint to which this Act applies (whether being a complaint made to the Authority or a complaint of which the Authority has been notified under section 18) should not be investigated or further investigated under this Act—

- (a) if he or she is satisfied that the complaint was made more than 6 months after the complainant or person on whose behalf the complaint was made became aware of the conduct complained of and that there are no special reasons justifying the investigation or further investigation of the complaint; or
- (b) if in his or her opinion—
 - (i) the complaint is trivial, frivolous or vexatious or was not made in good faith; or
 - (ii) the complainant or person on whose behalf the complaint was made does not have a sufficient interest in the matter raised in the complaint,

and there are no special reasons justifying the investigation or further investigation of the complaint; or

- (c) if the complaint was made without disclosure of the identity of the complainant and there are not, in the opinion of the Authority, any special reasons justifying investigation of the complaint; or
- (d) if a person has been charged with an offence or breach of discipline in relation to the conduct complained of; or
- (e) if the complainant or person on whose behalf the complaint was made has exercised a right of action or has or has exercised a right of appeal or review in relation to the matter complained of and there are not, in the opinion of the Authority, any special reasons justifying the investigation or further investigation of the complaint; or

- (f) if, in his or her opinion, the investigation or further investigation of the complaint is unnecessary or unjustifiable having regard to all the circumstances of the case.

(2) Where the Authority makes a determination under this section, he or she must, by writing, notify the Commissioner and, unless the identity of the complainant is not known, the complainant of the determination and his or her reasons for making the determination.

Determination by Authority to resolve complaint informally

21A. (1) The Authority may determine that a complaint to which this Act applies (whether being a complaint made to the Authority or a complaint of which the Authority has been notified under section 18) is a minor complaint that should be the subject of an informal inquiry only.

(2) Where the Authority makes a determination under subsection (1), he or she must—

(a) by writing, notify the Commissioner of the determination; and

(b) in accordance with arrangements for referral agreed between the Authority and the Commissioner, refer the complaint for the conduct of an informal inquiry by a member of the police force.

(3) The member of the police force to whom a complaint has been referred under this section must notify the complainant, unless the identity of the complainant is not known—

(a) that an informal inquiry is being conducted into the complaint; and

(b) that the complainant may, during the informal inquiry or within 14 days of receipt of particulars of the outcome of the informal inquiry, make a request to the Authority that the Authority determine that the complaint be investigated under the other provisions of this Act.

(4) The Commissioner must ensure that a report, in writing, of—

(a) the results of the inquiry; and

(b) any action taken in relation to the member of the police force about whose conduct the complaint was made,

is prepared and delivered to the Authority as soon as practicable.

(5) The Authority must, in relation to each complaint that is the subject of an informal inquiry, enter in the register kept by the Authority under section 29 and furnish to the member of the police force concerned and, unless the identity of the complainant is not known, the complainant, particulars of the matters referred to in subsection (4).

(6) If a request is made to the Authority as referred to in subsection (3)(b) that the Authority redetermine the question whether the complaint should be investigated under the other provisions of this Act, the Authority must redetermine the question (and section 19 and the other provisions of this Act will apply in the same way as to a complaint made to the Authority).

(7) At any time before or within 14 days after receipt of a report under subsection (4) in respect of an informal inquiry, the Authority may, and must if the Commissioner so requests, determine that the complaint the subject of the inquiry be investigated under the other provisions of this Act and, in that event, the Authority must, subject to any determination under section 23, refer the complaint to the Commissioner for investigation by the internal investigation branch.

(8) No information obtained in relation to the subject matter of a complaint during an informal inquiry into the complaint may be used in proceedings in respect of a breach of discipline before the Tribunal unless the proceedings are against a member of the police force who has allegedly provided false information with the intention of obstructing the proper resolution of the complaint.

(9) The Authority may delegate to the Commissioner the following powers or functions (which may be the subject of further delegation by the Commissioner):

- (a) power to determine that a complaint is a minor complaint that should be the subject of an informal inquiry;
- (b) power to refer a complaint to a member of the police force for the conduct of an informal inquiry;
- (c) the function of acknowledging a complaint under section 20;
- (d) the function of furnishing to the member of the police force concerned and the complainant particulars of the outcome of an informal inquiry.

(10) A delegation under this section—

- (a) may be absolute or conditional; and
- (b) is revocable by the delegator.

Conciliation

22. (1) The Commissioner may in relation to a complaint to which this Act applies (being a complaint made to a member of the police force), if he or she considers it appropriate to do so, attempt to resolve the matter by conciliation.

(2) The Commissioner must not attempt conciliation in relation to a complaint except with the agreement of the Authority.

(3) The Authority may in relation to a complaint to which this Act applies (whether being a complaint made to the Authority or a complaint of which the Authority has been notified under section 18), if he or she considers it appropriate to do so, attempt to resolve the matter by conciliation.

(4) The Commissioner or the Authority may, in attempting conciliation under this section, act personally or through some other person.

(5) The Authority, before attempting conciliation in relation to a complaint, must notify the Commissioner of his or her intention to do so and may request that any investigation or further investigation of the complaint be deferred pending the results of his or her action.

(6) Where conciliation is to be attempted in relation to a complaint, the Commissioner may, or, at the request of the Authority under subsection (5), must, direct that any investigation or further investigation of the complaint by members of the police force be deferred pending the results of that action.

(7) Where conciliation is attempted under this section by the Commissioner or the Authority, the one must report to the other the results of his or her action.

Police (Complaints and Disciplinary Proceedings) Act 1985

(8) The Authority may, if he or she is satisfied that the matter raised by a complaint has been properly resolved by conciliation undertaken by him or her or by the Commissioner, determine that the complaint should not be investigated or further investigated under this Act.

(9) Where the Authority makes a determination under subsection (8), he or she must, by writing, notify the Commissioner and, unless the identity of the complainant is not known, the complainant of the determination.

(10) Where the Authority disagrees with an assessment of the Commissioner contained in a report under subsection (7) that the matter raised by a complaint has been properly resolved by conciliation undertaken by the Commissioner, the Authority must, by writing, notify the Commissioner of his or her disagreement and the reasons for his or her disagreement.

Authority may initiate investigation

22A. (1) The Authority may, on his or her own initiative, raise a matter for investigation that he or she is satisfied concerns possible misconduct, or a pattern of misconduct, affecting a member or members of the public that has become a matter of public interest or comment or may raise questions as to the practices, procedures or policies of the police force.

(2) Where the Authority raises a matter for investigation on his or her own initiative, the Authority must—

- (a) notify the Commissioner, by writing, of the matter to be investigated and furnish him or her with particulars of the matter; and
- (b) subject to any determination under section 23, refer the matter to the Commissioner.

(3) Where a matter is referred to the Commissioner under subsection (2)(b), the Commissioner must refer the matter to the internal investigation branch for investigation.

(4) The Commissioner may, if he or she disagrees with—

- (a) the decision of the Authority that the matter be raised for investigation; or
- (b) the methods employed in the investigation,

advise the Authority, by writing, of his or her disagreement.

(5) Where the Authority is notified of disagreement by the Commissioner under subsection (4)—

- (a) the investigation into the matter is to cease unless or until the matter is resolved by agreement between the Authority and the Commissioner or by determination of the Minister; and
- (b) the Authority may, if he or she is unable to resolve the matter by consultation with the Commissioner, refer it to the Minister for determination.

Determination that matter be investigated by Authority

23. (1) Subject to subsection (2), the Authority may determine that a matter to which this Act applies (whether being a complaint made to the Authority or a complaint of which the Authority has been notified under section 18 or a matter raised for investigation on the initiative of the Authority under section 22A) should be investigated by him or her.

(2) The Authority may make a determination under subsection (1)—

- (a) after consultation with the Commissioner, in relation to any matter that he or she is satisfied—
 - (i) concerns conduct of a member of the police force holding a rank equal to or senior to the rank held by the officer in charge of the internal investigation branch; or
 - (ii) concerns conduct of a member of the police force serving in the internal investigation branch; or
 - (iii) is in substance about the practices, procedures or policies of the police force; or
 - (iv) should for any other reason be investigated by the Authority; or
- (b) in relation to any matter that concerns conduct of a prescribed officer or employee—if the Authority is of the opinion, having regard to the nature of the matters raised in relation to the prescribed officer or employee, that there are no special reasons justifying investigation of the matter by the internal investigation branch; or
- (c) as otherwise provided under this Act.

(3) Where a determination is made under subsection (1), the Authority may, in addition, make one or more of the following determinations:

- (a) a determination that the matter or part of the matter concerned should be investigated or further investigated by the internal investigation branch in conjunction with the investigation to be carried out by the Authority;
- (b) a determination that the matter or part of the matter concerned should not be investigated or further investigated by the internal investigation branch or any member of the police force acting under the direction of the Commissioner.

(4) Where the Authority makes a determination under this section, he or she must, by writing, notify the Commissioner of the determination.

(5) Where—

- (a) a determination is made under this section in relation to a matter; and
- (b) the internal investigation branch has commenced but not completed an investigation or further investigation of the matter,

the officer in charge of the branch must, as soon as is practicable, cause a report, in writing, of the results of the investigation or further investigation to be prepared and delivered to the Commissioner.

(6) The Commissioner must, as soon as practicable after his or her receipt of a report under subsection (5), furnish a copy of the report to the Authority and, when doing so, may attach to the report such comments as he or she thinks fit to make in relation to the investigation or further investigation.

Police (Complaints and Disciplinary Proceedings) Act 1985

Effect of certain determinations of Authority

24. Where the Authority has made—

- (a) a determination under section 21 or 22 that a complaint should not be investigated or further investigated under this Act; or
- (b) a determination under section 23 that a matter should be investigated by him or her,

the Commissioner may nevertheless, in his or her discretion, but subject to any determination under section 23(3)(b), direct that the matter or part of the matter concerned be investigated or further investigated, but, in that event, the provisions of this Act will not apply to or in relation to that investigation or further investigation.

Investigations by internal investigation branch

25. (1) Subject to any determination made by the Authority under section 21, 22 or 23, or direction given by the Commissioner under section 22, each matter that is referred to the internal investigation branch under this Act for investigation or further investigation must be investigated or further investigated by that branch.

(2) An investigation or further investigation referred to in subsection (1) is to be conducted, subject to any directions of the Authority or the Commissioner, in such manner as the officer in charge of the internal investigation branch thinks fit.

(3) Subject to any directions of the Authority or the Commissioner, a member of the internal investigation branch may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as he or she thinks fit.

(3a) Where a member of the internal investigation branch seeks information from a person under subsection (3), that person must not, if so directed in writing by the Authority, divulge or communicate to any other person the fact that the investigation is being or has been carried out or that he or she has been requested or required to provide information.

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

(3b) Subsection (3a) does not prevent—

- (a) a person from whom information has been sought from consulting—
 - (i) a legal practitioner; or
 - (ii) some other person with the Authority's approval (which may be a general approval or given in a particular case),

in relation to the matter under investigation;

- (b) a member of the police force whose conduct has been under investigation from divulging or communicating particulars of the outcome of the investigation as furnished or registered under section 36 (including any comments made by the Authority when furnishing any of those particulars).

(3c) If a person consulted under subsection (3b)(a) obtains information as a result of the consultation that the person who initiated the consultation is (apart from that subsection) prohibited from divulging or communicating, the person so consulted must not divulge or communicate that information.

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

(4) Subsections (2) and (3) do not authorise a member of the police force to contravene or fail to comply with a law that would, if those subsections had not been enacted, apply in relation to the investigation of a matter referred to the internal investigation branch, but nothing in this subsection affects the operation of any other provision of this section.

(5) A member of the internal investigation branch may, for the purposes of the investigation, direct a member of the police force to furnish information, produce a document or other record or answer a question, being information, a document or record or a question that is relevant to the investigation.

(6) For the purposes of the *Police Act 1952*, a direction given by a member of the internal investigation branch under subsection (5) has effect as if it had been given by the Commissioner.

(7) A member of the internal investigation branch must, before giving any direction under subsection (5) to the member whose conduct is under investigation, inform the member of the particulars of the matter under investigation.

(8) A member of the police force who—

(a) without reasonable excuse, refuses or fails to furnish information, produce a document or other record or answer a question when so required in pursuance of this section; or

(b) furnishes information or makes a statement to a member of the internal investigation branch knowing that it is false or misleading in a material particular,

may be dealt with in accordance with the *Police Act 1952* for breach of discipline.

(8a) A person other than a member of the police force who furnishes information or makes a statement to a member of the internal investigation branch knowing that it is false or misleading in a material particular is guilty of an offence.

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

(9) Where a member of the police force is directed under subsection (5) to furnish information, produce a document or record or answer a question, the member is not excused from complying with the direction on the ground—

(a) that the furnishing of the information, the production of the document or record or the answering of the question—

(i) would be contrary to the public interest; or

(ii) would contravene the provisions of any other enactment; or

(b) that the information, the document or record or the answer to the question might tend to show that he or she has committed a breach of discipline.

(10) A member of the police force may refuse to furnish information, produce a document or record or answer a question if the information, the document or record or the answer to the question might tend to incriminate him or her or a close relative of his or hers, but any such refusal may be dealt with in accordance with the *Police Act 1952* as a breach of discipline.

Police (Complaints and Disciplinary Proceedings) Act 1985

(11) In subsection (10)—

"**close relative**" of a member of the police force means a spouse (including a putative spouse within the meaning of the *Family Relationships Act 1975*), a parent or a child of the member.

(12) A member of the police force who furnishes information, produces a document or record or answers a question is not liable to a penalty under the provisions of any other law prohibiting such an act if the act is done in compliance with a direction given by a member of the internal investigation branch under this section.

(13) The officer in charge of the internal investigation branch may, subject to any directions of the Commissioner, require a member of the police force not serving in that branch to assist the branch in conducting investigations under this section or to conduct investigations on behalf of the branch, and, in that event, the provisions of this section apply as if that member were a member of the internal investigation branch.

(14) In this section—

"**member of the police force**" does not include a prescribed officer or employee.

Powers of Authority to oversee investigations by internal investigation branch

26. (1) The Authority may, at any time after a matter has been referred to the internal investigation branch for investigation or further investigation under this Act—

- (a) discuss the complaint or any aspect of the complaint with the complainant (if the investigation relates to a complaint); or
- (b) require the Commissioner or, as approved by the Commissioner, the officer in charge or any other member of the internal investigation branch—
 - (i) to provide information to him or her about the progress of the investigation; or
 - (ii) to arrange for him or her to inspect any document or record in the possession or under the control of the branch that is relevant to the matter under investigation; or
 - (iii) to arrange for him or her to interview a person in relation to the matter under investigation.

(2) The Commissioner must ensure that any requirement of the Authority made under subsection (1)(b) is complied with without any undue delay.

(3) The Authority may, by writing, notify the Commissioner of any directions that he or she considers should be given by the Commissioner as to the use for investigative purposes of members not serving in the internal investigation branch or any other matter or thing in relation to an investigation or investigations by the internal investigation branch under this Act.

(4) Where the Commissioner is notified by the Authority under subsection (3) of any directions that the Authority considers should be given by the Commissioner, the Commissioner must—

- (a) give the directions accordingly; or
- (b) if he or she does not agree that the directions should be given—notify the Authority, by writing, of his or her disagreement and the reasons for the disagreement.

(4a) The Authority may give directions to the officer in charge of the internal investigation branch as to the matters to be investigated, or the methods to be employed, in relation to a particular investigation under this Act.

(4b) The Commissioner may, by writing, advise the Authority of his or her disagreement with a direction given by the Authority under subsection (4a) and, in that event, the direction will cease to be binding unless or until the matter is resolved by agreement between the Authority and the Commissioner or by determination of the Minister.

(5) Where the Authority is notified of disagreement by the Commissioner under this section, the Authority may, if he or she is unable to resolve the matter by consultation with the Commissioner, refer it to the Minister and the Minister may determine what directions (if any) should be given.

(5a) The Minister responsible for the administration of the police force must be notified, in writing, of any determination made by the Minister under subsection (5).

(6) A determination of the Minister under subsection (5) that relates to complaints generally, or to a class of complaints, will not be binding on the Commissioner unless embodied in a direction of the Governor given under section 21 of the *Police Act 1952*.

(7) In this section—

"**directions**" includes directions varying or revoking directions previously given by the Commissioner or the Authority whether under this section or otherwise.

* * * * *

Investigation of matters by Authority

28. (1) Where the Authority has made a determination under section 23 that a matter should be investigated by him or her, the investigation is to be conducted in private and, subject to this section, in such manner as he or she thinks fit.

(2) Whenever it becomes necessary or desirable for the Authority to use persons with police training in connection with his or her investigation of a matter, he or she may, and must insofar as it is practicable to do so, use, in connection with that investigation—

(a) a member of the police force who is made available to him or her by the Commissioner for the purposes of the investigation; or

(b) a member of the police force of the Commonwealth or of another State or a Territory of the Commonwealth whom that police force agrees to make available to the Authority, for the purposes of the investigation, under arrangements made by or with the approval of the Minister.

(3) Subject to this section, the Authority may, for the purposes of an investigation under this section, obtain information from such persons, and make such inquiries, as he or she thinks fit.

(3a) Where the Authority seeks information from a person under subsection (3), that person must not, if so directed in writing by the Authority, divulge or communicate to any other person the fact that the investigation is being or has been carried out or that he or she has been requested or required to provide information.

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

Police (Complaints and Disciplinary Proceedings) Act 1985

(3b) Subsection (3a) does not prevent—

(a) a person from whom information has been sought from consulting—

(i) a legal practitioner; or

(ii) some other person with the Authority's approval (which may be a general approval or given in a particular case),

in relation to the matter under investigation;

(b) a member of the police force whose conduct has been under investigation from divulging or communicating particulars of the outcome of the investigation as furnished or registered under section 36 (including any comments made by the Authority when furnishing any of those particulars).

(3c) If a person consulted under subsection (3b)(a) obtains information as a result of the consultation that the person who initiated the consultation is (apart from that subsection) prohibited from divulging or communicating, the person so consulted must not divulge or communicate that information.

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

(4) Subject to subsection (5), it is not necessary for the complainant (if the investigation relates to a complaint) or any other person to be afforded an opportunity to appear before the Authority or any other person in connection with an investigation by the Authority under this section.

(5) The Authority must not make a report in respect of an investigation under this section in which he or she sets out opinions that are, either expressly or impliedly, critical of—

(a) the police force; or

(b) a person (including a member of the police force),

unless, before completing the investigation, he or she has afforded—

(c) if the opinions relate to the police force or a member of the police force—the Commissioner and that member; or

(d) if the opinions relate to a person (other than a member)—that person,

opportunities, or an opportunity, to appear (whether personally or by a representative) before him or her, or before an authorised person, and to make submissions, either orally or in writing, in relation to the matter under investigation.

(6) The Authority may, by notice in writing, require a person whom he or she believes to be capable of giving information relevant to an investigation under this section to furnish to him or her in writing, within a period specified in the notice, such information, and to produce to him or her such documents and other records, being information, documents or records relevant to the investigation, as are specified in the notice.

(7) For the purposes of an investigation under this section, the Authority may, by notice in writing, require—

- (a) if the investigation relates to a complaint, the complainant or person on whose behalf the complaint was made; or
- (b) a member of the police force or any other person who is, in the opinion of the Authority, able to give information relevant to the investigation,

to attend before him or her at a time and place specified in the notice and there to answer questions relevant to the investigation.

(8) Where the Authority makes a requirement under subsection (6) or (7) of the member of the police force whose conduct is under investigation, the Authority must state in the notice by which the requirement is made the particulars of the matter under investigation.

(9) Where the Minister furnishes to the Authority a certificate certifying that the disclosure of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure of the contents of any documents or records would be contrary to the public interest, by reason of the fact that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet, the Authority is not entitled to require a person to furnish any information concerning the matter, or to produce those documents or records, to the Authority.

(10) A person must not—

(a) without reasonable excuse—

- (i) fail to attend before a person; or
- (ii) refuse or fail to furnish information, produce a document or other record or answer a question,

when so required in pursuance of this section; or

(b) furnish information or make a statement to the Authority or an authorised person knowing that it is false or misleading in a material particular.

(11) Where—

(a) a person other than a member of the police force contravenes subsection (10), he or she is guilty of an offence and liable to a penalty not exceeding \$2 500; or

(b) a member of the police force contravenes subsection (10), he or she may be dealt with in accordance with the *Police Act 1952* for breach of discipline.

(12) Despite the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this section on the ground that—

(a) the furnishing of the information, the production of the document or record or the answering of the question—

- (i) would contravene the provisions of any other enactment; or
- (ii) would be contrary to the public interest; or

Police (Complaints and Disciplinary Proceedings) Act 1985

- (b) in the case of a person who is a member of the police force, the information, the document or record or the answer to the question might tend to show that he or she has committed a breach of discipline; or
- (c) the information, the document or record or the answer to the question would disclose legal advice furnished to a Minister or to the police force.

(13) A person may refuse to furnish information, produce a document or record or answer a question if the information, the document or record or the answer to the question—

- (a) might tend to incriminate him or her; or
- (b) might tend to incriminate a close relative of his or hers; or
- (c) might tend to show that a close relative of his or hers who is a member of the police force has committed a breach of discipline,

but any such refusal on the part of a member of the police force may be dealt with in accordance with the *Police Act 1952*, as a breach of discipline.

(14) In subsection (13)—

"**close relative**" of a person means a spouse (including a putative spouse within the meaning of the *Family Relationships Act 1975*), a parent or a child of the person.

(15) A person who furnishes information, produces a document or record or answers a question is not liable to a penalty under the provisions of any other enactment prohibiting such an act if the act is done in compliance with a requirement made of the person under this section.

(16) For the purposes of an investigation under this section, the Authority or an authorised person may, at any reasonable time of the day, enter any premises used by the police force or any other place and may carry on the investigation at that place and for that purpose inspect any documents or records relevant to the investigation kept at that place (other than a document in respect of which the Minister has furnished a certificate under subsection (9)).

(17) The power of entry conferred by subsection (16) must not be exercised by any person in relation to premises in which any person resides or carries on business unless a special magistrate is satisfied that there are reasonable grounds for the exercise of the power and issues a warrant authorising the person to enter the premises.

(18) A person who, without reasonable excuse, wilfully obstructs, hinders or resists the Authority or any other person in the exercise of his or her powers under this section—

- (a) in the case of a person other than a member of the police force—is guilty of an offence and liable to a penalty not exceeding \$2 500;
- (b) in the case of a member of the police force—may be dealt with in accordance with the *Police Act 1952* for a breach of discipline.

(19) Where a member of the police force is of the opinion that he or she might, in complying with a requirement of the Authority or an authorised person made in the exercise of his or her powers under this section, disclose information that should be the subject of a certificate of the Commissioner under section 48(3), the member is entitled to refuse to comply with the requirement for such period (not exceeding 48 hours) as is necessary for the purpose of enabling the Commissioner to determine whether or not to furnish such a certificate in respect of the information.

(20) A person exercising or proposing to exercise any powers under this section must, on demand by a person in relation to whom the powers are or are to be exercised, produce for his or her inspection a certificate of authority in the prescribed form.

(21) In this section—

"**authorised person**" means a person appointed by the Authority to be an authorised person for the purposes of this section;

"**member of the police force**" does not include a prescribed officer or employee.

Register to be kept by Authority

29. The Authority must maintain a register containing particulars of—

(a) each complaint made to the Authority or of which he or she has been notified under section 18; and

(b) each matter raised by the Authority for investigation on his or her own initiative,

including particulars of any determination made under section 21, 21A, 22 or 23 in relation to the matter and particulars of any investigation or further investigation of the matter under this Act.

Authority to respond to inquiries by complainants

30. Any inquiry by a complainant as to the investigation of his or her complaint is to be directed to the Authority who must, in response to the inquiry, furnish such information as he or she considers appropriate in relation to the investigation or further investigation of the complaint.

**PART 5
ACTION CONSEQUENTIAL ON INVESTIGATION**

Reports of investigations by internal investigation branch to be furnished to Authority

31. (1) When the internal investigation branch completes an investigation or further investigation of a matter referred to it under this Act, the officer in charge of the branch must, as soon as practicable, cause a report, in writing, of the results of the investigation or further investigation to be prepared and delivered to the Commissioner.

(2) The Commissioner must, as soon as practicable after his or her receipt of a report under subsection (1), unless he or she directs that further investigations be carried out by the internal investigation branch, furnish a copy of the report to the Authority and, when doing so, may attach to the report such comments as he or she thinks fit to make in relation to the investigation or further investigation.

Authority to make assessment and recommendations in relation to investigations by internal investigation branch

32. (1) Where the Authority receives from the Commissioner under section 31 a report of the results of the investigation or further investigation of a matter by the internal investigation branch, he or she must consider the report and any comments of the Commissioner attached to the report and, subject to subsection (2), must, by writing, notify the Commissioner of—

(a) his or her assessment of whether—

(i) any conduct of a member of the police force—

(A) constituted an offence or breach of discipline or was contrary to law; or

(B) was unreasonable, unjust, oppressive or improperly discriminatory; or

(C) was in accordance with a rule of law, a provision of an enactment or a practice, procedure or policy, being a rule, provision, practice, procedure or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or

(D) was based either wholly or partly on a mistake of law or of fact; or

* * * * *

(ii) a member exercised a discretionary power for an improper purpose or on irrelevant grounds; or

(iii) in a case where the conduct to which the investigation relates comprised or included a decision by a member to exercise a discretionary power in a particular manner or to refuse to exercise such a power—

(A) irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that manner or to refuse to exercise the power, as the case may be; or

(B) the complainant in respect of the investigation or some other person was entitled at law to have been furnished, but was not furnished, with the reasons for deciding to exercise the power in that manner or to refuse to exercise the power, as the case may be; and

- (b) his or her recommendations as to whether—
 - (i) action should be taken—
 - (A) to charge a member of the police force with an offence or breach of discipline; or
 - (B) to reconsider, vary or reverse a decision or to provide reasons for a decision; or
 - (C) to rectify, mitigate or alter the effects of a decision, act or omission; or
 - (D) to alter a rule of law, a provision of an enactment or a practice, procedure or policy on which a decision, act or omission was based; or
 - (ii) any other action should be taken in relation to the matter; or
 - (iii) no action should be taken in relation to the matter.

(2) Despite the provisions of subsection (1), the Authority may, if he or she considers that the matter has not been adequately investigated, in addition to or instead of making an assessment and recommendations under that subsection—

- (a) refer the matter back to the Commissioner for further investigation; or
- (b) make a determination under section 23(1) that the matter should be investigated by the Authority.

(3) Where a matter is referred to the Commissioner under subsection (2)(a), the Commissioner must refer the matter to the internal investigation division for further investigation.

Authority to report on and make assessment and recommendations in relation to investigation carried out by Authority

33. When the Authority completes any investigation or further investigation of a matter conducted by him or her under this Act, he or she must furnish to the Commissioner a report, in writing, of the results of the investigation or further investigation and must include in the report his or her assessment of and recommendations as to the matters referred to in section 32(1)(a) and (b).

Recommendations of Authority and consequential action by Commissioner

34. (1) When the Commissioner receives from the Authority under section 32 or 33 an assessment and recommendations made by the Authority in relation to the investigation or further investigation of a matter, he or she must, as soon as practicable, consider the assessment and recommendations together with the report relating to the investigation or further investigation and—

- (a) if he or she agrees with the assessment and recommendations, notify the Authority, by writing, of his or her agreement; or
- (b) if he or she does not agree with the assessment or a recommendation, notify the Authority, by writing, of his or her disagreement and the reasons for his or her disagreement.

Police (Complaints and Disciplinary Proceedings) Act 1985

(2) The Authority must, where the Commissioner notifies him or her of disagreement with an assessment or recommendation under subsection (1), after considering the Commissioner's reasons for disagreement and conferring with the Commissioner, by notice in writing to the Commissioner, confirm or vary the assessment or recommendation or substitute for the assessment or recommendation a new assessment or recommendation.

(3) The Commissioner must—

(a) take all such steps (if any) as are necessary to give effect to any recommendations of the Authority—

(i) as agreed to by the Commissioner under subsection (1); or

(ii) as confirmed, varied or substituted by the Authority under subsection (2); or

(b) refer the matter to the Minister.

(4) Where a matter is referred to the Minister under subsection (3), the Minister may determine—

(a) that certain action of a kind referred to in section 32(1)(b)(i) or (ii) should be taken in consequence of the investigation or further investigation; or

(b) that no action should be taken in consequence of the investigation or further investigation; or

(c) that the matter should be further investigated by the internal investigation branch or by the Authority, as he or she thinks fit.

(5) The Minister must not make a determination under subsection (4) as to whether action should be taken to charge a member of the police force with an offence or breach of discipline except in consultation with the Minister responsible for the administration of the police force and the Director of Public Prosecutions.

(6) The Authority and the Commissioner must be notified, by writing, of any determination made by the Minister under subsection (4).

(7) Where the Minister makes a determination under subsection (4)(a), the Commissioner must take all such steps as are necessary to give effect to the determination.

(8) Despite the provisions of subsection (7), a determination of the Minister under subsection (4)(a) that action should be taken to alter a practice, procedure or policy relating to the police force will not be binding on the Commissioner unless embodied in a direction of the Governor given under section 21 of the *Police Act 1952*.

(9) Where the Minister makes a determination under subsection (4)(c)—

(a) that the matter should be further investigated by the internal investigation branch, the Commissioner must refer the matter to that branch for further investigation; or

(b) that the matter should be further investigated by the Authority, the provisions of this Act apply as if the determination of the Minister were a determination made by the Authority under section 23(1).

Commissioner to notify Authority of laying of charges or other action consequential on investigation

35. (1) Where a member of the police force is charged with an offence or breach of discipline or other action is taken by the Commissioner under section 34 in consequence of the investigation or further investigation of a matter, the Commissioner must, by writing, notify the Authority of the laying of the charges or other action so taken.

(2) Where a member of the police force is charged with an offence or breach of discipline under section 34, the Commissioner must, by writing, notify the Authority of the final outcome of proceedings in respect of the charge including any decision of a court or the Commissioner as to punishment of the member.

Particulars in relation to matter under investigation to be entered in register and furnished to complainant and member of police force concerned

36. (1) The Authority must, in relation to each matter under investigation, enter in the register kept by him or her under section 29 and furnish to the member of the police force concerned and, unless the identity of the complainant is not known or the investigation does not relate to a complaint, to the complainant—

- (a) particulars of all assessments and recommendations made by the Authority in relation to the matter, being assessments and recommendations—
 - (i) as agreed to by the Commissioner under section 34(1); or
 - (ii) as confirmed, varied or substituted by the Authority under section 34(2); and
- (b) particulars of any determination made by the Minister under section 34(4) in relation to the matter.

(2) The Authority must, in relation to each matter under investigation, enter in the register kept by him or her under section 29 and, unless the identity of the complainant is not known or the investigation does not relate to a complaint, furnish to the complainant—

- (a) particulars of action taken by the Commissioner under section 34 in consequence of the investigation or further investigation of the matter; and
- (b) where the action involves the laying of a charge of an offence or breach of discipline against a member of the police force—particulars of the final outcome of proceedings in respect of the charge including any decision of a court or the Commissioner as to punishment of the member.

(3) The Authority may, when furnishing particulars to a member of the police force or a complainant under subsection (1) or (2), make such comments in relation to the matter as he or she thinks fit.

PART 6
POLICE DISCIPLINARY TRIBUNAL

Constitution of Police Disciplinary Tribunal

37. (1) There will be a tribunal entitled the *Police Disciplinary Tribunal*.

(2) The Tribunal will be constituted of a magistrate appointed by the Governor.

(3) The magistrate appointed to constitute the Tribunal will be appointed for such term of office, not exceeding 3 years, as the Governor may determine, and on the expiration of his or her term of office will be eligible for reappointment.

(4) The Governor may appoint another magistrate to be the deputy of the magistrate appointed to constitute the Tribunal and the Tribunal will, for any period for which the magistrate appointed to constitute the Tribunal is absent or unavailable, be constituted of that other magistrate.

(5) The Governor may appoint three or more magistrates to a panel and, if at any time the magistrate appointed under subsection (4) is absent or unavailable, the Chief Magistrate may appoint a magistrate from the panel to act in his or her place.

Registrar of Tribunal

38. (1) Persons may be appointed under the *Public Sector Management Act 1995* as the registrar and deputy registrar of the Tribunal.

(2) The position of registrar or deputy registrar of the Tribunal may be held in conjunction with any other position in the Public Service of the State.

(3) The registrar and deputy registrar of the Tribunal will have such duties and functions as are prescribed and such other duties and functions as are directed by the Tribunal.

Charges in respect of breach of discipline

39. (1) Where, in accordance with the *Police Act 1952*, the Commissioner charges a member of the police force with a breach of discipline and the member does not make an admission of guilt to the Commissioner, the proceedings on the charge are to be heard and determined by the Tribunal.

(2) Subsection (1) applies whether the charge is laid by the Commissioner in consequence of the investigation of a matter to which this Act applies or otherwise.

(2a) The Commissioner or person representing the Commissioner in proceedings before the Tribunal must, at the commencement of the proceedings, indicate to the Tribunal which of the following categories of punishment the Commissioner considers would, on the facts then known to the Commissioner, most likely be appropriate if the Tribunal finds the member guilty of the breach of discipline:

- (a) category A—termination or suspension of the member's appointment or reduction in the member's rank for an indefinite period;
- (b) category B—transfer of the member (without reduction in rank for an indefinite period), reduction of the member's remuneration, reduction in the member's seniority or imposition of a fine;
- (c) category C—withdrawal of specified rights or privileges, a recorded or unrecorded reprimand, counselling, education or training or action of a kind prescribed by regulation.

(3) Where the Tribunal is satisfied on the balance of probabilities that the member committed the breach of discipline with which he or she is charged, the Tribunal must make a finding that the member is guilty of the breach of discipline and remit the proceedings to the Commissioner for the imposition of punishment on the member in accordance with the *Police Act 1952*.

(4) The Tribunal may, when remitting proceedings to the Commissioner under subsection (3), indicate to the Commissioner the Tribunal's assessment of the seriousness or otherwise of the breach of discipline of which the member has been found guilty and, in that event, the Commissioner must, when making his or her determination as to punishment, have due regard to the Tribunal's assessment.

Proceedings before the Tribunal

40. (1) The Tribunal must, in relation to any proceedings to be heard by the Tribunal, give the Commissioner and the member charged (in this Act referred to as "the parties") reasonable notice of the time and place at which the proceedings are to be heard and must afford them a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.

(2) The Tribunal must, when giving notice under subsection (1), also give the Authority notice of the time and place at which the proceedings are to be heard.

(3) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his or her absence.

(4) The Commissioner may appear personally in proceedings before the Tribunal or may be represented at the proceedings by counsel or a member of the police force.

(5) A party to proceedings before the Tribunal (other than the Commissioner) is entitled to appear—

(a) personally or by counsel; or

(b) by leave of the Tribunal—by some other representative.

(6) Subject to subsection (7), the proceedings of the Tribunal are to be heard in private.

(7) The Tribunal must permit the Authority or his or her nominee and may, in its discretion, permit any other person to be present at proceedings of the Tribunal.

(8) Subject to this Act, the Tribunal will in its proceedings—

(a) be bound by the rules of evidence; and

(b) follow, to such extent as it considers appropriate, the practice and procedure of courts of summary jurisdiction on the hearing of complaints for simple offences.

Powers of the Tribunal

41. (1) The Tribunal may—

(a) by summons signed by the Tribunal or by the registrar or deputy registrar, require the attendance before the Tribunal of any person; or

(b) by summons signed by the Tribunal or by the registrar or deputy registrar, require the production of any books, papers or documents; or

Police (Complaints and Disciplinary Proceedings) Act 1985

- (c) inspect any books, papers or documents produced before the Tribunal and retain them for such reasonable period as the Tribunal thinks fit and make copies of any of them, or of any of their contents; or
- (d) require any person to make an oath or affirmation that he or she will truly answer all questions put to him or her by the Tribunal, or by any person appearing before the Tribunal, relating to the matter being heard by the Tribunal; or
- (e) require any person appearing before the Tribunal, including a party, (whether he or she has been summoned to appear or not) to answer any relevant questions put to him or her by the Tribunal or by any person appearing before the Tribunal.

(2) If any person—

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse (proof of which lies on him or her) to attend in obedience to the summons; or
- (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse (proof of which lies on him or her) to comply with the summons; or
- (c) misbehaves himself or herself before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal; or
- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he or she is guilty of an offence.

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

(3) A person is not required to produce any books, papers or documents or to answer a question under this section if the contents of the books, papers or documents or the answer to the question might tend to incriminate him or her or, in the case of a member of the police force, to prove that he or she has been guilty of a breach of discipline.

(4) The Tribunal may, on being satisfied that a person has failed to appear before the Tribunal in obedience to a summons served on him or her under this section, issue a warrant authorising a member of the police force to arrest the person and bring him or her before the Tribunal.

(5) In the course of any proceedings, the Tribunal may—

- (a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact that it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court or tribunal that may be relevant to the proceedings.

Protection of Tribunal, counsel and witnesses

42. (1) The person constituting the Tribunal has in that capacity the same protection and immunity as a judge of the Supreme Court.

(2) Counsel or any other person appearing for a party in proceedings before the Tribunal has the same protection and immunity as counsel appearing for a party in proceedings in the Supreme Court.

(3) A person appearing before the Tribunal as a witness has the same protection and immunity as a witness in proceedings in the Supreme Court.

Case stated

43. The Tribunal may state a case on any question of law for the opinion of the Supreme Court.

Costs

44. (1) The Tribunal may make such orders for costs as the Tribunal thinks just and reasonable.

(2) Where the Tribunal has ordered the payment of costs, the costs are to be recoverable summarily.

Reasons for decision

45. The Tribunal must, at the request of a party or the Authority made within 7 days after the Tribunal has made a decision in proceedings, give reasons in writing for the decision.

PART 7
APPEALS IN RESPECT OF DISCIPLINE

Appeal against decision of Tribunal or punishment for breach of discipline

46. (1) A party to proceedings before the Tribunal may appeal to the Court against a decision made by the Tribunal in those proceedings.

(2) A member of the police force may appeal to the Court against an order of the Commissioner imposing punishment on him or her for a breach of discipline.

(3) Subsection (2) applies—

(a) whether the charge for the breach of discipline was laid in consequence of the investigation of a matter to which this Act applies or otherwise; and

(b) whether the order imposing the punishment was made on the member being found guilty of the breach of discipline by the Tribunal or on the member making an admission of guilt to the Commissioner.

(4) An appeal under this section must be instituted within one month of the making of the decision or order appealed against, but the Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal be instituted within that period.

(5) Where the Commissioner has made an order imposing punishment on a member of the police force and the Commissioner or the Court is satisfied that an appeal against the order has been instituted, the Commissioner or the Court may suspend the operation of the order until the determination of the appeal.

(6) Where the Commissioner has suspended the operation of an order under subsection (5), the Commissioner may terminate the suspension, and where the Court has suspended the operation of an order under subsection (5), the Court may terminate the suspension.

(7) The Court may, on the hearing of the appeal, exercise one or more of the following powers, according to the nature of the case:

(a) affirm, vary or quash the decision or order appealed against or substitute, or make in addition, any decision or order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Tribunal or the Commissioner, as the case may be, for further hearing or consideration or for rehearing or reconsideration;

(c) make any further or other order as to costs or any other matter that the case requires.

(8) No further appeal lies against a decision of the Court made on an appeal under this section.

(9) In this section—

"Court" means the Administrative and Disciplinary Division of the District Court.

**PART 8
MISCELLANEOUS**

Application to Supreme Court as to powers and duties under Act

47. (1) Where—

- (a) in relation to a complaint about the conduct of a member of the police force; or
- (b) in relation to a matter raised for investigation on the initiative of the Authority,

a question arises as to the duties or powers of the Authority or the Commissioner or any other member of the police force, the Authority or the Commissioner may apply to the Supreme Court for a determination of the question.

(2) On an application under subsection (1), the Supreme Court may make such order as it thinks proper and the Authority or the Commissioner, or both, as the case may be, must give effect to the order.

Secrecy

48. (1) In this section—

"prescribed officer" means—

- (a) a person acting under the direction or authority of the Authority; or
- (b) a member of the internal investigation branch or any other member of the police force,

but does not include the Authority or the Commissioner;

"relevant person" means—

- (a) in relation to a person who is or has been acting under the direction or authority of the Authority—the Authority; or
- (b) in relation to a person who is or has been a member of the police force—the Commissioner; or
- (c) in any case—the Minister.

(2) Except as required or authorised by this Act or by a relevant person, a person who is, or has been, a prescribed officer must not, either directly or indirectly, make a record of, or divulge or communicate, information acquired by reason of his or her being, or having been, a prescribed officer, being information that was disclosed or obtained under this Act.

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

(3) Where the Commissioner furnishes to the Authority a certificate certifying that the divulging or communication of information specified in the certificate, being information that has been disclosed to the Authority by a member of the police force or obtained by the Authority from records of the police force, might—

- (a) prejudice present or future police investigations or the prosecution of legal proceedings whether in the State or elsewhere; or

Police (Complaints and Disciplinary Proceedings) Act 1985

- (b) constitute a breach of confidence; or
- (c) endanger a person or cause material loss or harm or unreasonable distress to a person,

then, despite any other provisions of this Act, a person who is, or has been, the Authority or a person acting under the direction or authority of the Authority must not, either directly or indirectly, divulge or communicate any part of the information except with the approval of the Commissioner or the approval of the Minister given after consultation with the Commissioner.

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

(4) This section does not prevent a person who is or has been a prescribed officer from divulging or communicating information disclosed or obtained in the course of an investigation under this Act—

- (a) in proceedings before a court, the Tribunal or the Commissioner in respect of—
 - (i) an offence; or
 - (ii) a breach of discipline,relating to a matter the subject of the investigation; or
- (b) as required in proceedings under the *Royal Commissions Act 1917*; or
- (c) as required by order of a court, the court being satisfied that there are special reasons requiring the making of such an order and that the interests of justice cannot adequately be served except by the making of such an order.

(5) This section does not prevent a person who is or has been a prescribed officer from whom information has been sought in the course of an investigation under this Act from consulting—

- (a) a legal practitioner; or
- (b) some other person with the Minister's approval (which may be a general approval or given in a particular case),

in relation to the matter under investigation.

(6) This section does not prevent a person who is or has been a member of the police force whose conduct has been under investigation under this Act from divulging or communicating particulars of the outcome of the investigation as furnished or registered under section 36 (including any comments made by the Authority when furnishing any of those particulars).

(7) Despite any other Act or law, a person who is or has been the Authority or the Commissioner cannot be required to divulge information disclosed or obtained under this Act in the course of an investigation except where such a requirement is made—

- (a) in proceedings before a court or the Tribunal in respect of—
 - (i) an offence; or
 - (ii) a breach of discipline,relating to a matter the subject of the investigation; or

- (b) in proceedings under the *Royal Commissions Act 1917*; or
- (c) by a court in the interests of justice.

(8) If a person consulted under subsection (5) obtains information as a result of the consultation that the person who initiated the consultation is (apart from that subsection) prohibited from divulging or communicating, the person so consulted must not divulge or communicate that information.

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

Offences in relation to complaints

49. (1) Where—

- (a) a person in making a complaint under this Act makes a false representation knowing the representation to be false; and
- (b) the complaint would not, apart from the false representation, be liable to be investigated or inquired into under this Act,

the person making the complaint is guilty of an offence.

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

(2) A person who—

- (a) prevents another person from making a complaint under this Act; or
- (b) hinders or obstructs another person in making a complaint under this Act,

is guilty of an offence.

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

(3) Proceedings for an offence against subsection (1) must not be commenced except with the consent of the Authority and no proceedings for an offence other than against subsection (1) may be commenced or heard against a person in respect of his or her making of a complaint under this Act.

(4) An apparently genuine document purporting to be a certificate of the Authority certifying that he or she has consented to the commencement of proceedings for an offence against subsection (1) is to be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

(5) On convicting a person of an offence against subsection (1), the court may order him or her to pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made under this Act as a result of the false representation.

(6) Any amount received by the complainant under subsection (5) is to be paid by him or her to the Treasurer in aid of the Consolidated Account of the State.

(7) In this section—

"complaint under this Act" means a complaint to a member of the police force or the Authority about the conduct of a member of the police force.

Police (Complaints and Disciplinary Proceedings) Act 1985

Authority may revoke or vary determinations, assessments, etc.

50. (1) The Authority may revoke or vary a determination, assessment or recommendation made by the Authority under this Act.

(2) Where the Authority revokes or varies a determination, assessment or recommendation, the provisions of this Act will apply as if the determination, assessment or recommendation had not been made or had been made as so varied.

(3) The revocation or variation of a determination, assessment or recommendation will not render unlawful anything done prior to the revocation or variation.

Authority and Commissioner may report to Ministers

51. Nothing in this Act prevents the Authority or the Commissioner from reporting to the Minister or the Minister responsible for the administration of the police force on any matter arising under, or relating to the administration of, this Act.

Annual and special reports to Parliament by Authority

52. (1) The Authority must, as soon as practicable after 30 June in each year, submit to the President of the Legislative Council and the Speaker of the House of Assembly a report on the operations of the Authority during the period of 12 months preceding that 30 June.

(2) The Authority may, at any other time, if he or she thinks fit to do so, submit to the President of the Legislative Council and to the Speaker of the House of Assembly a special report on operations of the Authority under this Act.

(3) Without limiting the generality of subsection (1) or (2), the Authority may report under subsection (1) or (2) on any case where, in his or her opinion, there has been a failure to take adequate and appropriate action in consequence of the investigation or further investigation of a matter, including any case where such failure arises from the nature of a determination made by the Minister under section 34(4).

(4) The Authority must not make a report under this section in which he or she sets out opinions that are, either expressly or impliedly, critical of the Commissioner or the police force unless—

- (a) before making the report—he or she has afforded the Commissioner an opportunity to make comments in writing on the report; and
- (b) where the Commissioner has made comments in writing on the report—he or she includes in or attaches to the report those comments.

(5) The Authority must, when he or she submits a report under this section, also deliver a copy of the report to the Minister.

(6) The President of the Legislative Council and the Speaker of the House of Assembly must, on receiving a report under this section, lay the report before their respective Houses.

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Regulations

55. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended by 90, 1996, Sched.
Section 2:	repealed by 90, 1996, Sched.
Section 3:	redesignated as s. 3(1) by 90, 1996, s. 3(c) definition of "breach of discipline" substituted by 90, 1996, s. 3(a) definition of "conduct" amended by 90, 1996, Sched. definition of "member" amended by 90, 1996, Sched. definition of "minor complaint" inserted by 90, 1996, s. 3(b) definition of "prescribed officer or employee" amended by 60, 1992, Sched. 2; 90, 1996, Sched.
Section 3(2) - (5):	inserted by 90, 1996, s. 3(c)
Section 5(2) - (5):	amended by 90, 1996, Sched.
Section 6:	amended by 90, 1996, Sched.
Section 7:	substituted by 75, 1993, s. 24
Section 8(1):	amended by 90, 1996, Sched.
Section 8(3) - (5):	amended by 90, 1996, Sched.
Section 9:	substituted by 90, 1996, s. 4
Section 10:	repealed by 90, 1996, s. 4
Section 11(2), (3):	amended by 90, 1996, Sched.
Section 11A:	inserted by 90, 1996, s. 5
Section 12:	amended by 90, 1996, Sched.
Section 13(1):	amended by 90, 1996, s. 6(a), Sched.
Section 13(2):	amended by 90, 1996, s. 6(b)
Section 14:	amended by 90, 1996, Sched.
Part 4 heading:	amended by 90, 1996, s. 7
Section 16(2):	amended by 90, 1996, Sched.
Section 16(4):	amended by 90, 1996, s. 8(a), Sched.
Section 16(5):	amended by 90, 1996, s. 8(b)
Section 17(1) - (5):	amended by 90, 1996, Sched.
Section 18(1) - (5):	amended by 90, 1996, Sched.
Section 19(1):	amended by 90, 1996, s. 9, Sched.
Section 19(2):	amended by 90, 1996, Sched.
Section 20:	amended by 90, 1996, Sched.
Section 21(1) and (2):	amended by 90, 1996, Sched.
Section 21A:	inserted by 90, 1996, s. 10
Section 22(1) - (3):	amended by 90, 1996, Sched.
Section 22(5) - (10):	amended by 90, 1996, Sched.
Section 22A:	inserted by 90, 1996, s. 11
Section 23(1):	amended by 90, 1996, s. 12(a), (b), Sched.
Section 23(2):	amended by 90, 1996, s. 12(c)-(f), Sched.
Section 23(3):	amended by 90, 1996, s. 12(g)
Section 23(4):	amended by 90, 1996, Sched.
Section 23(5):	amended by 90, 1996, s. 12(h), (i), Sched.
Section 23(6):	amended by 90, 1996, Sched.
Section 24:	amended by 90, 1996, s. 13, Sched.
Section 25(1):	amended by 90, 1996, s. 14(a), Sched.
Section 25(2):	amended by 90, 1996, s. 14(b), Sched.
Section 25(3):	amended by 90, 1996, s. 14(c), Sched.
Section 25(3a) - (3c):	amended by 90, 1996, s. 14(d)
Section 25(4):	amended by 90, 1996, s. 14(e)
Section 25(6):	amended by 90, 1996, Sched.
Section 25(7):	substituted by 90, 1996, s. 14(f)
Section 25(8):	amended by 90, 1996, Sched.
Section 25(8a):	inserted by 90, 1996, s. 14(g)

Police (Complaints and Disciplinary Proceedings) Act 1985

Section 25(9) and (10):	amended by 90, 1996, Sched.
Section 25(13):	amended by 90, 1996, Sched.
Section 26(1):	amended by 90, 1996, s. 15(a)-(d), Sched.
Section 26(2):	amended by 90, 1996, Sched.
Section 26(3):	substituted by 90, 1996, s. 15(e)
Section 26(4):	amended by 90, 1996, Sched.
Section 26(4a) and (4b):	inserted by 90, 1996, s. 15(f)
Section 26(5):	amended by 90, 1996, s. 15(g), (h), Sched.
Section 26(5a):	inserted by 90, 1996, s. 15(i)
Section 26(6):	amended by 90, 1996, Sched.
Section 26(7):	amended by 90, 1996, s. 15(j)
Section 27:	repealed by 90, 1996, s. 16
Section 28(1):	amended by 90, 1996, s. 17(a), Sched.
Section 28(2):	amended by 90, 1996, s. 17(b), Sched.
Section 28(3):	amended by 90, 1996, Sched.
Section 28(3a) - (3c):	inserted by 90, 1996, s. 17(c)
Section 28(4):	amended by 90, 1996, s. 17(d)
Section 28(5):	amended by 90, 1996, s. 17(e), (f), Sched.
Section 28(6):	amended by 90, 1996, Sched.
Section 28(7):	amended by 90, 1996, s. 17(g), Sched.
Section 28(8):	substituted by 90, 1996, s. 17(h)
Section 28(9):	amended by 90, 1996, s. 17(i)
Section 28(10) - (13):	amended by 90, 1996, Sched.
Section 28(16):	amended by 90, 1996, s. 17(j)
Section 28(17) - (20):	amended by 90, 1996, Sched.
Section 29:	substituted by 90, 1996, s. 18
Section 30:	amended by 90, 1996, Sched.
Section 31(1):	amended by 90, 1996, s. 19, Sched.
Section 31(2):	amended by 90, 1996, Sched.
Section 32(1):	amended by 90, 1996, s. 20(a), (b), Sched.
Section 32(1)(a)(i)(E):	repealed by 56, 1998, s. 3
Section 32(2):	amended by 90, 1996, s. 20(c), Sched.
Section 32(3):	amended by 90, 1996, s. 20(d), Sched.
Section 33:	amended by 90, 1996, s. 21, Sched.
Section 34(1):	amended by 90, 1996, s. 22(a), Sched.
Section 34(2) and (3):	amended by 90, 1996, Sched.
Section 34(4):	amended by 90, 1996, s. 22(b), Sched.
Section 34(5):	amended by 90, 1996, s. 22(c), Sched.
Section 34(6) - (8):	amended by 90, 1996, Sched.
Section 34(9):	amended by 90, 1996, s. 22(d), (e), Sched.
Section 35(1):	amended by 90, 1996, s. 23, Sched.
Section 35(2):	amended by 90, 1996, Sched.
Section 36(1):	amended by 90, 1996, s. 24(a)-(d), Sched.
Section 36(2):	amended by 90, 1996, s. 24(e)-(g), Sched.
Section 36(3):	amended by 90, 1996, Sched.
Section 37(1) - (4):	amended by 90, 1996, Sched.
Section 37(5):	inserted by 59, 1998, s. 18
Section 38(1):	substituted by 90, 1996, Sched.
Section 38(2) and (3):	amended by 90, 1996, Sched.
Section 39(1):	amended by 90, 1996, Sched.
Section 39(2):	amended by 90, 1996, s. 25
Section 39(2a):	inserted by 56, 1998, s. 4(a)
Section 39(3):	amended by 90, 1996, Sched.; 56, 1998, s. 4(b)
Section 39(4):	amended by 90, 1996, Sched.
Section 40(1) - (3):	amended by 90, 1996, Sched.
Section 40(5) - (8):	amended by 90, 1996, Sched.
Section 41(1) - (4):	amended by 90, 1996, Sched.
Section 43:	amended by 90, 1996, Sched.
Section 44(2):	amended by 90, 1996, Sched.
Section 45:	substituted by 90, 1996, s. 26
Section 46(1):	amended by 56, 1998, s. 5(a)

Section 46(2):	amended by 90, 1996, Sched.; 56, 1998, s. 5(a)
Section 46(3):	amended by 90, 1996, s. 27, Sched.
Section 46(4) - (7):	amended by 56, 1998, s. 5(a)
Section 46(8) and (9):	inserted by 56, 1998, s. 5(b)
Section 47(1):	substituted by 90, 1996, s. 28
Section 47(2):	amended by 90, 1996, Sched.
Section 48(1):	substituted by 90, 1996, s. 29(a)
Section 48(2):	amended by 90, 1996, s. 29(b), Sched.
Section 48(3):	amended by 90, 1996, s. 29(c), (d), Sched.
Section 48(4):	substituted by 90, 1996, s. 29(e); amended by 56, 1998, s. 6
Section 48(5):	substituted by 90, 1996, s. 29(e)
Section 48(6) - (8):	inserted by 90, 1996, s. 29(e)
Section 49(1):	amended by 90, 1996, s. 30(a)-(c), Sched.
Section 49(2):	amended by 90, 1996, s. 30(d), (e), Sched.
Section 49(3) - (6):	amended by 90, 1996, Sched.
Section 50(1):	amended by 90, 1996, s. 31(a)
Section 50(2):	substituted by 90, 1996, s. 31(b)
Section 50(3):	amended by 90, 1996, s. 31(c), Sched.
Section 51:	amended by 90, 1996, s. 32, Sched.
Section 52(1), (2):	amended by 90, 1996, Sched.
Section 52(3):	amended by 90, 1996, s. 33, Sched.
Section 52(4) - (6):	amended by 90, 1996, Sched.
Sections 53 and 54:	repealed by 90, 1996, Sched.